Anticipated acquisition by Xchanging Holdings Limited of Total Objects Limited

ME/6468-14

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 9 December 2014. Full text of the decision published on 20 January 2015.

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

Contents

Page

SUMMARY

1. Xchanging plc (**Xchanging**) is active in the supply of specialist insurance software to the insurance market and, in particular, to carriers (insurers and

reinsurers)[1], brokers and Lloyd's of London (**Lloyd's**) registered managing agencies (**MAs**).[2]

2. Total Objects Limited (**TOL**) is active in the supply of software and technology services to the insurance market and in particular to brokers, carriers, managing general agents (**MGAs**) and MAs.

3. Xchanging entered into an agreement to acquire TOL for £21 million on 3 July 2014, which is subject to regulatory clearance (the **Merger**). Xchanging has also acquired certain companies of the Agencyport Software Group (**Agencyport**), which is also active in the supply of software and services to the insurance market. The Competition and Markets Authority (**CMA**) is also investigating this transaction. The CMA considers this to be a parallel transaction for the purposes of its assessment.

4. The CMA considers that the Parties are enterprises that as a result of the Merger would cease to be distinct and that the share of supply test is met under Section 23 of the Enterprise Act (the **Act**). The CMA therefore believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. The Parties overlap in the supply of a number of insurance software products and, in particular, the supply of standalone outward reinsurance (**ORI**) software with 'excess of loss' (or '**non-proportional**') capability for carriers with requirements for Lloyd's-specific functionality including MAs (**Lloyd's Carriers**) and/or for carriers with requirements for London Companies-specific functionality (**London Companies Carriers**).

6. The Parties also overlap in the supply of broker software for brokers and binder management solutions for insurance market participants. The Parties and Agencyport overlap in the supply of core software to MGAs. However, the CMA does not consider that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in respect of these overlaps. The Parties and/or Agencyport also supply a number of other software products including policy administration system (**PAS**) software, business intelligence and data warehousing software and exposure modelling software.

[1] Carriers are companies selling insurance or reinsurance (which is the insurance of the risk borne by insurers) and insurance/reinsurance is sold through a range of sales channels including through brokers, MGAs and directly by carriers. Lloyd's is a specialist insurance market based in London where its members join together to form syndicates in order to insure and share risk. MAs manage one or more syndicates and handle the day to day management of the insurance business (they are equivalent to carriers outside the Lloyd's market). Insurance brokers act as an intermediary between customers and insurance companies, finding and arranging suitable insurance policies for their customer/s.

[2] MAs are companies providing managing agency services to Lloyd's registered syndicates and act effectively as carriers in the Lloyd's market.

7. In relation to the supply of non-proportional ORI software for Lloyd's Carriers, the CMA found that the Merger resulted in a reduction of main suppliers from three to two. In addition, Xchanging is developing a new product Xuber Ceding and future competition between Xchanging and TOL would be lost.

8. On the evidence available to it, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of non-proportional ORI software for Lloyd's Carriers.

9. The CMA did not receive sufficient evidence to suggest that entry or expansion would be timely or sufficient to mitigate its competition concerns. The total market size in the supply of non-proportional ORI software for Lloyd's Carriers is approximately [less than £3 million]. Taking account of the size of the market and likely impact of the SLC and the public costs of a second phase investigation, the CMA therefore considers that, while its duty to refer is met, it is appropriate to exercise its discretion to apply the '*de minimis* exception' in this case.

Decision

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

ASSESSMENT

Parties

11. **Xchanging Holdings Limited** is a wholly owned subsidiary of Xchanging, which provides business processing, technology and procurement services internationally. Xchanging and its subsidiaries operate in the insurance market providing a suite of specialist insurance software to the insurance market. Xchanging generated worldwide of turnover of £685.9 million and UK turnover of £430.5 million in its financial year ended 31 December 2013.

12. **TOL** is a supplier of software and services to the insurance market. TOL's turnover for the year ended 31 December 2013 was approximately [✂] generated in the UK.

Transaction

13. Xchanging entered into an agreement to acquire the entire issued share capital of TOL on 3 July 2014 (the Merger as defined at paragraph 3). The Merger is anticipated and its completion is subject to regulatory clearance by the CMA at the end of a first phase investigation.

Jurisdiction

14. The CMA considers that, as a result of the Merger, two or more enterprises would cease to be distinct under section 23(1) of the Act.

15. The Parties overlap in the supply of standalone ORI software, with a combined share of supply to MAs in the UK of approximately [30–40]% (with an increment of [10–20]%).[3]

16. The Parties submitted that this was not a reasonable basis upon which to calculate shares of supply and that standalone ORI software should be calculated by reference to both UK carriers and MAs (of which they submit there is a combined total of 260). The CMA does not agree. It considers that the supply of ORI software to MAs is a reasonable description of goods or services for the purposes of the share of supply test under section 23 of the Act.[4] This is supported by evidence from third parties which indicated that there are different, more complex requirements in providing software for ORI in the Lloyd's market (see paragraphs 35 *et seq* for more detail). The CMA therefore considers that the share of supply test in section 23 of the Act is met.

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 initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 October and the statutory 40 working day deadline for a decision is therefore 9 December 2014.

Frame of reference

19. 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

---

[3] The Parties' share of supply was calculated by count of the MAs supplied by the Parties compared to the total number of MAs identified on Lloyd's website. The Parties supply [✂] out of 60 MAs. Xchanging supplies [✂] MAs and TOL supplies [✂] MAs. The CMA notes that the Parties' share of supply may be even higher, because not all MAs may use ORI software purchased externally (see further the product frame of reference below).
[4] The CMA notes that there is a wide discretion in describing the relevant goods or services for the purposes of the 'share of supply' test under the Act (see paragraph 4.56 of CMA2 *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, January 2014).

relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[5]

Product frame of reference

20. The Parties overlap in the provision of specialised software to participants in the insurance industry and, in particular, to those participating in Lloyd's and the London Companies insurance markets, two international and specialist insurance marketplaces (or 'bureaus') based in London and collectively known as the '**London Market**'.

21. As its starting point, the CMA considered whether there should be a separate product frame of reference for each software product supplied by the Parties and whether the supply of these specialised software products is specific to the Lloyd's market.[6]

Segmentation of the market by Lloyd's specific software and non-Lloyd's specific software

22. The Parties submit that, from both a demand- and supply-side perspective, there is no separate market for the supply of software to Lloyd's registered and non-Lloyd's registered entities, because these entities, while operating on different platforms, perform the same fundamental tasks, and therefore require software solutions with the same functional requirements.

Demand-side substitutability

23. The CMA received responses to its market test from third parties that suggested that customers operating within the London Market commonly have software requirements incremental to those of other commercial customers operating outside of the London Market. Furthermore, comments from the Parties and third parties suggest that customers doing business within the Lloyd's market have further incremental software requirements in addition to those required for London Market operations.[7] To the extent that

---

[5] See CC2/OFT 1254, *Merger Assessment Guidelines*, A joint publication of the Competition Commission and the Office of Fair Trading (**Merger Assessment Guidelines**), at paragraph 5.2.2. These have been adopted by the CMA, see Annex D to CMA2 *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, January 2014. *Merger Assessment Guidelines*.

[6] Third party responses suggested that, in general, customers operating within the London Market commonly have software requirements incremental to those of other commercial customers outside of the London Market, and that customers doing business within the Lloyd's market have further incremental software requirements in addition to those required for London Market operations.

[7] The Parties submit that the additional software requirements for the London market include managing 'London market messaging' – the sending and receiving of standardised data messages between counterparties – while further Lloyd's-specific requirements include managing processes relating to the subscription business and compliance with Lloyd's regulatory reporting. These requirements are described further in relation to each of the individual product overlaps.

these software requirements affect demand-side substitutability, the CMA considers that insurance software products with different types of bureau-specific functionality (or none) constitute plausible candidate frames of reference, and that insurance software with Lloyd's-specific functionality will tend to be the narrowest of these given the incremental additional functionality that it requires.[8]

Supply-side substitution

24. The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, the CMA may, in principle, from a supply-side perspective, aggregate plausible candidate markets based on supply-side responses to changes in competitive conditions. There are two conditions for such aggregation. In particular:

    (a) production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each; and

    (b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.[9]

25. The Parties submit for a number of product areas that it would be relatively easy for non-Lloyd's or non-London Companies software providers to adjust their software for supply to Lloyd's customers and, therefore, that there exists a wider market than for software with Lloyd's-specific functionality based on supply-side substitution.

