Anticipated acquisition by London Stock Exchange Group of Frank Russell Company

ME/6455/14

SUMMARY

1. London Stock Exchange Group plc (LSEG) has agreed to acquire Frank Russell Company (Russell), a US business which provides index and global asset management services (the Merger). LSEG is a diversified financial markets infrastructure and capital markets group which operates trading platforms, post trade, and trading technology services. It owns FTSE, an index business. LSEG and Russell are together referred to as 'the parties'.

2. The Competition and Markets Authority (CMA) gave notice to the parties that their merger notice was satisfactory on 12 September 2014. The CMA's statutory timetable under section 34ZA(1) of the Enterprise Act 2002 (the Act) therefore expires on 7 November 2014.

3. As regards the product scope of the frame of reference, the parties overlap horizontally in the supply of indices. Indices can be separated on the basis of a variety of dimensions, including the asset classes and geographies of an index's constituents, as well as on the basis of specificities in the rules for selecting index constituents or assigning weights to them. The CMA received mixed responses from third parties on the appropriate product and geographic scope. On a cautious basis, and mindful that a narrow approach would risk missing some areas of potential overlap, the CMA analysed the effect of the Merger at a UK-wide and at a global level on the basis of the supply of separate segments of financial indices based on different asset classes, different countries/regions and considering the impact of the Merger on different customer groups.

4. The parties are also active upstream in the provision of listing and trading services (exchanges) and downstream in the provision of asset management services.

Horizontal effects in indices

5. The CMA first examined the likelihood of horizontal unilateral effects arising as a result of the merger. Generally, third parties which responded to the CMA's market investigation told the CMA that they did not consider the parties' products were competing. In all segments, the parties' combined shares of supply were low. Where shares were higher (above [35–45%]), the increment contributed by Russell was always less than [0–10%].

6. One third party raised the possibility that the Russell UK Mid Cap 150 and the FTSE 250 were competing. However, evidence received by the CMA indicates that the parties' products do not closely constrain each other, and there are close competitors whose products would continue to impose a constraint on the merged entity.

7. Third parties did not raise concerns about any other overlap or indicate that any of the other indices supplied by the parties were close competitors. Third parties confirmed the parties' submission that Russell mainly operates in the US and its main indices reflect US securities, whereas FTSE is stronger in the European Economic Area (EEA). None of the third parties who responded to the CMA's investigation could identify any particular securities where the parties were closely competing and competition from other providers was limited. The CMA also examined switching data, which was consistent with the view that the parties do not compete closely.

8. Given the evidence suggesting that the parties' indices are not closely constraining one another in any segment, the existence of strong competitors across all segments, the very low increment attributable to Russell and the general lack of third party concerns, the CMA found that there is no realistic prospect of a Substantial Lessening of Competition (SLC) as a result of loss of competition between LSEG and Russell indices in any plausible frame of reference.

Vertical and conglomerate effects

9. The CMA also assessed the likelihood of vertical effects arising as a result of the Merger, specifically as regards input foreclosure of rival index providers and customer foreclosure of asset managers. However, the CMA found that the Merger does not give rise to competition concerns in this respect.

10. The CMA also assessed the likelihood of conglomerate effects arising. Based on submissions from third parties, the CMA considers that LSEG is unlikely to have the ability to foreclose rival index providers by bundling some of its indices. This is because at least two of LSEG's competitors also have the

ability to provide broad bundles of indices, and there are indications that some large customers purchase all the main indices from the largest providers. The CMA therefore found no realistic prospect of an SLC arising from conglomerate effects.

11. The Merger will therefore **not be referred** under section 33(1) of the Act.

ASSESSMENT

Parties

12. LSEG is a diversified financial markets infrastructure and capital markets group. It is the holding company of London Stock Exchange plc and Borsa Italiana S.p.A., the companies responsible for operating the London Stock Exchange and Borsa Italiana, respectively. Alongside a number of trading platforms, LSEG provides post-trade and trading technology services. LSEG's information services division includes FTSE, an index business. In 2013, LSEG's worldwide turnover was around GBP 1.2 billion, of which around [✂] million was achieved in the UK.

13. Russell is a US business which provides index and global asset management services. Russell's index business is a global brand offering customers a wide range of indices for tracking portfolios and benchmarking investment performance. Russell's asset management business offers actively managed multi-asset portfolios and services that include advice, investments and implementation. In 2013, Russell's worldwide turnover was approximately USD [✂] (or around GBP [✂]), of which around USD [✂] (or around GBP [✂]) was achieved in the UK.

