

Completed acquisition by Marston (Holdings) Limited of Collectica Limited

ME/6475-14

The CMA's decision on reference under section 33(1) given on 26 November 2014.
Full text of the decision published on 23 December 2014.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Marston (Holdings) Limited (**Marston Holdings**) and Collectica Limited (**Collectica**) supply debt enforcement services to a range of creditors, including public bodies such as local authorities, and are the main suppliers to HM Courts and Tribunals Service (**HMCTS**). Marston Holdings and Collectica are together referred to as the '**Parties**'.
2. On 19 June 2014 Marston Holdings acquired the entire issued share capital of Collectica (the **Merger**). For the reasons set out in more detail below, the Competition and Markets Authority (**CMA**) considers that the Merger has resulted in enterprises ceasing to be distinct, that the share of supply test is met, and accordingly that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of debt enforcement services. This is the enforcement of a debt, which is subject to a court order, by certificated enforcement agents who visit the debtor with the power to remove goods if payment in full is not obtained on behalf of the creditor. It also includes some compliance work (eg letter writing, phone calls, emails) to collect the debt prior to enforcement by an agent (but after the court order has been issued).
4. On a cautious basis, the CMA has considered separate frames of reference for different types of customers for debt enforcement on the basis of evidence received from third parties regarding potential differences between the following customer types: individuals and businesses, local authorities and other public bodies, and central government. However, it has not been

necessary to conclude on this given that no competition concerns arise under any plausible frame of reference. The Parties do not currently overlap in the provision of debt enforcement services to individuals and businesses, as Collectica currently only provides services to HMCTS and, to a lesser extent, to local authorities. Furthermore no third parties raised concerns with respect to these services. Therefore the CMA did not consider this further.

5. The Parties are only active in England and Wales, and not Scotland or Northern Ireland, which have different legal frameworks. Therefore the CMA has assessed the Merger within the frame of reference of the supply of debt enforcement services in England and Wales.
6. Given that the majority of debt enforcement is provided to customers free of charge (in most cases regulated fees are charged to the debtor instead), price competition in debt enforcement plays a very limited role. The CMA therefore considered whether the Merger may lead to a substantial lessening of competition (**SLC**) resulting in a deterioration of the quality of the services provided and/or a reduction in the incentives to innovate, in the supply of debt enforcement services to local authorities and other public bodies, and to central government.
7. Both Marston Holdings and Collectica currently provide debt enforcement services to local authorities, although the evidence suggests that they are not close competitors. Debt enforcement suppliers did not consider Collectica to be either a strong or moderately strong competitor, and considered that there were a large number of alternative debt enforcement suppliers for local authorities and other public bodies. Local authorities and public bodies who responded stated that the market for debt enforcement services was very competitive.
8. The CMA also considered the effect of the Merger on debt enforcement services to central government, of which there is currently one larger contract with HMCTS and a significantly smaller contract to the Child Support Agency (**CSA**). In the future there will be other central government debt enforcement contracts, for example the Debt Market Integrator (**DMI**). The current HMCTS contract is being superseded by the Compliance and Enforcement Services (**CES**) contract, whose procurement is ongoing and which is being designed differently to the current contract.
9. The CMA considers that Marston Holdings is a leading supplier for central government contracts and Collectica is currently a close competitor, given its position as an incumbent on the current HMCTS contract. However, the evidence available to the CMA demonstrated that a range of alternative

suppliers will participate in tenders for the new CES contractⁱ and future central government contracts, such as DMI.

10. On this basis the CMA considers that the Parties remain subject to sufficient competitive constraints such that the Merger does not give rise to a realistic prospect of an SLC for debt enforcement services to local authorities and other public bodies, and for central government.

Decision

11. The Merger will therefore not be referred under section 22(1) of the Enterprise Act 2002 (**the Act**).

ASSESSMENT

Parties

12. Marston Holdings supplies a wide range of debt management services, specialising in debt collection, debt enforcement and related services to public and private creditors, to recover unpaid debts in England and Wales. Marston Holdings receives over 2 million debt management cases a year from a range of customers, including HMCTS, HM Revenue and Customs (**HMRC**), the Legal Aid Agency, Transport for London (**TfL**), local authorities and law firms. Marston Holdings is comprised of a number of subsidiaries which are active in this sector: Marston Group Limited, Rossendales Limited and Rossendales Collect Limited (**Rossendales**), Swift Credit Services Limited (**Swift**) and CW Harrison and Co High Court Enforcement Limited. Marston Holdings' total turnover for the year ending 31 May 2014 was £57.9 million in the UK.
13. Collectica was a wholly owned subsidiary of Serco Holdings Limited (**Serco**) before the Merger. Collectica supplies debt management services to the public sector and government with a focus on supplying debt enforcement services to HMCTS and to a lesser extent local authorities. Collectica's turnover in the year to 31 May 2014 was £12.2 million in the UK.