26. The CMA considered whether suppliers of software without Lloyd's specific software could easily adjust their software to supply to Lloyd's Carriers and/or London Companies Carriers. Third parties' responses to the CMA's market test suggested that it was not possible for a supplier to develop such functionality quickly, with development and implementation taking several years and requiring significant financial resources. In addition, the CMA notes that there are no indications that suppliers of software products with London

[8] The CMA's market test indicated that competition may be more intense outside of Lloyd's and that there are a number of alternative suppliers available in addition to those competing in the Lloyd's market in relation to each of the software products considered below. In addition, the CMA understands that Lloyd's market participants have incremental requirements in addition to those required for London Market operations. On a cautious basis, the CMA therefore focusses on the Lloyd's market and does not discuss the supply of insurance software to customers outside of Lloyd's further in this decision (while considering any asymmetric constraints which may derive from outside of this frame of reference).
[9] See *Merger Assessment Guidelines*, at paragraph 5.2.17.

Companies' specific functionality routinely adjust their software specification to make it available for Lloyd's Carriers in response to increases in price or demand. This finding is consistent with the CMA's first phase decision in *Xchanging/Agencyport*, which considered similar insurance software products for the Lloyd's market.[10,11]

27. The CMA therefore considers that, in general, there is likely to be a separate market for Lloyd's specific software. However, the CMA considers this separately for each narrowest plausible candidate market below.

Segmentation of the market by customer type/solution

28. The Parties submit that products for different customer types (for example, software for brokers, software for carriers and software for MGAs) share a high degree of commonality and that supply-side substitutability is possible.[12]

29. The third party responses to the market test did not suggest that suppliers of software within one customer segmentation could begin supplying software for different customer segments quickly. Each software product has considerable segment-specific functionality and, therefore, for a supplier to move into a new segment, it would need to develop a product, implementation of which would take several years and require significant financial resources.[13] The conditions of competition in these markets appear to differ significantly (see the CMA's analysis by product below). The CMA does not therefore consider that these different customer segments can be aggregated for the purposes of its assessment of the relevant frame of reference.

Asymmetric constraints

30. The CMA may take into consideration that products in separate plausible candidate markets may impose asymmetric constraints on each other[14] and, therefore, the boundaries of the product market may depend on the identity of the products in the candidate market.

31. The Parties submit that they each supply both Lloyd's registered and non-Lloyd's registered carriers, MGAs and brokers with the same software solutions, in other words that software with Lloyd's-specific functionality is

---

[10] See the CMA's phase 1 decision regarding the completed acquisition by Xchanging of Agencyport Software Europe of 2 December 2014, at paragraphs 38 to 43.
[11] See further detail regarding the cost and time required to enter the respective markets in the 'Barriers to entry and expansion' sections for each candidate product frame of reference below.
[12] The Parties' notification dated 14 October 2014 (**Notification**), at paragraph 13.1.
[13] See further details in the 'Barriers to entry and expansion' section in respect of each candidate product frame of reference below.

used outside of Lloyd's and that the market should therefore be defined more widely.

32. The CMA does not consider that evidence of the use of Lloyd's-specific software outside of Lloyd's (ie, by customers without Lloyd's operations) amounts to evidence that customers with requirements for Lloyd's-specific functionality would consider software lacking such functionality to be a credible substitute.

Conclusion on candidate markets

33. The CMA has therefore considered the following plausible candidate markets and considered whether these should be widened or narrowed on the basis of demand-side and supply-side factors:

(a) the supply of standalone ORI software for Lloyd's Carriers;

(b) the supply of broker software for Lloyd's Brokers;

(c) the supply of binder management solutions for Lloyd's market participants (ie, Lloyd's Carriers, MGAs active in Lloyd's (referred to as '**coverholders**') and Lloyd's Brokers); and

(d) the supply of core software for coverholders.

Supply of ORI for Lloyd's Carriers

34. The Parties overlap in the supply of specialist recoveries and credit control systems used by Lloyd's Carriers for ORI that calculate non-proportional reinsurance recoveries.[15] Xchanging supplies its Elgar product and TOL supplies its GLOBAL XL Pro product.

Lloyd's-specific functionality

35. The Parties overlap in the supply of specialist recoveries and credit control systems used by Lloyd's Carriers for ORI that calculate excess of loss (or non-proportional) reinsurance recoveries (**non-proportional ORI**). Xchanging supplies its Elgar product and TOL supplies its GLOBAL XL Pro product.

36. The Parties submit that there is no objectively justifiable basis for restricting the product frame of reference for ORI software to Lloyd's Carriers only,

[15] Under a proportional contract, the reinsurer agrees to cover a percentage of the claim in return for the equivalent percentage of the original insurance premium; and under a non-proportional contract (also referred to as 'excess of loss' contracts) the reinsurer will only cover a share of any loss incurred by the insurer in excess of the specified amount.

because software has common functionality whether for use in Lloyd's or outside of Lloyd's and, while the Parties' products include LORS functionality (to communicate with the Lloyd's bureau), [✂]. The Parties submit that there are no differences in functionality for currency conversion in software used within Lloyd's.[16]

37. Third party responses to the market test indicated that customers with requirements for ORI software with Lloyd's-specific functionality would not consider software lacking such functionality to be a credible substitute, in particular, because the software needs to be able to interface with the Lloyd's bureau. One third party submitted that there are differences between Lloyd's and non-Lloyd's ORI software because of its multi-currency requirements, for which non-Lloyd's specific ORI software typically does not allow.[17]

38. In addition, the CMA is only aware of Lloyd's Carriers using standalone ORI software that includes Lloyd's-specific functionality (although many in-house systems appear to be used by MAs and it is not clear whether these systems include such Lloyd's-specific functionality).

39. Based on the evidence above, the CMA does not consider that a Lloyd's Carrier would consider ORI software without Lloyd's-specific functionality to be a substitute for that with such functionality. On a cautious basis, the CMA therefore focusses on the Lloyd's market and does not discuss the supply of standalone ORI to customers outside of Lloyd's further in this decision.

Excess of loss functionality

40. The CMA also received comments from third parties indicating that customers' requirements for ORI software would differ depending on whether they have a requirement for specific 'excess of loss' (or 'non-proportional') functionality, as opposed to 'proportional' functionality only, suggesting that the frame of reference should be narrower. The CMA does not consider that a Lloyd's Carrier requiring ORI software with non-proportional functionality would be able to substitute this for ORI software with proportional functionality only (although a fully ceded solution with both types of functionality would be a substitute).

[16] The Parties' response of 20 November 2014 to the CMA's issues letter of 18 November 2014 (**Issues Letter Response**), at paragraph 3.10 *et seq*.
[17] This was disputed by the Parties who stated that there were multi-currency requirements within all commercial and reinsurance marketplaces, and that the key additional requirement for Lloyd's carriers was the Lloyd's messaging functionality but that [✂].

41. The CMA therefore considered that the frame of reference should be narrowed further to the assessment of non-proportional ORI software for Lloyd's Carriers.

Supply-side factors

42. The Parties submitted that it would be 'relatively easy' for suppliers of proportional ORI software to provide non-proportional ORI software and *vice versa* and that many suppliers provide a fully ceded solution, ie, including both proportional and non-proportional ORI capability.[18]

43. As regards Lloyd's-specific functionality, third party responses to the market test confirmed that developing the additional functionality would take considerable time and financial resources.

44. As regards non-proportional functionality, the CMA understands from a number of third party responses that, while proportional ORI is relatively straightforward, non-proportional ORI software is complex. This evidence is supported by the fact that there are few suppliers of non-proportional ORI software while most PAS software includes a proportional ORI component.

45. In either case, given the relatively small size of the market and infrequent switching by customers, there may be limited incentives for non-Lloyd's suppliers to start providing non-proportional ORI software (see the section on barriers to entry relating to ORI software below).

46. The CMA therefore considers that the frame of reference for the supply of non-proportional ORI software for Lloyd's Carriers should not be expanded on the basis of supply-substitutability factors.

Supply of software for Lloyd's Brokers

47. The Parties overlap in the supply of core software to Lloyd's Brokers (**broker software**), which is used by Lloyd's Brokers to manage the full broking lifecycle, from risk processing and claims processing to billing, accounts information and reporting. Xchanging supplies its Brokasure product in two versions (Brokasure Desktop and Brokasure Enterprise) and TOL supplies its GLOBAL XB product.

[18] See Notification, at paragraph 13.25.

Demand-side factors

48. The Parties submitted that Lloyd’s Brokers require software with additional functionality to comply with the Lloyd’s reporting rules. However they also submitted that non-Lloyd’s Brokers can, and do, use Lloyd’s-compliant insurance software, including Xchanging’s and TOL’s broker software products.