Transaction

14. LSEG's proposed acquisition of Russell was announced on 26 June 2014.

15. LSEG will pay USD 2.7 billion in consideration (or approximately GBP 1.7 billion) for the acquisition of Russell.

Jurisdiction

16. The CMA considers that, as a result of the proposed Merger, LSEG and Russell will cease to be distinct. The UK turnover of Russell exceeds GBP 70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

18. The CMA gave notice to the parties that their merger notice was satisfactory on 12 September 2014. The CMA's statutory timetable under section 34ZA(1) of the Act therefore expires on 7 November 2014.

Counterfactual

19. The CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic, or where there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.[1]

20. The parties did not submit that it was appropriate to assess the Merger against a different counterfactual to the prevailing conditions of competition.

21. The CMA has therefore taken the prevailing conditions of competition as the appropriate counterfactual.

Frame of reference

22. The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of the merger. The relevant market contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.[2]

23. 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. In assessing whether a merger may give rise to an SLC 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.[3]

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[1] Merger Assessment Guidelines (OFT1254/CC2, September 2010, adopted by the CMA as set out in Annex D to Mergers: Guidance on the CMA's jurisdiction and procedure, CMA2, January 2014), paragraph 4.3.5.
[2] Merger Assessment Guidelines, paragraph 5.2.1.
[3] Merger Assessment Guidelines, paragraph 5.2.2.

Product scope

24. When considering the appropriate product scope, the CMA will generally start with the narrowest plausible candidate market and then consider whether it is appropriate to widen this, applying the hypothetical monopolist test, through demand or supply-side substitution.[4]

Indices

25. The parties overlap horizontally only in the provision of market indices. The parties submitted that indices are weighted averages that measure changes in the value of a group of underlying items, such as financial instruments, for the purposes of creating a standard measure of performance. In the context of financial markets, indices are statistical calculations which track changes in the performance of a portfolio or basket of securities. The portfolio is selected according to defined criteria such as markets, geographies, sectors, performance characteristics or are simply a named group of securities. Different indices covering the same underlying basket of securities will vary, as they will each have their own unique calculations, weightings and make-up.

26. The parties submitted that indices are used predominantly in three ways:

    (a) to replicate the performance of an index through an investment; to do so asset managers purchase a 'product licence' for a fee [✂]

    (b) as benchmarks for the performance of investments or for analytical or research purposes; this includes using this data for producing derivatives.[5] These customers purchase a 'data licence' and pay [✂]

    (c) to distribute index data, rather than or as well as, making use of the data themselves (eg Bloomberg). These customers would purchase a 'distribution licence' and [✂]

27. Both LSEG and Russell are active in supplying indices. LSEG supplies indices through its subsidiary FTSE. FTSE calculates over 120,000 end of day and real time indices covering more than 80 countries and all major asset classes. Its primary focus is equity indices. It has also entered into a joint venture with the TMX Group, indices of which represent [✂]% of FTSE global revenues.

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[4] Merger Assessment Guidelines, from paragraph 5.2.6.

[5] Derivatives are instruments with underlying assets based on the securities covered by the index. For example, an equity index derivative's value will fluctuate with changes in its underlying asset's equity, which is usually measured by share price. However, derivatives differ from ETFs as ETFs involve investment in the actual stocks covered by the index.

28. Russell calculates over 100,000 end of day and real time indices covering more than 80 countries. It is a significant provider of US equity indices, but has a smaller share of supply of indices tracking European and global markets.

Types of indices

29. Indices can be segmented on the basis of several dimensions, including the asset classes of an index's constituents (eg equity or fixed income), as well as on the basis of specificities in the rules for selecting index constituents or assigning weights to them (eg equity indices can be separated between large, medium, small or micro capitalisation, or by specific industry, such as energy or agriculture) or on the geographies of the underlying securities (eg national equities, such as UK, French or US equities, regional equities, such as Pan-European indices, or more complex rules, such as all developed countries excluding UK).

30. The CMA considers that each combination of these dimensions (for example, UK equity small cap indices) represents the narrowest plausible candidate market. It therefore considered whether some of these segments could be aggregated into wider segments on the basis of demand-side or supply-side substitution.