Transaction

14. Marston Holdings acquired the entire issued share capital of Collectica on 19 June 2014.

Jurisdiction

15. As a result of the Merger, the CMA considers that two or more enterprises have ceased to be distinct under section 23(1) of the Act.

16. Marston Holdings' share of supply for debt enforcement services in 2013 was approximately 25% and Collectica's was approximately 4%, based on estimates of annual revenues provided by the Parties, resulting in a combined share of supply of 29%. The share of supply test in section 23 of the Act is therefore met.
17. The statutory four month deadline for a decision under section 24 of the Act is 14 December 2014, following extensions under section 25(2) of the Act.
18. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 2 October and the statutory 40 working day deadline for a decision is therefore 26 November 2014.

Background

20. Debt enforcement has historically been understood to refer to enforcement of a debt that is subject to a court order by use of a certificated enforcement agent (or agents) to visit the debtor with the power to remove goods if payment in full is not obtained on behalf of the creditor. However, as of 6 April 2014, pursuant to Regulations 5 and 6 of The Taking Control of Goods (Fees) Regulations 2014 (**the 2014 Regulations**), debt enforcement now encompasses a three-stage process. After a court order has been granted, an enforcement company must proceed through the following stages:
 - Debt compliance stage. This includes all the activities undertaken in seeking repayment of a debt before the case is passed to an enforcement agent: making telephone calls, writing letters, sending SMSs and emails and entering into payment plans.
 - Debt enforcement stage. If debt cannot be recovered at the compliance stage, the case is passed to a certificated enforcement agent who visits the debtor with the power to remove goods if payment in full is not obtained.¹
 - Sale and disposal stage. If debt cannot be collected in full at the enforcement stage, debtor's goods can be sold.

¹ The enforcement of High Court writs involves two enforcement stages, the second taking place if the debtor and the enforcement agent do not enter into a controlled goods agreement, or if the debtor breaches the agreement.

21. In view of the 2014 Regulations, in this decision the term 'debt enforcement' is used in a broad sense to denote the three stages described above, which occur after a court order has been issued.
22. Debt enforcement services are part of a wider category of 'debt management services'. In addition to debt enforcement services, debt management services also include the initial debt collection stage, which refers to all the activities undertaken when seeking payment of a debt before a court order has been granted, for example analytics and propensity to pay assessment, writing letters, sending SMSs/emails (ie similar activities to those described above as part of the debt compliance stage of debt enforcement). Debt management services also include debt purchase, whereby debt can be bought by a company who will then try to collect the debt itself or use the services of a debt collection agency.
23. The evidence received by the CMA indicates that most debt enforcement companies provide debt enforcement services only and become involved after a court order has been granted. Some enforcement companies are part of companies which also provide wider debt management services (e.g. Capita, Marston Holdings).
24. Debt enforcement services are required by a range of customers (creditors) including public bodies (central government, other public bodies and local authorities), private companies and individuals.
25. There are various types of court orders which require enforcement, including council tax liability orders, criminal fines, road traffic debt warrants, High Court writs and commercial rent arrears. Since the 2014 Regulations, the enforcement of each of these court orders is required to follow the three stages set out in paragraph 20.

Debt enforcement fees

26. The 2014 Regulations fix the fees that debt enforcement companies can charge for their services. In most cases, regulated fees are charged to the debtor, so that the services are provided to customers free of charge. However, there are some exceptions:
 - a £75 abortive fee for High Court writs may be charged to the creditor in cases where recovery has been attempted but has not been successful; and
 - in the case of enforcement of arrest warrants, debt enforcement companies are paid by the Ministry of Justice (**MoJ**).

27. As the bulk of debt enforcement work is provided to customers free of charge because fees are charged to the debtor, the CMA considers that price competition in this sector plays a very limited role. Quality of service and innovation are the main dimensions of competition. This was supported by both the Parties and third parties. Quality of service relates to a number of different factors including collection performance (ie the proportion of outstanding debt that is collected), behavioural standards (ie dealing with vulnerable debtors), efficiency and security of data management. Innovation may refer to the adoption of technological improvements (for example, Marston Holdings has adopted body worn videos on its enforcement agents). It may also refer to developments in the IT systems used by debt enforcement suppliers to track and allocate cases. These developments are designed to enhance the performance of debt enforced, reduce customer complaints and improve behavioural standards. Both the quality of the service provided and the degree of innovation displayed in providing these services contribute to the reputation of the debt enforcement provider.

Counterfactual

28. The application of the SLC test involves a comparison of the merger scenario against the competitive situation without the merger, known as the counterfactual. At phase 1, the CMA considers the effect of the merger compared to the most competitive counterfactual providing that it considers that situation to be a realistic prospect. In practice, at phase 1, for completed acquisitions the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. An alternative counterfactual may be used at phase 1 where, on the basis of the evidence available, there is a realistic prospect of a counterfactual that is more competitive than the pre-merger conditions.²
29. In this case the CMA found that there was no realistic prospect of a counterfactual that is more competitive than the pre-Merger conditions.³ Although there were some indications that Serco, Collectica's owner prior to the Merger, may not have continued to operate Collectica beyond the expiry of its current contracts, the CMA did not receive sufficiently compelling

² See the [Merger Assessment Guidelines](#), joint publication of the Competition Commission and OFT, September 2010 (**Merger Assessment Guidelines**), section 4.3. These have been adopted by the CMA, see Annex D to CMA2 [Mergers: Guidance on the CMA's Jurisdiction and Procedure](#), January 2014.