49. As explained in general terms at paragraphs 30 to 32 above, the CMA considers that evidence of the use of Lloyd’s-compliant software by non-Lloyd’s registered brokers does not amount to evidence that Lloyd’s Brokers would consider non-compliant software as a credible substitute for Lloyd’s-compliant software. This is supported by third party responses which stated that Lloyd’s Brokers require specific functionality.

Supply-side factors

50. The Parties submitted that reforms to Lloyd’s regulatory rules will reduce the cost of developing software for Lloyd’s Brokers, allowing existing non-Lloyd’s software suppliers to expand their operations without significant or material additional investment. However, the CMA notes that third party responses indicated that these changes are unlikely to be implemented for a number of years. Moreover, the CMA has received insufficient evidence to show that, even were the rules to change, supply-side substitution would be feasible in a reasonable period of time without the need for significant investment by suppliers. Therefore any changes to Lloyd’s rules are not likely to result in supply-side substitutability that is sufficiently likely or timely such as to affect the CMA’s competitive assessment.

51. More generally, the balance of third party responses suggested that the Lloyd’s-specific functionality creates complex and highly specific software requirements and that development and implementation of such functionality would take several years and require significant investment[19] (although the CMA has received some limited evidence to suggest that the additional requirements for Lloyd’s-compliant software may not be particularly significant). There are no indications that suppliers of software products with non-Lloyd’s-specific functionality routinely adjust their software specification to make it available for Lloyd’s Brokers in response to increases in price or demand.[20]

---

[19] In particular the CMA was told that the software must be localised, ensure compliance with specific tax legislation, and provide functionality to comply with Lloyd’s regulations and electronic messaging.
[20] See further detail regarding the cost and time required to enter the market in the section on barriers to entry relating to broker software below.

Conclusion on frame of reference for broker software

52. The CMA therefore considers that the narrow frame of reference for the supply of broker software for Lloyd's Brokers should not be expanded on the basis of demand-side or supply-side factors.

Binder management solutions

53. The Parties overlap in the supply of binder management solutions, which process and manage the bordereaux sent from Lloyd's MGAs (referred to as '**coverholders**') to Lloyd's Carriers.[21,22] Xchanging supplies its Binder 360 binder management solution and TOL supplies its BinderCloud product.

54. Xchanging's binder management solution, Binder 360, is a back-office outsourcing service which undertakes the manual steps of bordereaux processing using automated software[23] on behalf of the customer. TOL's BinderCloud is a Cloud-based binder management software application providing end-to-end binder management processing. The software collates, transfers and converts bordereaux from agents globally into the insurance market standard format, which is then compiled into a database.

55. The Parties submitted that there should be a segmentation between the supply of bordereaux processing and management software solutions (eg, TOL's BinderCloud) and bordereaux management solutions/services (eg, Binder 360). In addition, the Parties submitted that their respective products are targeted at customers with different needs, ie, Binder 360 is used by customers who need to cleanse non-standardised bordereaux and do not wish to undertake this process in-house, whereas BinderCloud is purchased by customers requiring a complete binder management software solution but will generally perform the manual process themselves or outsource this.[24]

56. Xchanging launched Binder 360 in February 2014 and the CMA received only limited feedback on the relative competitiveness of the different products from third parties. However, a number of third party responses to the CMA's market

---

[21] This processing can broadly be described as 'bordereaux transformation', which involves the cleansing, transformation and validation of bordereaux reports. This involves a combination of using bordereaux software to automate aspects of the transformation process, and also some manual steps to further validate, check and map non-standard bordereaux reports. These manual steps may either be performed "in-house" by a customer's back office team or outsourced.

[22] The CMA understands that the purchasing decision for a binder management solution is likely to be made by the Lloyd's Carrier and the coverholder will use the solution that it is required to use by the Lloyd's Carrier. In any event, Xchanging's Binder 360 product is not supplied to coverholders. The CMA therefore only considers the supply of binder management solutions to Lloyd's Carriers.

[23] [✂], which is used by its employees in order to deliver the Binder 360 service.

[24] The Parties also noted that the ultimate aim of BinderCloud was to dispense with bordereaux altogether as data would be entered by coverholders in a standard format and would be instantly available to brokers and carriers.

test submitted that, from a demand-side perspective, the products/solutions of Xchanging and TOL may be credible substitutes.

57. The CMA considers that while Xchanging's Binder 360 differs to TOL's BinderCloud in certain respects, these products may be substitutes for some aspects of bordereaux processing for Lloyds' Carriers.

58. On a cautious basis, the CMA considers binder management software and binder management solution services to be part of the same frame of reference. However, it has not had to conclude on the precise scope of the product frame of reference because the Merger does not result in any competition concerns on any plausible basis.

Products supplied by Xchanging, Agencyport and/or TOL

Core software for MGAs

59. TOL and Agencyport and, to a limited degree, Xchanging overlap in the supply of core software for MGAs/coverholders, which is used to manage the core business processes of an MGA/coverholder (including elements of functionality from PAS software and also from broker software). MGAs/coverholders are insurance brokers/agents who have been delegated underwriting authority to quote, set conditions and bind insurance on behalf of insurers, as well as handle other parts of the insurance lifecycle, for instance claims handling and processing.

60. TOL supplies its 'Global XB' and 'Global XII' products and Agencyport supplies its 'Open Core Platform: MGA'. Xchanging could also fulfil the core software needs of an MGA or coverholder by supplying 'Brokasure' its broker core software and certain components of Xuber.

61. The CMA does not consider that it is necessary to come to a conclusion on the product frame of reference for core software for MGAs, because this overlap does not lead to a realistic prospect of an SLC on any plausible basis (see paragraphs 159 to 162 below).[25]

[25] This is consistent with the CMA's first phase decision in *Xchanging/Agencyport,* which considered the same overlap, see paragraphs 56 to 60.

Products in which the Parties do not overlap

Central processing services provided by Xchanging

62. The CMA understands that London Market participants use shared central processing services (including premium and policy preparation, checking, messaging and settlement services) when processing risks, premiums and claims and to report to Lloyd's for tax and regulatory purposes ('**central/shared services**').

63. Xchanging provides these central/shared services to London Market participants as part of an exclusive joint venture with Lloyd's and the International Underwriting Association of London (**IUA**).[26]

64. The CMA understands that the use of the central/shared services provided by Xchanging's joint venture is largely non-discretionary for London Market participants. The CMA therefore considers that the product frame of reference cannot be widened on the basis of demand-side or supply-side substitution.

Software and services provided by TOL to Capita in relation to Singapore shared services

65. TOL supplies a modified version of its Global XB software to Capita, which Capita uses to supply shared services to MAs that are active in Lloyd's Asia based in Singapore.[27,28] These services are similar to the shared central services provided by Xchanging in London although are more limited at present (**Singapore central/shared services**).

66. As the CMA understands that the use of these Singapore central/shared services for MAs active in Singapore is effectively non-discretionary,[29] the CMA considers that the product scope of the frame of reference cannot be widened on the basis of demand-side or supply-side substitution.

[26] Xchanging also provides central claims processing services through a separate exclusive joint venture with Lloyd's.
[27] Lloyd's Asia is an insurance and reinsurance platform based in Singapore. It has 18 service companies that operate from the Lloyd's office in Asia Square. This gives Lloyd's an underwriting base to access both Singapore and regional insurance and regional business.
[28] The Parties dispute the CMA's jurisdiction to review this aspect of the Merger. However, the CMA considers that it has jurisdiction to review this aspect of the Merger. In particular, it understands that while the end product of the shared services may ultimately be used by MA's Singapore service companies, at least for some MAs, [✄] for the Singapore hub in the UK, [✄], and [✄]. In addition, TOL also supplies the contract services to Capita in the UK.
[29] The CMA notes that while the shared services are not centrally mandated or operated through a joint venture such as that between Lloyd's, the IUA and Xchanging for central services, they are the only option for those wishing to use shared services in Singapore.

Other products supplied by Xchanging and Agencyport

67. In addition, one or more of the Parties and Agencyport supply insurance software or processing solutions in each of the following areas:

    (a) exposure modelling software for carriers;

    (b) PAS software for carriers;

    (c) business intelligence and data warehousing for carriers; and

    (d) business process outsourcing for carriers.

68. In relation to each of the products and services identified in paragraph 67 above, the CMA followed the approach taken by it in its *Xchanging/Agencyport* first phase decision and, on a cautious basis, assessed the impact of the merger using the following narrowest plausible candidate markets for the purposes of its analysis of potential conglomerate effects (set out at paragraphs 186 to 194 below):

    (a) the supply of exposure modelling software for Lloyd's Carriers;

    (b) the supply of PAS software for Lloyd's Carriers;

    (c) the supply of business intelligence software and data warehousing for Lloyd's Carriers; and

    (d) the supply of business process outsourcing services to Lloyd's Carriers.[30]

Geographic frame of reference

69. The Parties submitted that the relevant geographic frame of reference for the supply of insurance software to carriers, brokers and MGAs is worldwide, because there are no barriers to participants in the insurance market purchasing software solutions from software providers around the world and the majority of suppliers of insurance software are active in a number of jurisdictions.