31. In Deutsche Börse/NYSE Euronext[6] **(DB/NYSE)** and in Intercontinental Exchange/NYSE Euronext[7] **(ICE/NYSE),** the European Commission defined separate markets for indices on the basis of the asset class of their constituents and on national and regional bases.

32. The parties, while not submitting an approach to market definition that they considered would necessarily represent an accurate reflection of the economic markets in which they operate, proposed adopting the same approach as the one adopted by the EC in DB/NYSE and ICE/NYSE.[i]

33. The CMA received mixed evidence on the extent to which different types of indices would be a suitable alternative for customers. A number of third parties told the CMA that certain indices were effectively in their own market, as customers were heavily influenced by branding and reputation, as well as the specific makeup of the index, and would not therefore switch to others in the event of a small, non-negotiable increase in price.[8] However, one third party submitted that from the demand side, indices as a whole fall within a

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[6] COMP/M.6166, Deutsche Börse/NYSE Euronext, decision of 1 February 2012.
[7] COMP/M.6873, Intercontinental Exchange/NYSE Euronext, decision of 24 June 2013.
[8] Merger Assessment Guidelines, paragraph 5.2.10 to 5.2.20.

wider market relating to all indices encompassing different asset classes, geographies and currencies. This third party explained this as a form of partial substitution: investors may switch, or alter relative weightings, between equities (in different geographies), bonds/fixed income (in different geographies), commodities or any other investment to reflect changes in economic and market conditions, perception of risk, and investment strategy. However, the CMA notes that an investor altering its investment strategy (eg to diversify its blend of indices by asset class) may simply reflect a change in approach, rather than substitution.

34. This third party also submitted that there is a very high degree of supply-side substitution in relation to the provision of indices in respect of different asset classes, geographies and expressed in different currencies and provided several examples of index suppliers entering asset classes where they were not previously present (although it did not specify under what conditions it believed that investors and asset managers would switch across different asset classes and geographies). However, other third parties told the CMA that there were reputational barriers to entering new markets, and that brand name was important with respect to indices. In particular, several third parties told the CMA that it could be difficult for an index supplier to gain traction for a new index in an asset class or geography where it did not have existing products, or where its other products were not already successful.

Customer segmentation

35. The parties also noted the possibility of segmenting the market by customer profiles. The parties submitted that if this were carried out, there would be a number of possible segmentations within the overall market for the provision of indices in the UK. The parties proposed using the classifications used in the Morningstar, eVestment and WFE/IOMA databases, to identify segmentations as follows:

- UK mutual funds.
- UK exchange-traded funds (ETFs).
- UK institutional funds.
- UK listed derivatives.
- UK individual pension funds.
- UK life funds.
- UK pooled pension funds.

- UK investment trusts.

36. The CMA's market testing suggested that there may be scope for customer segmentation, in that the importance attributed by customers to the reputation and brand recognition of a certain index varies according to whether the customer offers its products to more or less sophisticated buyers (eg third parties told the CMA that institutions investing on their own behalf are more likely to be open to the use of a new or a more specialised product than investors, such as pension funds, who serve final consumers).

Conclusion on product scope for indices

37. The CMA considers that it does not need to reach a conclusion on market definition in the present case, as no realistic prospect for a substantial lessening of competition was identified in the relevant frame of reference, however defined. In particular, the CMA notes that a narrow approach to the frame of reference would not necessarily capture some overlaps between the parties when looking at the transaction on a wider level. On a cautious basis, the CMA therefore examined both narrower and wider frames of reference. The CMA has taken possible customer segmentations into account as part of the competitive assessment.

Asset management

38. Russell is active downstream of indices provision in asset management. Asset (or investment) management involves realising a customer's aims (eg managing a particular risk exposure or investing in line with a chosen risk profile) by developing a strategy for choosing, acquiring (or creating), employing and maintaining appropriate assets to achieve those aims.

39. In previous cases,[9] the European Commission and the OFT have defined the relevant product market for the supply of asset management services to be:

    (a) the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies)

[9] At the European level: COMP/ M.6812: SFPI/Dexia, 21 February 2013; COMP/M.5728: Credit Agricole/Societe Generale Asset Management, 22 December 2009; COMP/M.5580: BlackRock/Barclays Global Investors UK Holdings, 22 September 2009. At the UK level: Anticipated acquisition by BlackRock of the exchange traded funds business of Credit Suisse, 13 June 2013; OFT Decision: Anticipated Acquisition by Resolution plc of Friends Provident, 12 October 2007; OFT Decision: Anticipated Acquisition by Old Mutual plc of Försäkringsaktiebolaget Skandia, 30 November 2005, Anticipated acquisition by BMO Global Asset Management (Europe) Limited of F&C Asset Management plc, 2 May 2014.