³ The CMA considered whether a possible acquisition of Collectica by another firm would have constituted a more competitive counterfactual than the pre-Merger conditions (i.e. ownership by Serco) given that in 2013 Serco was banned from bidding for central government contracts, but concluded that there was not a realistic prospect that this was the case because this ban was lifted in early 2014 (i.e. before the Merger).

evidence to conclude that there was a realistic prospect that Collectica would have exited the market absent the Merger.⁴

30. As such, the CMA assessed the Merger against a counterfactual of pre-Merger conditions, where, absent the Merger, Collectica would have continued to operate under the ownership of Serco.

Frame of reference

31. The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of the merger. Market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way, as the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁵

Product frame of reference

32. The Parties overlap in relation to the provision of debt enforcement services. On the basis of the 2014 Regulations, the CMA understands that debt enforcement companies must be able to provide services to the customer at each of the three stages included in debt enforcement (described in paragraph 20). The evidence received confirmed that the same provider generally supplies all of these debt enforcement services to the customer. On this basis, the evidence available to the CMA indicated that competitive conditions do not vary materially in the supply of services at each of the three stages included in debt enforcement. Therefore the CMA considers it appropriate to define debt enforcement as a single frame of reference.⁶
33. The Parties submitted that the product scope should be defined as debt management services, including debt enforcement services but also the services provided before a court order has been granted (as described in paragraph 22). However, based on the evidence provided by third parties, the CMA understands that customers typically purchase debt enforcement services separately from other types of debt management services and that most debt enforcement companies, including Collectica, do not offer other

⁴ See *Merger Assessment Guidelines*, from paragraph 4.3.8.

⁵ See *Merger Assessment Guidelines*, paragraph 5.2.2.

⁶ See *Merger Assessment Guidelines*, paragraph 5.2.17.

debt management services.⁷ For these reasons, on a cautious basis, the CMA does not consider it appropriate to widen the frame of reference to include all debt management services.

Customer groups

34. As noted above, debt enforcement services are required by a range of different types of customers, including public bodies (such as central government, other public bodies such as TfL, and local authorities) and private businesses and individuals.
35. A number of debt enforcement suppliers told the CMA that there were some differences between services to individuals and businesses, local authorities and central government (explained further in the paragraph below). The CMA therefore considered the extent to which the supply of debt enforcement services can be delineated according to the type of customers (creditors) involved.⁸
 - *Customer distinction: individuals and businesses and public bodies*
36. Firstly, based on the evidence received from some third parties, the CMA understands that a distinction can be made between debt enforcement services provided to public bodies and those provided to private businesses and individuals. The main difference is that contracts with public bodies are usually tendered and require dealing with a large number of debtors, while contracts with individuals and businesses are mostly obtained through bilateral negotiations with private companies and mostly involve a much smaller number of debtors. Therefore, servicing public bodies requires greater expertise in bulk administration. The CMA also notes that the Parties only overlap in the provision of services to public bodies.
 - *Customer distinction: within different public bodies*
37. A number of debt enforcement suppliers also told the CMA that there were some differences between debt enforcement services to central government bodies and those enforcement services provided to local authorities (and to other public bodies). These suppliers stated that, although the services provided were in many respects very similar, central government contracts were often larger in scale, required enforcement companies to provide

⁷ The CMA has also not seen any evidence that customers generally have a preference to purchase a bundle of debt management services such that they would not be willing to switch from purchasing a bundle to purchasing debt enforcement services separately if the price of the bundle was to increase.

⁸ See *Merger Assessment Guidelines*, from paragraph 5.2.28.

national coverage, had longer, more complex and therefore more demanding procurement processes, and there were fewer bidding opportunities given the smaller number of available contracts.⁹ In contrast, the CMA understands that local authority contracts (and contracts for other public bodies) are generally smaller and there are more frequent bidding opportunities due to the greater number of available contracts.¹⁰

38. The Parties said there was no significant difference between supplying debt enforcement services to central government and to local authorities/other public bodies, because the services were identical and were undertaken by the same enforcement agents using the same processes and systems and charging identical fees. Furthermore, the Parties stated that central government contracts were not generally larger in value, national coverage was not a barrier to entry, and that they did not have longer procurement processes or longer contract periods.¹¹
39. When considering the supply-side, there is evidence that debt enforcement providers are not all active in providing services to each of these different types of public bodies. For instance, based on evidence received from third parties the CMA understands that a larger number of providers are active in enforcement services to local authorities as opposed to central government bodies where the number of suppliers is currently more limited.
40. In relation to central government contracts, the Parties told us that HMCTS and the CSA were currently the only two central government bodies who had debt enforcement contracts, although the CMA was told that in future there will be other central government debt enforcement contracts, for example the DMI.¹² The CMA has assessed the key current and future central government contracts as part of its assessment within this frame of reference.