70. While third parties' responses were mixed in relation to whether they would switch away from UK suppliers to non-UK suppliers, a number of responses noted the importance of a local presence for suppliers to implement and service insurance software and the large majority of customers use suppliers that have a local presence in the UK across all products identified in

[30] *Xchanging/Agencyport*, at paragraphs 26–47 and 61–62.

paragraph 33. This indicates that the geographic frame of reference for the supply of insurance software to Lloyd's Carriers and Brokers is the UK.

71. Based on this evidence, the CMA has assessed the geographic frame of reference for the Merger as being the UK. However, the CMA has not found it necessary to conclude on the precise scope of the geographic market, because it does not affect its competitive assessment in any eventuality.

72. The CMA took the same general approach in assessing vertical effects in relation to the supply of central/shared services in Lloyd's in London and shared services to MAs active in Lloyd's Singapore (set out in paragraphs 163 to 185), and, on a cautious basis, considers that the impact of the Merger should be assessed on the basis of the narrowest plausible geographic market for the supply of central/shared services to London Market participants (including in respect of their activities on Lloyd's international hubs), being the UK.

Other products supplied by one or more of the Parties and Agencyport

73. For the purposes of its analysis of possible conglomerate effects (set out in paragraphs 186 to 194), following the approach to the geographic frame of reference in its *Xchanging/Agencyport* first phase decision, the CMA considered that a local presence in the UK was likely to be important for a supplier of the products/services identified in paragraph 68 above. On a cautious basis, the CMA assessed each of these products/services by reference to their supply in the UK. However, the CMA has not found it necessary to conclude definitively on the precise scope of the geographic frames of reference, because it does not affect its competitive assessment on any plausible basis.

Counterfactual

74. The CMA assesses the Merger's impact relative to the situation that would prevail absent the Merger, known as the counterfactual. In practice, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of a merger. However, the CMA will assess a merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of the prevailing conditions continuing is not realistic or where there is a realistic prospect of a counterfactual that is more competitive than the prevailing conditions.[31]

[31] *Merger Assessment Guidelines*, at paragraphs 4.3.5 *et seq.*

75. The CMA may be required to consider a merger at a time when there is the prospect of another merger in the same market (a parallel transaction)[32]. In such circumstances, the relevant question that the CMA seeks to answer is whether the transaction under review creates the realistic prospect of an SLC. When considering parallel transactions the CMA is likely to consider whether the statutory test would be met if the parallel transaction proceeds and also consider whether the statutory test would be met if the parallel transaction does not proceed.[33]

76. In parallel to this case, the CMA is considering the completed acquisition by Xchanging of certain companies of the Agencyport Software Group (**Agencyport**), comprising its European operations (***Xchanging/ Agencyport***). Agencyport is active in the same markets and also in adjacent markets to Xchanging and/or TOL. The CMA considers that *Xchanging/ Agencyport* is a parallel transaction for the purposes of its assessment.

77. Therefore, the Merger needs to be assessed against the conditions of competition where the acquisition by Xchanging of Agencyport is cleared by the CMA and, in the alternative, against the conditions of competition that would exist if Xchanging's acquisition of Agencyport is unwound.

Competitive assessment

Unilateral horizontal effects

78. The CMA has considered whether the Merger may lead to a substantial lessening of competition through unilateral horizontal effects for the first three frames of reference set out in paragraph 33 in the UK.[34]

Parameters of competition

Preliminary observations on shares of supply

79. Before seeking to draw conclusions from the share of supply data in relation to the insurance software products under investigation in this case, the CMA

[32] See the *Merger Assessment Guidelines* at footnote 46, which explains that a parallel transaction is considered as part of the counterfactual on the basis that it would occur whether or not the merger takes place. In this context, a parallel transaction is one which is either anticipated or which has been completed but remains subject to the possibility of being unwound as a result of intervention by the CMA under the Act.
[33] See the *Merger Assessment Guidelines* at paragraphs 4.3.25 *et seq*.
[34] Unilateral horizontal effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices (or degrade quality) on its own and without needing to coordinate with rivals. See *Merger Assessment Guidelines*, section 5.4.

makes a number of general observations regarding the interpretation of market shares in the supply of insurance software for Lloyd's Carriers.

80. First, due to high switching costs faced by customers (such as migration and implementation costs, which were highlighted by a large majority of third parties in the market test), as well as the operational risk of changing core systems, they tend to remain with their chosen supplier for long periods of time.[35] This implies that market shares at any given point in time do not necessarily reflect the relative strength of competitors for marginal customers (ie, customers who are likely to purchase the product in the near future), but rather reflect the historic purchasing decisions of customers.

81. Secondly, insurance software is, to some extent, an 'experience good' (ie, a good whose quality is only revealed when the good is used). As such, if a supplier introduces a new product of low quality, some customers may purchase it 'in error' and subsequently refrain from switching suppliers in light of significant switching costs thereby retaining an inferior product.[36] To the extent that this occurs, it is likely that a 'tail' of small suppliers will arise, which do not necessarily represent credible alternatives to new customers – especially if those customers were acquired a long time ago.

82. Accordingly, when considering the relative strength of competitors now, shares of supply should be interpreted with caution and the balance of evidentiary weight should favour the direct assessment of closeness of competition. This is equally true of historic bidding data given the somewhat cyclical nature of competition in this market and the long product lifecycles, which is discussed further at paragraphs 89 to 95 below. It is also the case that the long product lifecycles are likely to exacerbate the effect of the Merger, because, at any given time, only a proportion of the credible competitors may have a product in the competitive period of its product lifecycle. This is consistent with the approach taken by the CMA in its *Xchanging/Agencyport* first phase decision, which related to very similar insurance software products.[37]

---

[35] No third party responses indicated that switching costs were low or that switching away was easy.
[36] For any given product, this imperfect information problem is likely to affect only a small number of customers as there appear to be considerable information flows between customers regarding the quality of suppliers' products once they have been installed. For example, one third party told the CMA that products stop winning competitions after a small number of unsuccessful implementations. Other third parties have noted that they evaluate products based on feedback from their peers. Moreover, Lloyd's has a small number of organised customers with established forums, and this is in any case conducive to information flows of this nature.
[37] At paragraphs 74–85.

Preliminary observations on closeness of competition

83. The following paragraphs set out some preliminary observations relating to the CMA's approach to assessing the closeness of competition between the Parties in relation to the overlapping insurance software products.

84. Third party responses to the CMA's market test suggested that insurance software products (including ORI software and broker software and to a certain degree binder management solutions) go through a lifecycle whereby a new product is released, builds credibility and functionality, reaches its peak sales and then begins to become obsolete because of technological developments. A new product will be released for active sales at this point and the supplier will cease to actively market its old product, which will only be maintained for existing customers (it becomes a 'legacy product'). Ultimately, a legacy product will be withdrawn. This can take many years.

85. An Xchanging internal document demonstrates this lifecycle, which shows products moving through 'build', 'invest and sell', 'sell', 'maintain' and 'support' stages before finally being withdrawn and replaced with the next generation of product. This document shows the roadmaps for Xchanging's and TOL's respective products and shows the following:

(a) [✄]

(b) [✄]

(c) [✄][38]

86. Given the product development cycles and long lead times, the CMA assessed a range of evidence. This included recent wins and current offerings as well as bid data. However, it also placed significant emphasis on suppliers' plans for, and investment in, product development in order to take account of the competitive dynamics in this market. In essence, at any given time, each supplier may be at a different point in its product lifecycles meaning that only limited weight can be placed on historic bidding data without taking account of the stage at which that supplier is in its product lifecycle. In particular, the CMA observes that a supplier may be investing in product development during a period when it is not winning tenders, as was the case with Xchanging over recent years with at least its ORI software product. It is less

[38] This is supported by the internal documents of the Parties, see for example Annex 6 of the Xchanging's response of 3 October 2014 to the CMA's enquiry letter sent under Section 109 of the Act regarding its acquisition of Agencyport.

clear the extent to which this was also the case for Xchanging's broker software.

87. As part of the CMA's competitive assessment, it sought to test whether the Parties were close competitors with their current product offerings, in particular by examining:

(a) the extent to which the competitive offerings of TOL and Xchanging are likely to be close substitutes; and

(b) the extent to which Xchanging and TOL update, improve or innovate in relation to their products and competitive offer.