(b) the provision of portfolio management services to pension funds, international organisations and private individuals

40. Moreover, the European Commission and the OFT have considered the further segmentation of the overall market for asset management services along one or more of the following lines:

(a) Between actively and passively managed funds, on the basis that active and passive investment strategies offer very different risk profiles and are not considered substitutes for each other.

(b) Across different types of funds, on the basis that some funds provide the same specific investment exposure (eg passive funds tracking or active funds managing investments in the same or equivalent market indices).

(c) Between different types of customer, on the basis that asset management services provided to institutional clients[10] (and potentially high-net-worth private clients) are dissimilar from asset management services provided to retail customers;[11] and

(i) between funds

(ii) comprised of different asset classes

(iii) covering different geographical areas

(iv) pursuing different investment strategies

41. Accordingly, there are numerous possible segmentations of the market for asset management services in which Russell is active in the UK. The CMA did not receive evidence to suggest that it should depart from the market definitions adopted in previous cases. However, the CMA has not found it necessary to conclude on these for the purpose of its vertical effects analysis, as it has identified no competition concerns on any plausible frame of reference. For the purposes of its vertical effects analysis, the CMA has considered the frames of reference identified above.

Conclusion on product scope

42. The CMA has not found it necessary to determine conclusively the precise product scope of the relevant frame of reference. On a cautious basis, for the

[10] Such as pension funds, sovereign wealth funds and insurers. Typically, 'institutional' investors will purchase asset management products directly from the provider.
[11] Such as general corporate clients, small and medium-sized enterprises and private individuals. Typically retail customers purchase asset management products through an intermediary.

purposes of this decision, it has examined the potential effects of the Merger on a number of different levels in the supply of financial indices:

(a) of different asset classes

(b) tracking securities of single countries

(c) regional indices in separation

43. As a robustness check, the CMA also considers the customer segmentations suggested by the parties.

44. For the purposes of its vertical effects analysis, the CMA has also considered possible effects in asset management, considering primarily the frames of reference of:

(a) the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies)

(b) the provision of portfolio management services to pension funds, international organisations and private individuals

45. The CMA has also had regard to possible further segmentations which may exist within the frames of reference outlined above.

Geographic scope

Indices

46. In their submission on geographic scope, the parties referred to the European Commission's approach in DB/NYSE, where the European Commission did not find it necessary to conclude on market definition but considered that a national market (as well as an EEA-wide or a global market) could also be defined, especially for some national indices.

47. The parties submitted that whilst there are no major structural restrictions preventing index providers based in one country from establishing an index used in another. In practice, some retail investors prefer indices which they associate clearly with a particular investment universe (for example, Dow Jones in the US). For institutional investment, the decision on index provider is more complex, with a more detailed analysis of the benchmark construction informing the decision. The CMA notes that index providers have regional strengths, which may reflect the point on investment universes made above.

48. One third party submitted that all national indices are substitutable with each other.

49. In the present case, the CMA has not found it necessary to reach a firm conclusion on the exact geographic scope of the frame of reference. For the purposes of this decision, and given that Russell is specialised in US indices and FTSE in UK and EEA indices, the CMA has examined the effects of this merger at a global level. However, to account for the UK focus of the CMA's activity, and the fact that there may be regional or national preferences in some segments, the CMA has also looked at shares of supply for UK customers.

Asset management

50. With respect to asset management, the parties submitted that demand for asset management increasingly operates according to global factors. Whilst some UK investors demand investment products designed specifically for the UK market, there are many others who seek global asset management solutions.

51. The parties submitted that the market for asset management services (and its constituent segments) is at least Europe-wide, if not global in scope. The parties submitted that these features were acknowledged by the CMA in its recent decision in *BMO Global Asset Management/F&C*, in which it noted that '[third parties submitted that] there were no real barriers to trade that would indicate that the geographic scope of the market should be limited to a national level.'[12] In that case, the CMA examined the transaction on a UK wide frame of reference.