- *Conclusion on customer groups*

41. As set out above, the Parties only overlap in the provision of debt enforcement services to public bodies and the CMA received evidence which

⁹ As noted in paragraph 8 there are currently only two debt enforcement contracts for central government for HMCTS and CSA. It is our understanding that to the extent that other central government bodies currently require debt enforcement services these are provided primarily in-house.

¹⁰ The CMA was told by one third party that there are more than 700 local authority debt enforcement contracts.

¹¹ The Parties also provided some evidence in support of this, for example they stated that both the existing central government contracts were originally for three years plus two possible one-year extensions and that the average local authority contract was similarly for three years with a possible two-year extension. They also stated that both central government contracts had procurement processes which lasted for a number of months and these were not substantially different to local authority contracts. In addition, they noted that contracts for both local authorities and central government were evaluated using a similar range of quality metrics such as collection performance, customer service and treatment of vulnerable debtors.

¹² See paragraph 67 for a description of DMI.

suggests that a distinction can be made between debt enforcement services provided to public bodies and those provided to private businesses and individuals. Given that the Parties do not overlap on services to individuals and businesses, and no third parties raised concerns regarding the impact of the Merger with respect to these services, individuals and businesses are not considered further. The CMA has therefore considered the provision of debt enforcement services to public bodies as a separate frame of reference. There was more mixed evidence on whether within public bodies there is a further distinction between local authorities/other public bodies and central government. On a cautious basis the CMA has considered these as separate frames of reference. However, it has not been necessary for the CMA to conclude on the precise delineation of the relevant product frames of reference given that no competition concerns arise under any plausible segmentation.

Types of enforcement service

42. The CMA also considered the extent to which debt enforcement services can be delineated by the different types of debts that enforcement companies seek to recover, for example council tax liability, road traffic debts, commercial rent arrears, etc. For most of these categories, both the Parties and third parties told the CMA that the expertise required from an enforcement company was similar irrespective of the type of debt and companies did not tend to specialise. The CMA therefore does not consider it necessary to define separate frames of reference with regard to these types of debt.
43. A number of third parties referred to significant differences relating to the enforcement of High Court writs,¹³ which are issued in situations where the creditors are individuals or businesses. Given that the Parties do not overlap in relation to these services, the CMA has not considered this further.
44. There was some evidence from third parties that there might be some distinction in the enforcement of arrest warrants without bail in comparison with other arrest warrant and distress warrant services, for example the requirement for some additional equipment eg personal protection equipment.¹⁴ However, a number of other third parties stated the services were very similar, are undertaken by the same enforcement agents and

¹³ A High Court writ can only be issued to authorised High Court Enforcement Officers (HCEO), of which there are circa 60 across England and Wales; HCEOs then pass the order to an enforcement agent or company.

¹⁴ Enforcement of these warrants leads to the restraint of individuals and taking them into custody, typically to court or a police station. The CMA understands that these types of services are required by a range of customers (including HMCTS and local authorities) and there are a range of debt enforcement companies who provide these services.

provided by the same suppliers. Overall the CMA considered that there does not appear to be any material difference between these services and other types of arrest or distress warrants and therefore has not considered these as separate frames of reference.

Conclusion on product frame of reference

45. It is not necessary for the CMA to determine conclusively the precise delineation of the relevant product frames of reference given that no competition concerns arise under any possible segmentation. However, based on the evidence set out above, for the purposes of this assessment, on a cautious basis the CMA considers the impact of the Merger on the following product frames of reference:
- debt enforcement services for local authorities and other public bodies; and
 - debt enforcement services for central government bodies, including services provided to HMCTS (both current services and with regard to the new CES contract) and other central government contracts.

Geographic frame of reference

46. The Parties are active in England and Wales and do not operate in Scotland or Northern Ireland. This is also the case for most providers of debt enforcement services in England and Wales. The Parties stated that the competitive field in England and Wales is distinct from the competitive field in Scotland and Northern Ireland due to different legal frameworks.
47. The CMA considered the extent to which there were regional differences in debt enforcement services. Although some debt enforcement companies operate on a regional scale, from the supply-side the evidence indicated that there are low barriers to geographic expansion within England and Wales. In order to operate in a different region companies require access to certificated enforcement agents based in that area. The CMA has been told by the Parties and by several other debt enforcement companies that as the large majority of enforcement agents are self-employed and constitute a mobile work force, an enforcement company who wins a contract in an area where it is not already operating is able to relatively easily access the enforcement agents it needs.
48. The CMA therefore has assessed the impact of the Merger within the frame of reference of the supply of debt enforcement services in England and Wales (excluding Scotland and Northern Ireland), without further geographic segmentation. However, it is not necessary for the CMA to conclude on the

geographic frame of reference given that no competition concerns arise under any possible regional differentiation.