88. This approach is consistent with the approach taken by the CMA in its first phase decision in *Xchanging/Agencyport*.[39]

Assessment of closeness of competition in bidding markets

89. The Parties submit that contracts to supply PAS software to Lloyd's Carriers are typically awarded on the basis of competitive tender.[40] In this regard, the Parties cite a number of Competition Commission (**CC**) and OFT decisions, which have considered bidding markets; in particular the following:

(a) the CC's decision regarding the completed joint venture between Tradebe Environmental Services Limited and SITA UK Limited (***Tradebe/Sita***) in which the CC stated "*to win a tender process the winner must beat the next best offer. Unilateral effects will be most likely where the parties ranked first and second in tenders merge*".[41] [Emphasis added by the Parties.]

(b) the OFT's decision in the completed acquisition by Capita Group plc of IBS OPENSystems plc,[42] in which it focused on the extent to which the parties are the two lowest priced bidders in tenders.

(c) the CC's decision regarding the completed acquisition by Stericycle, Inc of Ecowaste Southwest Limited (***Stericycle/Ecowaste***) in which the CC acknowledged that bidding markets could result in "*competitive outcomes with fewer firms than might otherwise be the case*".[43] [Emphasis added by the Parties], and went on to note that under certain circumstances, "*two*

[39] At paragraphs 93–101.
[40] Issues Letter Response, at paragraphs 2.1–2.7.
[41] Decision of 28 March 2014, at paragraph 6.52.
[42] Decision of 19 November 2008.
[43] Decision of 21 March 2012, at paragraph 7.102.

firms may provide enough competition to give rise to a fully competitive outcome."[44]

90. The CMA does not agree with some of the conclusions the Parties appear to have drawn from the precedents involving tendering processes listed above.

(a) In *Stericycle/Ecowaste*, the CC did indeed note that '*competition in markets in which prices are determined through a bidding mechanism can, if other conditions hold, result in competitive outcomes with fewer firms than might otherwise be the case*' [CMA emphasis added]. However, the CC considered that these conditions did not hold in the market under consideration in that case, healthcare risk waste,[45] and it concluded that in this context that '*any reduction in the relatively small number of potential bidders would have an adverse impact on prices and service quality available to purchasers*'.

(b) Similarly, in *Capita/IBS*, the CC, following the OFT's reference decision, considered that '*the most likely way in which just two firms could be sufficient to preserve competition in the [market under consideration in that case] would be if [that market] could be characterized as a 'bidding market' as defined in the [paragraph 9.18 of that decision].*'[46] However, the CC concluded that the market under consideration in that case did not present the conditions required for this framework to apply. It concluded that '*the reduction in the number of software suppliers and the resulting increase in market concentration in the [market under consideration] is likely to cause a lessening of competition for new customers going out to tender*'.

(c) In *Tradebe/Sita*, also relating to the market for healthcare risk waste, the CC recognised that the merger was most likely to be harmful where the parties were likely to be the two most competitive bidders for a customer. However, the CC did not limit itself to the analysis of past tender outcomes on a market-wide basis. It considered that it was necessary to assess the relative competitiveness of the different suppliers on a forward-looking basis to capture any potential changes in the conditions of competition. To this end, it examined the suppliers' future business plans and modelled their costs for future tenders. The CC also examined how

---

[44] At paragraph 7.103.
[45] A market characterized by a high degree of homogeneity in customer requirements, little innovation in product specifications, relatively low switching costs, and large contracts relative to the capacity of the plants.
[46] In this case these conditions have been described as follows: '*an ideal bidding market is characterized by the following structural features: (i) competition results in the winner taking all (ie each supplier wins all or none of the order); (ii) competition is 'lumpy' (ie each contest is large relative to a supplier's total sales in a period); and (iii) competition begins afresh for each contract and for each customer (ie there are no incumbency advantages by which the outcome of one contest importantly determines another.*'

the conditions of competition varied for different customers based on their location and requirements.

91. In summary, the CC has previously examined the theoretical possibility that competition might be sustained with a smaller number of competitors in bidding markets if certain conditions are met. However, it has generally concluded that the conditions required for this effect to materialise were not met. In most cases it has concluded that market concentration was a relevant parameter of competition even where customers used tenders to appoint their suppliers, and that a reduction in the number of competitors could harm customers. Even in cases where the CC has considered that anti-competitive effects would be most significant where the merging parties were likely to be the two most competitive bidders, it has performed a forward looking assessment, taking account a variety of other factors including competitors' business plans and incorporating differences in customer requirements in its assessment. In other words, it has not limited its analysis to a review of past tender data.

92. Such a nuanced approach is even more important in assessing the supply of insurance software.

93. As noted above, in past CC decisions 'ideal bidding markets' have been described as displaying the following structural features: (i) competition results in the winner taking all (ie, each supplier wins all or none of the order); (ii) competition is 'lumpy' (ie, each contest is large relative to a supplier's total sales in a period); and (iii) competition begins afresh for each contract and for each customer (ie, there are no incumbency advantages by which the outcome of one contest importantly determines another). In assessing the extent to which these structural features may be met in this case, the CMA found that:

(a) In these markets, it is not clear whether the size of contracts relative to each supplier's total sales are large enough to expect suppliers to act as if they are 'betting their company' in each tender.

(b) In these markets incumbents may have an advantage over competitors (because of switching costs and customers' emphasis on credibility and track record), indicating that competition does not 'begin afresh' for each contract. More importantly, in this market the product has a degree of differentiation (in the sense that different customers value different features of these products), and the relative competitiveness of suppliers varies over time. So despite the fact that the Parties did not rank first and second for some customers in past tenders for these products, it does not necessarily follow that the Parties may not rank first and second for other customers or, indeed, for the same customers in future tenders.

94. As such, the CMA considered that, while software contracts are commonly awarded through tender processes, this market is unlikely to exhibit the features of an ideal ‘bidding market’.

95. The CMA cannot therefore be confident, in its first phase investigation, that the bidding data accurately reflects the full extent of competitive dynamics in this market and it therefore considered other evidence available to it in addition to the bidding data submitted to it by the Parties.[47]

Non-proportional ORI software

Shares of supply

96. The Parties were unable to provide the CMA with an estimate of the total market size or their shares of supply of non-proportional ORI software for Lloyd’s Carriers. The CMA therefore sought to calculate shares of supply by count of customer and also calculate its own estimate of shares of supply by value based on information received from the Parties and third parties. The CMA understands from information received from the Parties and third parties that the total market size is approximately [less than £3 million]. The CMA has estimated the Parties’ shares of supply in Table 1 below.

Table 1: Parties’ shares of supply for non-proportional ORI software by count and by value

Supplier	Product name	Number of customers	Share of customers among known suppliers	Revenue (2013)	Share of supply among three largest suppliers (by value)
TOL	GLOBAL XL Pro	[✂]	[30–40]%	[✂]	[50–60]%
Xchanging	Elgar	[✂]	[30–40]%	[✂]	[30–40]%
Combined		[✂]	*[70–80]%*	[✂]	*[80–90]%*
Blem	XLRAS	[✂]	[20–30]%	[✂]	[10–20]%
Sungard	ProCede	[✂]	[0–5]%	unknown	-
Total known market		[✂]	100%	[✂]	100%

Source: Submissions by the Parties and third parties.

97. The data presented in Table 1 above demonstrates that, when in-house supply is excluded, the Parties hold a combined share of supply by count of [80–90]% and that its share of supply by value is likely to be even higher.

98. The evidence collected by the CMA suggests that more than half of the 60 MAs use a non-proportional ORI software product and at least one MA provides non-proportional ORI functionality in-house although it is likely that

[47] This is the same as the analysis taken by the CMA in its *Xchanging/Agencyport* first phase decision, see paragraphs 102–108.

this number is higher. Third party responses suggested that a Lloyd's Carrier is likely to require non-proportional ORI functionality.

99. The CMA understands that there are only four suppliers of non-proportional ORI software to Lloyd's Carriers, one of which has [✂] customer.

Closeness of competition

100. The Parties submitted that Xchanging and TOL are not close competitors in the supply of ORI software because they are functionally different.[48] In addition, they submitted that Xchanging's Elgar product is a legacy product which is no longer actively marketed to new customers, is a non-core product, [✂] (which makes it less attractive to potential customers), receives very limited market interest and has [✂] customers.[49] The Parties submit that the current market share of Elgar therefore materially overstates the competitive constraint that it exercises in the market and that given the significant switching costs for customers, the comparatively reduced offering of Elgar is unlikely to result in switching away from TOL's GLOBAL XL Pro.