52. In the present case, based on a cautious approach, the CMA has examined the transaction on a UK wide frame of reference. However, given its view that no realistic prospect of an SLC exists in any plausible geographic frame of reference, the CMA does not consider it necessary to reach a conclusion on the appropriate geographic frame of reference.

Conclusion on the frame of reference

53. The CMA has therefore analysed the effect of the merger at a global level on the basis of the supply of financial indices:

[12] Anticipated acquisition by BMO Global Asset Management (Europe) Limited of F&C Asset Management plc, 2 May 2014, paragraph 30.

(a) of different asset classes

(b) tracking securities of single countries

(c) regional indices in separation

54. As a robustness check, the CMA also considers the customer segmentations suggested by the parties. The CMA has focused on supply to UK customers.

55. For the purposes of its vertical effects analysis, the CMA has also considered possible effects in asset management, considering primarily the frames of reference of:

(a) the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies) in the UK

(b) the provision of portfolio management services to pension funds, international organisations and private individuals in the UK

56. The CMA has also had regard to possible further segmentations which may exist within the frames of reference outlined above.

Horizontal unilateral effects

57. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.[13]

Loss of competition between LSE and Russell indices

58. The CMA examined the possibility of unilateral horizontal effects, for example in the form of decreased quality or increased prices, arising in the UK as a result of a loss of actual competition between LSEG and Russell indices.

59. Russell calculates over [✂] end of day and real time indices covering more than 80 countries. It is a significant provider of US equity indices, but its indices tracking European and global markets represent a much smaller portion of its revenues. Of the approximately GBP[✂] in revenues earned by Russell indices in 2013 worldwide, [✂]% was generated in the US. Russell

[13] Merger Assessment Guidelines, paragraph 5.6.13.

indices generated GBP[✂] in revenues in the EMEA region in 2012, with GBP[✂] of this being generated in the UK.

60. LSEG (through FTSE[14]) calculates over 120,000 end of day and real time indices covering more than 80 countries and all major asset classes. Its primary focus is equity indices.

61. The parties submitted that depending on the approach to market definition adopted, there is either no horizontal overlap between the parties in indices or the overlap results in at most a modest and, more often, a minimal increment to LSEG's estimated share of supply of indices in the UK or globally. They submitted that they predominantly operate in different geographies and provide indices tracking securities of different geographies. According to the parties, overlaps between the parties for UK customers are primarily in the provision of equity indices, but also in the provision of multi asset (allocation strategy) asset class indices, and equity indices with regional and global investment exposures.

62. As regards national indices, the parties only overlap in the provision of US and Japanese equity indices.[15] In particular, these overlaps are limited to the following types of UK customers: i) pooled pension funds, ii) individual pension funds, and iii) life funds.

63. In order to show the extent of the overlaps between the parties' indices, the parties provided shares of supply for each of the parties' segments of overlap. In doing so the parties estimated shares of supply for national, regional and global indices according to a number of possible combinations. The parties provided these shares for UK customers and (as a form of sensitivity check) for worldwide customers.

64. The parties also provided shares of supply that reflect the use of the parties' indices for derivatives. The parties submit that (based on the data available to them) there is no overlap in the UK, as there are no derivatives where a Russell index is the underlying asset that are traded in the UK.[16] The parties therefore provided these shares of supply only at global level.

65. The shares of supply provided by the parties were aggregated using data from Morningstar and eVestment. The parties submit that in some

[14] As noted above, LSEG also has a JV with the TMX group, indices of which represent [✂]% of FTSE global revenues.
[15] The market testing identified also an overlap in the supply of UK midcap equity indices, the Russell UK Mid 150 and FTSE 250, however, the parties explained that the Russell UK Mid 150 [✂]. The CMA discusses this overlap in detail in the next section of this decision.
[16] The parties could not verify, however, whether derivatives associated with Russell indices are traded in the UK over the counter, that is, through brokers.

circumstances this data was aggregated manually, so it may contain a degree of error.[17] The parties did not indicate a more reliable source of data. The CMA nonetheless considers that, given the large number of segmentations considered, this data provides an initial indication of the parties' position in different segments. The CMA in any case market-tested the results of this data with third parties (see below).