Competitive assessment

Horizontal unilateral effects

49. The CMA has considered whether the Merger may lead to a substantial lessening of competition in the provision of debt enforcement services through horizontal unilateral effects, leading to, in particular, a deterioration of the quality of the services provided and/or a reduction in the incentives to innovate¹⁵, for each of the frames of reference set out in paragraph 45 in England and Wales.

Supply of debt enforcement services to local authorities and other public bodies

50. Collectica and Marston Holdings both currently supply debt enforcement services for local authorities. Therefore the CMA has considered whether the Merger may give rise to a realistic prospect of a substantial lessening of competition for these services.
51. Collectica currently provides debt enforcement services to a small number of local authorities and this represents less than 10% of its revenues. Based on tender data provided by the Parties, Collectica submitted a number of bids for debt enforcement services for local authorities between 2009 and 2013 and was especially active in 2010 when it submitted [REDACTED] bids. The Merger therefore reduces the number of debt enforcement companies active in bidding for local authority contracts.
52. However, the CMA notes that in the last three years Collectica [REDACTED].¹⁶ This suggests that Collectica has not been a particularly strong competitor for local authorities' contracts over recent years. Furthermore of the eight suppliers who responded to the CMA's enquiries, only one supplier considered Collectica to be a strong competitor for local authorities' contracts.
53. The evidence indicates that there are a large number of debt enforcement companies providing debt enforcement services to local authorities/other public bodies. All seven local authorities/other public bodies who responded to

¹⁵ As previously explained, given that the majority of debt enforcement services are provided free to the customer, price competition in debt enforcement plays a very limited role and therefore the CMA considered any harm likely to arise relates to quality of services and/or innovation.

¹⁶ [REDACTED]

the CMA said that the market for enforcement services was very competitive and that there were a large number of alternative suppliers. The vast majority of competitors also stated that there were a large number of strong or moderate strength competitors for local authorities/other public bodies, besides Marston Holdings, including Capita (Equita and Ross and Roberts), Jacobs, Newlyn, Bristow and Sutor, JBW Group, NSL, Phoenix Commercial and Rundle & Co.

54. There is also evidence that there are frequent opportunities to compete for contracts for local authorities/other public bodies and to switch between suppliers. A number of third parties stated that many local authorities and other public bodies, used tenders to select panels of multiple providers, rather than a single provider. The CMA was told that such panels also allowed local authorities/regional public bodies to benchmark the performance of each company against the others and switch providers even within a contract. This was supported by evidence received from local authorities.
55. For the reasons outlined above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC in the supply of debt enforcement services to local authorities and other public bodies.

Supply of debt enforcement services to central government

56. As noted previously, the CMA understands that HMCTS and the CSA are the only two central government bodies who currently have debt enforcement contracts.
57. In relation to HMCTS, the Parties are the two main current providers of debt enforcement services.¹⁷ The CMA understands that the contract with HMCTS, valued at approximately £[redacted] million, is currently the largest central government debt enforcement contract out of the overall revenues for the entire debt enforcement industry in England and Wales, which is estimated by the Parties as being £[redacted] million.¹⁸ HMCTS will be replacing this contract with the CES contract, which will cover wider debt management services (the CES contract is described further in paragraph 63).
58. The CSA contract was tendered in 2011 and won by Rossendales (now part of Marston Holdings). The contract is relatively small, requiring the enforcement of less than [redacted] orders a year, with an annual revenue to

¹⁷ There is a third supplier for the current HMCTS contract, Excel, who shares the work in Wales (see paragraph 60)

¹⁸ [redacted]

Marston Holdings of approximately £[REDACTED]. This compares with the current HMCTS contract which involves more than [REDACTED] cases.

59. The CMA considers the current HMCTS contract, the tender for the CES contract, and future contracts for other central government bodies separately, before then concluding on whether there is a realistic prospect of the Merger resulting in an SLC for central government contracts.

Current HMCTS contract

60. The current HMCTS contract for warrant enforcement services was awarded in 2009 and was due to expire in November 2014, although it has now been extended for a further twelve months until November 2015. Twelve companies bid for the contract.¹⁹ Originally, it was awarded to four different companies: Marston Holdings, Phillips (now renamed Collectica), Swift and Excel. Marston Holdings was appointed as the provider in the South East, South West and North West regions, Collectica in the London, North East and Midlands regions, while Excel and Swift were selected as joint providers in Wales. With the acquisition of Swift by Marston Holdings in 2013, the number of contracted providers has reduced to three. Following the acquisition of Collectica, the number of providers has further reduced to two, with Marston Holdings being the only large incumbent, receiving more than [REDACTED]% of the work by volume, and Excel handling only half of the work in Wales. This contract accounts for [REDACTED]% of Marston Holdings' revenues and [REDACTED]% of Collectica's.
61. The contract stipulates certain targets in terms of collection rates for the providers to meet.²⁰ If a provider fails to meet these targets, HMCTS can either reallocate part of the work (up to 20% of cases) to a "reserve debt enforcement company" or terminate the contracts. Collectica is the reserve debt provider in Marston Holdings' regions²¹ and Marston Holdings is the reserve debt provider in Collectica's regions. [REDACTED].
62. [REDACTED]^{22 23}

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ Except in Wales where the reserve provider was Excel.