101. The Parties also referred to evidence from bidding data they submitted as further evidence that they were not close competitors. The Parties stated this data indicates that, since 2010, TOL participated in [✂] tenders but Xchanging [✂], the Parties both bid for [✂] of the [✂] tenders and have not bid against each other since 2011.

102. On the other hand, the CMA notes that the Parties' internal documents suggest that their products do compete albeit with some differentiation. In particular, an Xchanging internal document states that [✂] and [✂].[50] A TOL internal document suggests that [✂].[51]

103. While third party responses largely confirmed [✂], third parties indicated that GLOBAL XL Pro and Elgar do compete and that the gap in functionality between the two products is not insurmountable. In addition, while the Parties submit that Elgar is no longer actively marketed, evidence submitted by the Parties indicates that Elgar has been invited to [✂] tenders of which it won [✂].

[48] In particular, the Parties submitted that Xchanging's Elgar is a non-proportional ORI software product that is designed to interface with the proportional ORI software incorporated in a Lloyd's Carrier's PAS software. On the other hand, TOL's Global XL Pro is a fully ceded solution providing both non-proportional and proportional ORI functionality and therefore replaces the proportional ORI component of a Lloyd's Carrier's PAS software. The Parties submit that a Lloyd's Carrier looking for a fully ceded solution would be unlikely, therefore, to consider Xchanging's product (and vice versa).
[49] See Notification, at paragraph 15.61.
[50] See Annex C14 to the Notification, [✂].
[51] See Annex C18 to the Notification, at slide 29.

104. Further, the CMA understands that Xchanging is currently developing a new outward reinsurance product, Xuber Ceding.[52] As stated above, given the product development cycles and lead times, the CMA considers that it is important to assess closeness of competition not only on the basis of recent wins and current offerings, but also on the basis of a supplier's plans for, and investment in, product development. An internal document shows [✄].[53] [✄].

105. Based on the evidence above, the CMA considers that Xchanging and TOL are likely to be the closest credible competitors in the supply of non-proportional ORI software for the purposes of its competitive assessment both in the immediate and long-term (although it recognises that Xchanging's Elgar product is a weak constraint on TOL's GLOBAL XL Pro).

Constraint posed by alternative non-proportional ORI suppliers

106. The Parties submit that they compete with a number of suppliers of non-proportional ORI software including Blem, SunGard, Sapiens, CSC and TCS and a number of global software providers including Stoneriver, SAP and Effisoft.[54]

107. The Parties submit that they face competition from Blem frequently in tenders and that Blem has an installed base of customers. SunGard has a Lloyd's Carrier customer, and Sapiens and CSC bid to supply reinsurance software for Lloyd's Carriers.[55]

108. The CMA notes that a number of third parties raised concerns regarding a reduction in choice in the supply of non-proportional ORI software post-Merger. The majority of third party responses suggest that there are only three main non-proportional ORI software products with excess of loss functionality available: Xchanging's Elgar, TOL's GLOBAL XL Pro and Blem's XLRAS. This is supported by the fact that only Blem and SunGard have Lloyd's Carrier customers other than the Parties and the latter only has [✄] customer.

109. The CMA received some evidence which suggested that Blem may not currently be a strong active competitor in particular in comparison with TOL, and also to a lesser extent in comparison with Xchanging. On the other hand, tender data provided by the Parties suggests that the Parties were aware of [✄] occasions where Blem participated in a tender competition against TOL,

[52] See Annex C14 to the Notification.
[53] See Annex C14 to the Notification, at slide 39.
[54] See Notification, at paragraph 15.64 and Issues Letter Response, at paragraphs 3.40 *et seq*.
[55] Issues Letter Response, at paragraphs 3.42–3.59.

albeit winning [✂]. The CMA therefore considers that Blem is a credible competitor when compared to Xchanging's Elgar product.

110. The CMA has received comments from third parties that suggest that the other smaller competitors identified by the Parties are not credible competitors in the supply of non-proportional ORI software for Lloyd's Carriers.[56] In particular, no third party has mentioned Stoneriver or Effisoft as credible suppliers and the CMA has not been able to confirm that any of these suppliers other than Blem and SunGard currently have any Lloyd's Carrier customers.

Conclusion on horizontal unilateral effects in the supply of non-proportional ORI software

111. The CMA considers that the Merger reduces the number of credible suppliers of non-proportional ORI software from three to two, with the Parties only constrained by one credible competitor, Blem, post-Merger. In addition, some third parties suggest that Blem has not been competing strongly for new customers over recent years. The CMA does not consider, therefore, that Blem is likely to constrain the Parties to a sufficient extent post-Merger. Moreover, Xchanging is developing a new product Xuber Ceding that, absent the Merger, would have competed with TOL's GLOBAL XL Pro product. This future competition will therefore be lost as a result of the Merger.

112. Based on the evidence set out above, the CMA considers that the Merger will give the merged entity the ability to increase prices or worsen non-price aspects of the competitive offering (such as quality) and may also have a negative effect on innovation in the supply of non-proportional ORI software for Lloyd's Carriers. The CMA therefore believes that, subject to what is said below regarding entry and expansion, there is a realistic prospect of an SLC in the supply of non-proportional ORI software for Lloyd's Carriers.

113. The CMA therefore considered whether entry or expansion exist to constrain the merged entity post-Merger.

Barriers to entry and expansion

114. The CMA considered whether entry or expansion could mitigate any potential unilateral effects of the Merger and prevent the realistic prospect of an SLC.

[56] For example SunGard has no UK implementation team, Sapiens currently had no London market clients and CSC's product was not considered to be a credible alternative due to its price and complicated configuration.

In assessing whether this was the case, the CMA considered whether such entry or expansion would be (a) timely, (b) likely, and (c) sufficient.

115. The CMA received comments from a material number of third parties to suggest that there were significant barriers to entry into the supply of non-proportional ORI software for Lloyd's carriers. In particular, those comments highlighted two main barriers to entry. First, non-proportional ORI software is highly complex and it would take a supplier that is not currently supplying this software some time to develop software with this functionality and also require significant financial investment, and, secondly, credibility in the market is important and infrequent switching makes building a credible reputation difficult.

116. The CMA received comments from third parties to suggest that entry would be unlikely to occur within a sufficiently short time horizon, in particular because existing suppliers have large market shares and switching occurs very infrequently. For these reasons the market may not be attractive to new entrants. Moreover, this is a very small market and few suppliers may be incentivised to enter should prices increase.

117. [✄]

118. Therefore the CMA does not have sufficient evidence to conclude that entry or expansion by existing providers will be timely, likely or sufficient, such as to mitigate any SLC arising in the supply of non-proportional ORI software to Lloyd's Carriers.

Conclusion on non-proportional ORI software

119. The CMA therefore finds that it is or may be the case that the Merger gives rise to a realistic prospect of an SLC in the supply of non-proportional ORI software for Lloyd's Carriers.

Insurance software for Lloyd's Brokers

Shares of supply

120. The Parties did not provide an estimate for the market size for the supply of broker software to Lloyd's Brokers or shares of supply by revenue. An Xchanging internal document indicated that it considered that the size of the

broking software market was [✂],[57] but the Parties submit that they consider that this estimate was superseded by an estimate of [✂].[58]

121. The Parties submitted that the Merger results in a combined share of supply of broker software to Lloyd's Brokers of [20–30]% by count with an increment of [5–10]%.

122. The Parties' share of supply by count of Lloyd's market participants is set out in Table 2 below.

Table 2: Parties' shares of supply by count

	Lloyd's Brokers							
	Total count	**Xchanging**		**TOL**		**Combined**		
Brokers		**Count**	**Share**	**Count**	**Share**	**Count**	**Share**	**Increment**
Willis, Aon and Marsh	[✂]	[✂]	[30–40]%	[✂]	[0–5]%	[✂]	[30–40]%	[0–5]%
Excluding Willis, Aon and Marsh	[✂]	[✂]	[10–20]%	[✂]	[5–10]%	[✂]	[20–30]%	[5–10]%
All Lloyd's	[✂]	[✂]	[10–20]%	[✂]	[5–10]%	[✂]	[20–30]%	[5–10]%
Service co.	[✂]	[✂]	[10–20]%	[✂]	[0–5]%	[✂]	[10–20]%	[0–5]%
Total	[✂]	[✂]	[10–20]%	[✂]	[5–10]%	[✂]	[20–30]%	[5–10]%

123. The CMA understands that the size of Lloyd's Brokers varies greatly which may mean that the Parties share of supply by value may be higher or lower than that by count. In particular, the 'Big 3' Lloyd's Brokers (Willis, Aon and Marsh) represent 60 to 70% of spend on broker software, one of which uses Xchanging's Brokasure system. Moreover, the CMA understands that there are in the region of seven to ten large to medium-sized brokers (excluding the 'Big 3') with the remaining brokers being significantly smaller.[59]

124. While the CMA does not consider customer segmentation is appropriate in this case, third party comments suggested that some suppliers did not supply software to broker customers of certain sizes as larger customers and smaller customers tended to have specific requirements that made it more difficult for smaller suppliers to compete for these customers. [✂]

[57] Annex C16 of the Notification refers to an estimate of the size of the UK & Ireland broker software market of [✂] in 2012.
[58] See response to CMA questions of 30 September 2014. The Parties submit that this estimate has been superseded by an estimate of [✂] and is in any case based on assumptions about regional distribution of IT spend that are likely to give rise to an underestimate of UK market size.
[59] This is supported by data on brokers' size by gross premium, which show that there are 17 broker groups with gross premiums of £500 million or more, making up 72% of total gross premium. Although the CMA notes that the Parties submitted that for a variety of reasons gross written premium does not provide a reliable basis for assessing broker software spend.