66. The CMA considered shares of supply in over 70 segments (across different products and customer groups, including UK and worldwide customers). The parties' combined share of supply is in excess of [20–30%] in [10–20] cases. However, in [10–20] of these cases the increment is lower than [0–10%] and in the remaining [0–10] cases i) the parties' combined share of supply is lower than [30–40%] and (ii) the increment is below [0–10%].

67. This is also confirmed by the parties' estimates of their worldwide shares of supply. These indicate that the increment from the Merger is above [0–10%] only in two segments, where the increment is still below [5–15%] and the parties' combined share remains below [10–20%]. These estimates also indicate that the parties' worldwide shares of supply in the provision of indices to the creators of listed derivatives are lower than [0–10%] combined.

68. Based on the parties' share of supply estimates, in the majority of segments MSCI and/or Standard and Poor **(S&P)** appear to be the parties' strongest competitors and provide strong constraints.

Closeness of competition

69. In addition to considering market shares, the CMA also considers closeness of substitution. If the products of the merger firms are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to the price increase, making the price rise less costly.[18]

70. The CMA therefore assessed the extent to which the parties' products could be said to be constraining each other. With only limited exceptions discussed below in detail, third parties responding to the CMA's market investigation did not consider that the parties' products were competitors.

[17] The parties also submitted that they were unable to have sight of AuM or trades executed over the counter.
[18] Merger Assessment Guidelines, paragraph 5.4.9.

UK midcap equities

71. One third party suggested that the Russell UK Mid 150 could be competing with the FTSE 250, although it did not express concerns about a loss of competition between these indices. Evidence submitted by the parties showed that these indices do correlate closely in terms of their performance (over 95%) which indicates that technically both these indices could be used to track UK mid cap equities, and are therefore good alternatives in terms of the products tracked. However, other evidence indicated that the Russell UK Mid 150 is not a close competitor to the FTSE 250 and that these products are not constraining each other. The third party which commented on these products submitted that, although it did consider that the Russell Mid 150 could be seen as an alternative to the FTSE 250, it was not a close competitor. This is corroborated by the Russell UK Mid 150 [✂] since its introduction at the beginning of December 2013 (ie 11 months ago at the date of this decision). In fact, it has [✂] AuM and has generated [✂] revenues so far. By contrast, the FTSE 250 has [✂] AuM.

72. Further, to the extent that the Russell UK Mid 150 is a competitor, the CMA received evidence indicating that there are other providers' products that provide an equivalent constraint. One asset manager which uses the FTSE 250 indicated MSCI and Stoxx as the alternatives it would use to track UK mid cap shares if the FTSE 250 was not available, and did not mention the Russell index.

73. The parties also submit that MSCI's UK Mid Cap is an equivalent alternative to FTSE 250, although, [✂], MSCI's product [✂] has zero AuM. The parties estimated over 90% correlation in terms of performance between the MSCI UK Mid Cap, Russell UK Mid 150 and FTSE 250. The CMA also notes that MSCI also offers a UK large capitalisation index and a successful (USD [✂] AuM) UK small capitalisation index.

74. On the basis of evidence suggesting that the parties' UK mid cap equity indices do not closely constrain each other, and the presence of competitors whose products would impose a constraint on the merged entity, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC in this respect.

Other overlapping indices

75. Third parties did not raise concerns about any other overlap or indicate that any of the other indices supplied by the parties were particularly close competitors. Third parties confirmed the parties' submission that Russell mainly operates in the US and its main indices reflect US securities, whereas

FTSE is stronger in the EEA. None of the third parties who responded to the CMA's investigation could identify any particular securities where the parties were closely competing and competition from other providers was limited. One third party noted that FTSE and Russell both have global index series which are similar. However, this third party told the CMA that these indices are not widely utilised and it considered that there are alternatives to these series. It submitted that individually each firm has a primary exposure in the UK and the US, but there are alternative options available.

76. The CMA also examined data provided by the parties of ETF customers switching from one index provider to another in the last three years. The data shows that out of [✂] instances of switches to or from FTSE and out of [✂] instances of switches from or to Russell, there is [✂] of a customer switching from FTSE to Russell (this is in relation to indices tracking [✂]). Instead, [✂], followed by [✂], appear as the parties' strongest competitors, as they are involved in the vast majority of switching events.

77. The CMA notes that this data is not comprehensive, as the parties submit [✂], as customers generally would close a fund tracking a provider's index and open a new fund with another provider rather than switching provider. This was supported by third parties, who generally indicated that they would be unwilling to switch.