²² [REDACTED]

²³ [REDACTED]

Future HMCTS contract (CES procurement)

63. The CES contract is for the collection and enforcement of criminal fines and confiscation orders, one aspect of which is the enforcement of warrants. The CMA understands that this will be designed differently to the current HMCTS contract. A single prime contractor will be appointed, which will be responsible for the delivery of a wide range of services, including debt management services. The prime contractor may then sub-contract the provision of any of those services and is required to use a sub-contractor for the enforcement of Warrants of Control. The contract is expected to be awarded in early 2015 and will have an initial term of five years, with the possibility of being extended for a further four (2+2) years. The CMA understands that HMCTS will pay the prime contractor a monthly service fee and a payment by results fee based on the volume and value of debt that the prime contractor collects (through enforcement or otherwise) either directly itself or through its sub-contractors. In line with the 2014 Regulations, execution fees for warrants of control will be paid by the debtor straight to the company executing the warrant.
64. There are currently three prime bidders shortlisted for the CES contract: [✂].
65. HMCTS told the CMA that it required complete visibility over each prime bidder's supply chain and must approve any material sub-contractor. Therefore it would need to review the contractual arrangements in place between the prime contractor and its sub-contractors. If a prime bidder's contractual arrangements were not considered to be acceptable by HMCTS then it would not award the contract. However, HMCTS would not have any direct contractual relationship with the sub-contractors. Provided that the prime bidder was able to offer a service that meets HMCTS's requirements and it had adequate assurance of this and any sub-contractual arrangements in place, then HMCTS told the CMA it was non-prescriptive about the choice of debt enforcement suppliers used by the prime bidders.
66. [✂]

Other contracts with central government bodies

67. The CMA understands that there will be other future central government debt enforcement contracts. For example, the DMI is being led by the Cabinet Office, on behalf of six government departments/bodies (HM Revenue and Customs, the Department for Works and Pensions, the Student Loans Company, the Legal Aid Agency, the Driver and Vehicle Licensing Agency and the Home Office), and will provide the mechanism for debt to be collected and enforced with a private sector partner.

68. The CMA was told by the Parties that the intention is for DMI to come into operation in 2015 and the contract will have a duration of five years. The DMI is expected to offer a comprehensive suite of debt management services and will create panels of providers who will be able to offer different debt management services to public bodies through ‘call off’ contracts.²⁴ These contracts under the DMI framework agreement will be awarded for a period up to five years, with an option to extend them by a further two years. Although initially focused on debt collection, it is understood that debt enforcement services will also be required.

69. [REDACTED]

Competitive assessment for central government contracts

70. The CMA considers the closeness of competition between the Parties and the extent of the constraint imposed by Collectica on Marston Holdings, before then considering the extent of the remaining constraints from alternative debt enforcement suppliers.

- *Closeness of competition*

71. There is evidence from the current HMCTS contract that the Parties are currently close competitors, because they are the two main incumbent suppliers for this contract and are each other’s reserve provider in their respective regions in the case of underperformance, where HMCTS is able to reallocate a proportion of cases to the other party.²⁵ The Parties were also two of the incumbent suppliers in the previous HMCTS contract which ran from 2006-2009.

72. The CMA notes that Marston Holdings’ internal documents indicated that [REDACTED]²⁶

73. The CMA also received some evidence indicating that the importance of incumbency should not be overstated. For example, [REDACTED]. HMCTS told us that they were non-prescriptive about the choice of sub-contractors and had not stipulated that an incumbent must be included in the bids. The Parties also referred to evidence from the previous contracts which indicated that the incumbent suppliers had not always won the subsequent contract. For example, when the 2006 HMCTS contract was let, three of the incumbent

²⁴ Call off contracts are specific contracts between individual customers and the DMI for the provision of specific debt services.

²⁵ See paragraph 61 for further explanation of this mechanism.

²⁶ [REDACTED]

suppliers did not win the new contract. One of the prime bidders also stated that incumbency was not a factor in its choice of sub-contractor.