Table 3: Share of supply for Lloyd's Broker software by revenue

	Revenue (£ million)	Share of revenue	Revenue excluding 'Big 3' (£ million)	Share of revenue excluding 'Big 3'
TOL[1]	[✂]	[10–20] %	[✂]	[10–20]%
Xchanging	[✂]	[20–30]%	[✂]	[10–20]%
Combined	[✂]	*[30–40]%*	[✂]	*[30–40]%*
Trace	[✂]	[20–30] %	[✂]	[30–40]%
Sequel[2,3]	[✂]	[30–40]%	[✂]	[20–30]%
Morning Data	[✂]	[0–5]%	[✂]	[5–10]%
GPM	[✂]	[0–5]%	[✂]	[0–5]%
Northdoor	[✂]	[0–5] %	[✂]	[0–5]%
Total known[4]	[✂]		[✂]	

Notes: (1) TOL's revenues are based on revenues from all Lloyd's wholesale brokers. This revenue includes revenues from [✂]. However, it excludes revenues from [✂]. (2) Sequel's revenues [✂]. (4) These do not include revenues from SSP, Bross, or Websure.

125. As the revenues of a small number of competitors are not included in these calculations, the shares of supply of all competitors included in Table 3 are likely to be overstated. However, the exclusion of those revenues does not affect the relative shares of the competitors. The inclusion of some revenues from the sale of BinderCloud, MessageCloud and GLOBAL XII suggest that TOL's revenues are likely to be overstated.

126. As stated in paragraph 82 above, the CMA notes that shares of supply at any given point in time do not necessarily reflect the relative strength of competitors. The CMA considers that these shares should be interpreted with caution and the balance of evidentiary weight should be placed on the assessment of closeness of competition between the Parties.

Closeness of competition

127. The Parties submitted that Xchanging and TOL are not close competitors in the supply of broker software to Lloyd's registered brokers. They stated that TOL does not exert a strong competitive constraint on Xchanging in the supply of broker software to the 'Big 3' Lloyd's Brokers which represents the vast majority of spend on broking software, [✂].[60]

128. The CMA notes that there was some evidence from third parties which supported the Parties' submissions that they do not compete closely in

[60] The Parties submitted that this was supported by evidence from TOL's internal documents which stated that in relation to [✂].

respect of the 'Big 3' Lloyd's Brokers.[61] In particular, evidence from TOL's internal documents and [✂].[62]

129. The Parties submitted that for the remaining Lloyd's Brokers, bidding data and the Parties' switching analysis demonstrates that they are not close competitors. They submit that of the [✂] contracts that the Parties have bid for over the past four years, Xchanging and TOL have competed with one another on only [✂]. Furthermore the Parties stated that their broking software is differentiated and attracts different types of customers.[63] A number of third parties indicated that they rarely competed with Xchanging in recent tender competitions.

130. Outside of the 'Big 3' brokers, third party responses largely indicated that the Parties' products were credible alternatives to one another. For example, one third party suggested that it considered TOL's Global XB was the 'next best option' to Xchanging's Brokasure product. However, another third party indicated that it did not consider that Xchanging had a competitive product.

131. The responses of suppliers to the market test suggested that customers were to some extent 'tiered' in terms of size and that there were different competitors competing to supply customers of different tiers.

132. The responses of third parties to the market test suggested that there are a large number of competitors supplying smaller brokers, with this number becoming smaller as one considers larger brokers. The constraint from alternative suppliers is considered further by the CMA below.

133. The Parties provided switching analysis relating to sales of their respective broking systems. The CMA understands that [✂] brokers have switched from Xchanging to TOL since [✂], indicating that the Parties have competed against each other to some extent. The switching analysis also suggested that other suppliers may have a strong competitive offering (which is discussed below).

134. The CMA also notes that the Parties did not regularly bid against each other in those tenders identified by the Parties, which may indicate that the extent of competition between the Parties in tenders has been limited since 2010.

135. Based on the evidence discussed above, the CMA considers that Xchanging and TOL may be close competitors in the supply of broker software to Lloyd's

[61] This is supported by [✂] In addition, [✂].
[62] An internal document of the Parties states in relation to Global XB that [✂].
[63] For example the Parties stated that [✂] Brokasure provided additional functionality which the Parties submitted meant that smaller brokers considered Brokasure to be 'over-specified'.

Brokers when excluding the 'Big 3' Lloyd's Brokers for the purposes of its competitive assessment in the immediate term, although there is some evidence that they are not necessarily each other's closest competitors (as considered further below).

136. However, as stated in paragraph 86, the CMA considers it important to assess closeness of competition not only on the basis of recent wins and current offerings, but also on the basis of suppliers' plans for, and investment in, product development. It considers these aspects of competition below.

137. Xchanging is developing a new product with more modern software architecture, Xuber for Brokers. The CMA considers that the Parties may become closer competitors in future. However it notes that Xchanging's plans are still at a very early stage[64] and the Parties indicated at the issues meeting that the new product is expected [✄].

Constraints posed by alternative suppliers

138. The Parties submitted that there are a large number of alternative suppliers for broking software to Lloyd's Brokers. In relation to the 'Big 3' Lloyd's Brokers the Parties submitted that the existing suppliers, Sequel and Trace, are Xchanging's key competitors, both of whom will continue to constrain the merged entity, and that for reasons outlined above, TOL is not currently providing a constraint.

139. Outside of the 'Big 3' Lloyd's Brokers, the Parties stated that there are 18 existing suppliers but that of these their key competitors are: GPM Development (**GPM**), Morning Data, Northdoor, Sequel, Schemeserve, SSP, Trace and Websure.[65] The Parties also noted that some brokers self-supply.

140. Evidence from third parties suggested that there were a large number of suppliers competing for smaller customers (including Xchanging (with Brokasure Desktop), TOL, Morning Data, Northdoor, GPM, Bross, SSP and Websure. However, based on the evidence available, the main competitors supplying larger customers[66] were: Xchanging (with Brokasure Enterprise), TOL, Sequel and Trace, and, by some accounts, GPM.

[64] The Parties submitted that its project to develop [✄].
[65] Of these suppliers, the Parties submit that Morning Data, SSP and GPM are closer competitors with TOL as their software products are [✄]. Whereas Sequel and Trace compete more closely with Xchanging due to their depth of functionality.
[66] See paragraphs 122–123 above regarding the relative size of Lloyd's Brokers.

141. The CMA considered the extent to which there were sufficient alternative suppliers able to constrain the Parties post-Merger, particularly in relation to larger brokers.

142. The CMA notes that both Sequel and Trace currently supply a number of Lloyd's Brokers, including a number of larger brokers. Both Sequel and Trace told the CMA that they competed against TOL, Xchanging and each other. [✂]. The CMA therefore considers that there was strong evidence that both Sequel and Trace compete with the Parties.

143. The CMA also considers that there was some evidence to suggest that GPM would provide a constraint on the Parties post-Merger. GPM were mentioned by some third parties as an alternative. Furthermore the CMA notes that GPM was the supplier to [✂]. GPM informed the CMA that it currently has [✂] Lloyd's Broker customers and had recently won a customer from [✂]. [✂]. It told the CMA that it could compete for larger clients [✂].[67] The CMA also notes that a TOL internal document [✂].[68]

144. The CMA therefore considers there is evidence which indicated that GPM is a credible alternative supplier and could compete for brokers, including larger brokers.

145. There was more limited evidence to suggest that other suppliers would be able to provide a constraint, particularly in relation to larger customers. Bross, SSP and Websure have Lloyd's Broker customers and were mentioned as suppliers by some third parties, albeit relatively infrequently. SSP stated that it competed against TOL and Xchanging, in addition to GPM, Morning Data and Sequel. Morning Data was mentioned by some third parties, however [✂]. Northdoor currently supplies [✂] customers and the CMA understands that [✂].