78. The CMA nonetheless considers that, although, when considered in isolation, this switching data may be of limited evidential value, taken in the round with the rest of the evidence discussed above, it provides an indication of the closeness of competition between the parties. The CMA considers that this evidence, though probative only to a limited extent, corroborates the finding that the parties do not provide a strong competitive constraint on each other and that they face significant competition from other suppliers.

Conclusion on horizontal unilateral effects

79. Given the evidence set out above, which indicates that the parties' indices are not closely constraining one another in any segment, the existence of significant competitors across all segments, the low increment attributable to Russell and the parties' relatively low combined share of supply where the increment is somewhat higher, together with the general lack of third party concerns, the CMA considers that there is no realistic prospect of a SLC as a result of horizontal unilateral effects in any plausible frame of reference.

Vertical effects

80. Vertical effects may arise where the merger parties operate at different levels of the supply chain. Total and partial input foreclosure involve the refusal to supply to rivals downstream, or supplying rivals only at a higher price than the merged firm's own downstream operations with a view to reducing competition in the long term.[19]

81. In the present case, the CMA has considered the potential for vertical effects arising from the combination of companies operating as index providers (both parties), exchanges and clearing houses (LSEG), and asset managers (Russell). The CMA examines the likelihood of vertical effects in terms of the merged firm's ability to engage in exclusionary strategies, the incentive to do so, and the effect of doing so.[20]

82. The CMA assessed two possible vertical theories of harm, set out below.

Input foreclosure of rival index providers

83. To construct an index, index providers purchase data related to the market price of the index constituents from a number of sources, including from the London Stock Exchange. The CMA first examined the possibility that LSEG might therefore foreclose competing index providers by not providing (or providing only on less favourable commercial terms than to its own downstream operations) the data that would permit them to create their indices.

84. The CMA considers that the impact of the Merger on LSEG's ability and incentive to engage in such foreclosure is small. The CMA notes that LSEG already owns both upstream and downstream operations that might benefit from a foreclosure strategy and the CMA has not found evidence to suggest that LSEG has engaged in this strategy. Further, as set out above, the Merger gives rise to relatively small increments to LSEG's shares in the supply of indices, and strong competitors, including MSCI, S&P and INDXX, will remain to constrain the parties.

85. The CMA also notes that it is not clear that LSEG would have the ability to engage in such a foreclosure strategy. Although one third party considered that it was possible that LSEG could discriminate in favour of FTSE, by providing data on a discriminatory basis, other third parties did not consider it was possible to do so. The CMA was also pointed to the exchange rules by a

[19] Merger Assessment Guidelines, section 5.6.
[20] See Merger Assessment Guidelines, paragraph 5.6.6.

third party, which provide that data is supplied according to published price lists which are applicable to all users of the data. There appears therefore to be a regulatory barrier to engaging in total or partial input foreclosure with respect to data.

BATS CHI-X

86. The CMA also notes that Russell has an agreement in place with an exchange, BATS CHI-X, for the development and operation of the CHERI indices. The CMA also examined the possibility that LSEG might have the ability and incentive to terminate this contract in order to weaken BATS CHI-X's position, and whether this might result in an SLC. BATS CHI-X [✄].

87. First, the CMA considers that BATS CHI-X could enter into arrangements to develop indices with other providers, and will not therefore be foreclosed from the provision of indices as a result of LSEG terminating the CHERI contract. As discussed above, the CMA considers that there are a number of index providers (MSCI, S&P, INDXX, as well as others such as Markit) in competition with the parties.

88. Further, the CMA notes that [✄].

Conclusion on input foreclosure of index providers

89. The CMA therefore finds no realistic prospect of an SLC arising from input foreclosure of rival index providers.

Input foreclosure of asset managers

90. Currently, LSEG has no activities in asset management, and its only current connection with asset management is in the licensing of index IP, index data and other data to asset managers – either to create products, benchmark product performance, or facilitate management operations. Asset managers also trade on exchanges, including on the London Stock Exchange. The Merger will create a vertical relationship, as the Russell asset management business will become part of LSEG.

91. The CMA therefore considered the possibility that LSEG might have the ability and incentive to foreclose rival asset managers which currently compete with Russell in order to expand the downstream asset management business, by denying them a licence to FTSE and Russell indices on competitive terms. This theory could be extended to include licences to LSEG's SEDOL and ICB databases and to real-time trading data which LSEG currently licenses to competing asset management firms.