74. The CMA considers the Parties are close competitors as current incumbents for the HMCTS contract. There appears to be some incumbency advantage for tenders for work in which the Parties have experience, however the evidence strongly indicates that Marston Holdings would continue to face constraints from a wide range of suppliers (as discussed in paragraphs 82 to 90).
- *Strength of the competitive constraint imposed by Collectica*
75. As set out above, although the CMA considers that the Parties are close competitors, it also assessed the strength of the competitive constraint imposed by Collectica on Marston Holdings.
76. The CMA notes that [REDACTED], the evidence indicates that this nevertheless impacts on Collectica's reputation and weakens its ability to constrain Marston Holdings, absent the Merger.
77. This is supported by evidence from the prime bidders. One of the prime bidders stated [REDACTED].²⁷ Another of the prime bidders [REDACTED].
78. The CMA also notes that Collectica is a smaller debt enforcement company generating a significantly smaller turnover than Marston Holdings. Collectica's turnover in the year ending 31 May 2014 was just over £12 million whereas Marston Holdings' was in excess of £55 million. In the current HMCTS contract, although Collectica and Marston Holdings both supplied three different regions, Collectica earned less than half of the revenues earned by Marston Holdings on the HMCTS contract²⁸ than Marston Holdings. Furthermore a number of third parties said that, prior to the Merger, Marston Holdings had a wider geographic coverage than Collectica who was considered to be particularly strong in the London and the south east region. Evidence therefore demonstrates that Marston Holdings had a significantly wider national geographic coverage and reach prior to the Merger than Collectica. The CMA therefore considered that Collectica was a much smaller player than Marston Holdings.
79. The Parties stated that it was misleading to consider Marston Holdings and Collectica as being strong central government competitors because there

²⁷ [REDACTED]

²⁸ With regard to the HMCTS contract, Marston Holdings earned revenues of £[REDACTED]m whereas Collectica earned just over £[REDACTED]m for the year ending May 2014.

were currently only two contracts and Collectica was only a supplier on one of the contracts. Moreover, a wide range of enforcement suppliers had previously bid for the HMCTS contract, indicating that there were a number of alternative suppliers who could compete for this and other government contracts. The presence of alternative debt enforcement suppliers to compete for central government contracts is considered further below in paragraphs 82 to 90.

80. Most of the debt enforcement companies which responded to the CMA's enquiries considered Collectica to be a strong competitor for central government contracts, with the primary reason for this strength being its role as one of the current suppliers to HMCTS. One debt enforcement supplier also referred to Collectica's size, not simply in terms of the number of enforcement agents but in terms of its financial strength as current turnover is considered a good indicator of financial stability. Two debt enforcement suppliers also referred to the strength which comes from Collectica being part of a large group like Serco, although they did not provide evidence to support this.
81. In respect of the evidence from other debt enforcement companies, the CMA considers that Collectica's incumbency on the current HMCTS contract did provide evidence that the Parties are close competitors (see paragraphs 71 to 74). However whilst Collectica was providing a competitive constraint on Marston Holdings, it is clear that in relation to its size, financial strength and geographic coverage, Collectica was not of comparable strength to Marston Holdings. Therefore the CMA considered the extent to which there are other debt enforcement providers of at least comparable strength to Collectica, who will continue to constrain Marston Holdings post-Merger.
 - *Constraints from alternative suppliers*
82. The CMA has considered whether there are alternative suppliers to compete for the supply of debt enforcement services to central government contracts, for example in terms of the coverage, size and competitive strength, which are at least equivalent to Collectica.
83. The CMA notes that HMCTS considered that there were a number of alternative debt enforcement suppliers who could provide services for HMCTS and the CES prime contractor. It referred to the following alternative suppliers: Capita (Equita and Ross and Roberts), Bristow and Sutor, Newlyn, Excel, Rundle & Co, JBW Group, Phoenix Commercial and Jacobs. It also did not express any concerns about the impact of the Merger on the current contract or on the CES procurement.

84. The CMA understands that a number of the suppliers referred to by HMCTS, bid for the previous HMCTS contract. [REDACTED]
85. The CMA also notes that in relation to other future central government contracts, in respect to the DMI it has also already been determined that [REDACTED].
86. The evidence received by the CMA indicates that JBW Group is a credible alternative competitor. [REDACTED]. The CMA also understands that it provides a similar geographic coverage to that of Collectica.²⁹
87. Equita and Ross and Roberts are both owned by Capita, a large outsourcing organisation similar to Serco, and these suppliers have a turnover of approximately £30 million. Capita said that it could provide similar national geographic coverage for debt enforcement to that of Marston Holdings. It also had the second largest total debt enforcement market share according to figures provided by the Parties. Capita itself considered that it was a strong competitor for central government work and one third party also supported this. On the other hand, it did not consider itself to currently be a strong competitor for CES given that it was no longer bidding to be a prime contractor and expressed doubts that the other prime bidders would be willing to consider Capita given that it was a potential competitor outsourcing company. However, the CMA notes that this would also be the case if Collectica had continued to be under Serco's ownership.
88. Bristow and Sutor are also a large debt enforcement company with a turnover of approximately £13m, similar to Collectica's. Although it is primarily active in the local authority sector, [REDACTED].
89. In addition to these competitors, the CMA considers that there are a number of other smaller debt enforcement companies who are able to supply debt enforcement services for central government on a regional basis, albeit potentially for a smaller proportion than Collectica currently supplies for HMCTS.³⁰

²⁹ The CMA notes that JBW Group is also a current provider for TfL which although it is not a central government contract, is nonetheless still a significant contract, and was told that it is strong in the south of England, where some third parties had noted that Collectica was relatively strong.