92. No third party which responded to the CMA's investigation expressed concern about this theory of harm or considered it plausible. The CMA considers that LSEG is unlikely to have the ability to foreclose asset managers, as it only holds a [✂] in the supply of indices, as discussed above at paragraphs 64 to 68. Further, the CMA considers that LSEG would be unlikely to have the incentive to engage in an input foreclosure strategy, as Russell has a [✂] share of the global asset management business, and therefore it is unlikely that Russell would recapture a substantial share of sales lost by the foreclosed asset managers.

93. The CMA therefore finds no realistic prospect of an SLC arising from input foreclosure of rival asset managers.

Conglomerate effects

94. Conglomerate mergers can raise concerns that the merged firm might increase the selling price of one of its products when sold on a stand-alone basis, but might not do so if customers buy both the merged firm's products; this would give customers an incentive to buy the second product from the merged firm as well, putting rivals in the second product market at a disadvantage. The CMA's approach involves analysing the ability, incentive and effect of this strategy.[21]

95. The CMA examined the prospect of the parties marketing bundles composed of Russell and FTSE's indices for a lower licence fee than if the products were sold individually. This might permit them to leverage a strong position in some geographies and/or asset classes (eg FTSE in UK equities or Russell in US equities) to expand in other geographies and/or asset classes (eg US equities or UK equities), to weaken competitors over time and ultimately reduce competition. Third parties told the CMA that indices are currently sold as bundles in some circumstances.

Ability

96. The CMA notes (and third parties confirmed) that the parties would face competition from strong competitors such as S&P and MSCI, both of which have a similar or even stronger worldwide presence than the parties combined, and both of which have a diverse portfolio spanning the major asset classes and geographies.[22]

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[21] Merger Assessment Guidelines, paragraph 5.6.13.

[22] As demonstrated by the market shares in AuM for global mutual funds, global institutional funds and global ETFs.

97. Third parties considered that this strategy is unlikely to be harmful. One customer submitted that it was extremely unlikely in their view that this strategy would be implemented as neither FTSE or Russell have the ability to apply that level of force on asset managers. Another customer told the CMA that although the parties may decide to market their indices in a bundle, this strategy would be unlikely to result in the foreclosure of competitors, as the parties would face strong competition from other main index suppliers. The very largest customers told the CMA that they bought all the major index suppliers' offerings in order to give maximum choice to their own clients.

98. A competitor also told the CMA that other suppliers would be able to offer similar bundles to their customers, thus effectively responding to any attempt of foreclosure by LSEG. No third parties raised concerns about this theory of harm.

99. The CMA considers that, based on share of supply data and third party evidence, S&P is the leading supplier in the US, so LSEG would be unlikely to be able to reduce competition in the US market by leveraging FTSE's market power in the UK and in Europe. The CMA notes that MSCI is also strong in many geographies, including the UK.

100. Based on this evidence, the CMA considers that LSEG will not have the ability to engage in competitor foreclosure though the bundling of indices at a discounted price. This is because: (i) some of the largest customers buy all the major indices jointly (so a discounted price for one index would not induce them to cancel their purchase of other indices); and (ii) at least two of LSEG's competitors have the ability to provide broad bundles (so they may not be placed at a significant disadvantage).

101. The CMA therefore finds no realistic prospect of an SLC arising from conglomerate effects.

Third parties views

102. The CMA's market testing in this case received responses from a variety of third parties, including competitors at both the exchange and index level, asset managers, index customers (including banks), and pension funds. Comments have been incorporated throughout where relevant.

103. One customer pointed to the parties competing with UK midcap equity indices, which has been addressed above. The customer was also concerned about a general loss of innovation arising from the general trend towards consolidation in indices. However, the CMA considers that this concern is not merger specific.

104. No other third parties responding to the CMA's market investigation expressed concerns about the Merger.

Decision

105. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

106. This merger will therefore **not be referred** under section 33(1) of the Act.

Nelson Jung
Director of Mergers
Competition and Markets Authority
7 November 2014

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[i] The parties further clarified that in the merger notice, they did not propose adopting the same approach to market definition as the EC in DB/NYSE and ICE/NYSE, but noted that there were no competition concerns arising under any approach to market definition, including the EC's approach in these cases.