³⁰ For instance Excel, who is the current incumbent supplier in Wales shared with Swift (owned by Marston Holdings), stated that it would have the capacity to supply [REDACTED]. Two other suppliers also told the CMA they would be capable of serving a proportion of the CES contract on a regional basis. Furthermore, the CMA was told that the [REDACTED]. This supplier also told us that it had ambitions to win central government contracts and was referred to by one third party as a strong competitor for central government. There is also some evidence that it is capable of winning larger local authority contracts.

90. The CMA therefore considers there are a range of alternative suppliers who will participate in tenders for central government debt enforcement contracts. There are three other alternative suppliers which the CMA considers are at least equivalent competitors to Collectica, who are able to constrain the Parties. In addition there are also a number of smaller competitors who are able to supply a proportion of debt enforcement services for central government on a regional basis.

Conclusion on competition for central government contracts

91. The CMA considered the effect of the Merger on debt enforcement services within the central government frame of reference, including the impact of the Merger for services provided to HMCTS (both current services and the new CES contract) and other central government contracts.
92. Although there is evidence to suggest that Marston Holdings and Collectica are close competitors (given that they are the two main incumbent suppliers for the current HMCTS contract), the CMA found that Collectica was of relatively smaller size, scale and geographic coverage than Marston Holdings and [X], and was therefore not of comparable strength to Marston Holdings. Furthermore the evidence available to the CMA demonstrates that there are a range of alternative suppliers who will participate in tenders for central government contracts (including the new CES contract and other future contracts such as DMI).
93. The CMA therefore found that the Merger does not give rise to a realistic prospect of an SLC in the supply of debt enforcement services to central government.

Barriers to entry and expansion

94. In cases where competition concerns arise, the CMA will consider the presence of barriers to entry.
95. Most debt enforcement companies told the CMA that barriers to entry into local authorities were low or at most moderate. They stated that due to the number of opportunities to tender for local authority contracts, there were ample routes for new suppliers to enter the market as local authorities often trialled suppliers. Also, as local authorities often contracted with multiple suppliers, it was easier to benchmark and switch to other suppliers. A number of third parties also referred to the fact that, as the majority of enforcement agents are self-employed, they are able to move companies to where their services are required; therefore, companies were able to access additional resourcing relatively easily and quickly.

96. However, some third parties also referred to the fact that in cases where there are a large number of debtors (for both local authorities, other public bodies and central government), this requires significant investment in complex IT systems and expertise in bulk administration. Some third parties also referred to the outsourcing of debt enforcement contracts (which is the case in some larger local authority contracts and in central government) as being a barrier to entry and expansion for a large number of suppliers as the outsourcer often awards debt enforcement work to those companies within their group. In addition, some third parties stated that as a proven track record was required (both by local authorities and central government), companies needed to demonstrate that they have experience of undertaking the different types of debt work.
97. In relation to debt enforcement services provided to central government bodies, with the exception of two debt enforcement suppliers, the majority of those who responded stated that barriers to entry into central government were particularly high. In particular, in addition to the points raised in the paragraph above, the CMA was told that this was difficult because:
- central government bodies were more risk averse – for example it was noted that HMCTS awarded its current debt enforcement contract to the firms who had supplied the previous HMCTS contract;
 - procurement processes were longer and more demanding than for local authorities work. Concerns were also raised that tendering was less open and transparent than for local authorities;
 - there were less frequent tendering opportunities;
 - providers were required to have a greater depth of compliance and quality control;
 - national coverage was required.
98. The Parties told the CMA that barriers to entry and expansion for the provision of debt enforcement services to central government bodies were no different from those of local authority customers and that there were low barriers to entry due to access to a mobile self-employed workforce, low working capital requirements and the use of panels to facilitate switching between providers.
99. The CMA considers that there is mixed evidence on the extent to which there are barriers to entry, particularly in relation to central government. However, given that the CMA has not found that the Merger gives rise to a realistic prospect of an SLC, it has not been necessary to conclude on barriers to entry.

Third party views

100. The CMA received responses from a range of customers (creditors) including a number of local authorities, public bodies such as TfL and the Legal Aid Agency, and HMCTS, of which the vast majority did not raise concerns about the Merger and considered that there were a number of alternative suppliers.
101. The majority of responses from other debt enforcement companies raised concerns about the Merger with respect to central government and in particular HMCTS. However, a small number of suppliers did not have concerns in this regard and on the Merger as a whole. These comments have been reflected in the competition assessment above.
102. Third party comments have been included where relevant in the decision.

Decision

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

Sheldon Mills

Senior Director Mergers

Competition and Markets Authority

26 November 2014

END NOTES

ⁱ With regards to paragraphs 9 and 92, the Parties clarified that although there will be a range of alternative suppliers who have had, and/or will have opportunities under the CES and further central government contracts, such as DMI, it is not certain that formal tenders will be issued. Suppliers may instead be appointed through a panel or bilateral negotiations.