146. The CMA also understands that a number of Lloyd's Brokers self-supply. One third party told the CMA that brokers' processes are relatively simple, and therefore so too are the products in this area. It said that this simplicity suggests that in-house systems may be more feasible in this area than in others, particularly among small brokers. However, the CMA did not need to conclude on the strength of the competitive constraint from in-house systems because the CMA did not find that the Merger resulted in a realistic prospect of an SLC on any plausible basis.

---

[67] The CMA understands that [✂].
[68] See Annex C18 of the Notification, page 29.

147. On the basis of the evidence that it has received, the CMA considers that in relation to smaller Lloyd's Brokers there appear to be a large number of alternative competitors. In relation to larger Lloyd's Brokers, the evidence indicated that Sequel, Trace and GPM are credible competitors to the Parties.

Conclusion on insurance software to Lloyd's Brokers

148. Based on the evidence above, the CMA does not consider that the Merger gives rise to a realistic prospect of an SLC in the supply of broker software for Lloyd's Brokers for the following reasons:

(a) While Xchanging and TOL are relatively close competitors in the supply of broker software to Lloyd's Brokers when excluding the 'Big 3' Lloyd's Brokers, the CMA does not consider that they are necessarily each other's closest competitors with Trace and Sequel arguably competing more closely with each of the Parties.

(b) The CMA considers there are a number of alternative competitors which will provide a sufficient competitive constraint on the merged entity post-Merger:

(i) As regards the 'Big 3', TOL is not considered to be a credible supplier for these customers and, post-Merger, the CMA therefore considers that there is no merger effect in relation to this segment of customer;

(ii) As regards larger Lloyd's Brokers, there are at least three alternative, credible competitors, being Sequel, Trace and GPM, and also Northdoor [✂] (although it is a relatively new entrant); and

(iii) As regards small and medium-sized Lloyd's Brokers, there is a 'tail' of additional competitors, including the four competitors already mentioned above and also Morning Data in particular plus Bross, SSP and Websure.

Binder management solutions

Shares of supply

149. The Parties did not provide an estimate for the market size for the supply of binder management solutions to Lloyd's Carriers and/or coverholders or shares of supply by revenue. The Parties' internal documents suggest that the size of the market is [✂], of which [✂] represents the supply of binder

management software to Lloyd's Carriers.[69] Third party responses indicated that self-supply could be as high as 50 to 60% of the market.[70]

Closeness of competition

150. The Parties submitted that Xchanging and TOL are not close competitors in the supply of binder management solutions, because their products provide entirely different functions and are targeted at customers with different needs. Binder 360 offers an outsourcing service to cleanse and transform bordereaux which are sent to the customer to be managed by that customer's binder management solution,[71] whereas BinderCloud is a cloud-based software that transforms bordereaux and stores them on the 'cloud', but customers still require some manual processing which can either be carried out in-house or outsourced (see paragraphs 53 to 58 above). The Parties submitted that almost all of Binder 360 customers also purchase binder management software.

151. The Parties also provided bidding data and submitted that this was evidence that the Parties did not overlap in binder management. This showed that TOL's BinderCloud has not come up against Xchanging's Binder 360 solution since its release in February 2014.

152. The Parties also submitted that Binder 360 is a new service and [✂] customers, deriving revenues of less than [✂] in 2013. TOL's BinderCloud has [✂] customers, [✂] of which [✂] Lloyd's Carrier and the others are brokers, and generated revenues of [✂] in 2013.

153. The CMA calculated shares of supply based on revenue information provided by third parties in relation to the supply of binder management solutions. Based on this calculation, TOL's share is likely to be less than [10–20]%, while Xchanging's share is likely to be smaller than [0–5]%.

154. Based on the evidence above, the CMA considers that there is strong evidence indicating that the Parties' products are differentiated and are therefore not close competitors and, in any event, the Parties have only a small combined presence in the market and the increment arising from the Merger is very small.

---

[69] See Annex C14 to the Notification, at slide 19.
[70] Although one third party told the CMA that changes to rules by the Financial Conduct Authority which will come into force in June 2015, will mean that self-supply is no longer a viable alternative to a binder management solution because the increased regulatory requirements will necessitate an external software product.
[71] In order to perform this service, Xchanging's outsourcing personnel use a modified version of Watertrace's binder management solution software.

Constraint posed by other binder management solution suppliers

155. The Parties submitted that Xchanging's Binder 360 competes with Capita and Charles Taylor, which both use licensed software to offer a bordereaux transformation service to customers that wish to outsource this function. On the other hand, the Parties submit that TOL competes with other binder management software suppliers such as Watertrace, VIPR, Knowledge Center and Catex. The Parties also submit that self-supply by customers is also an alternative to binder management software.

156. There were mixed responses from third parties regarding alternative suppliers. Some third parties suggested that the main competitors in the market for binder management solutions are the Parties and Watertrace and therefore the Merger would reduce choice in the market. On the other hand, other third parties suggested that there were also other competitors, including Charles Taylor, Catex and VIPR.

157. The CMA considers that the evidence from its market test indicates that there are a number of credible alternative suppliers of binder management solutions that will be able to constrain the merged entity post-Merger.

Conclusion on binder management solutions

158. Based on the evidence above, the CMA does not consider that the Merger gives rise to a realistic prospect of an SLC in the supply of binder management solutions to Lloyd's Carriers. In particular, this is because (1) the Parties' products are differentiated (Xchanging's Binder 360 performs a bordereaux transformation and cleansing service, whereas TOL's BinderCloud offers an end-to-end binder management solution (see paragraphs 55 to 57)); and (2) the Parties have a low share of supply (with an increment of just [0–5]%) and will be constrained by a number of competitors post-Merger.

Other products supplied by Xchanging, Agencyport and/or TOL

Core software for MGAs

159. The Parties submit that they have a very limited presence in the market for the supply of insurance software to MGAs in the UK. OPEN Core: MGA only has [✄] customers, only [✄] of which have the product deployed in the UK. In addition to these, Xchanging has [✄] customer deployments outside of the UK, [✄] and [✄], which use the same software solution. Moreover, TOL only has [✄] MGA customers in the UK. The Parties submit that this gives the

Parties a combined market share of [0–5]% (with an increment of [0–5]%) by count of MGAs in the UK.

160. The Parties submit that there are a substantial number of competing MGA products available from other suppliers, including Sequel, SSP/Sectornet/PURE, Northdoor, Transactor, VIPR, Acturius, Open GI, Wildnet and Salmon.

161. The CMA market tested the Parties' submission and third party responses confirmed that there were a number of competitors to the Parties in the supply of core software to MGAs and that the Parties were not strong competitors in this segment.

162. Accordingly, the CMA does not consider that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of core software to MGAs. This is the case in either counterfactual.

Non-horizontal effects

Vertical effects

163. Some third parties raised concerns regarding the impact of the Merger on competition for the provision of central or shared services in (a) Lloyd's in London, (b) in Lloyd's Asia international hub in Singapore, and (c) for future international hubs that are planned by Lloyd's.

164. As explained in further detail at paragraphs 62 to 64 above, Xchanging currently provides central/shared services to MAs interacting with Lloyd's in London under an exclusive arrangement with Lloyd's and the IUA. Similarly, Capita, in collaboration with TOL, provides some similar central/shared services to MAs using the Lloyd's Singapore hub effectively under an exclusive arrangement (see paragraphs 65 to 66 above). TOL provides Capita with software to allow Capita to provide central/shared services in Singapore under a contract [✄] (the combined service is referred to as '**Capita/TOL**').

165. The CMA has considered whether the Merger would give rise to the realistic prospect of:

(a) the loss of potential competition for central/shared services in Lloyd's in London arising from a strategy of input foreclosure by Xchanging against Capita.

(b) the loss of actual or potential competition for the supply to MAs of central/shared services in relation to Lloyd's Asia hub in Singapore, and

other future international hubs for which central/shared services may be tendered, arising from a strategy of input foreclosure in the United Kingdom by Xchanging against Capita.

166. An Xchanging internal document also considered the acquisition of TOL as a [✂],[72] [✂].[73]

167. The CMA's assessment was carried out in two stages. First, the CMA analysed whether, absent any possible foreclosure, Xchanging and Capita/TOL would have been likely to compete for the provision of central or shared services in the first place in relation to each of the platforms identified above, ie, in each of a) in Lloyd's in London, b) Lloyd's Asia in Singapore and c) other future international Lloyd's hubs (for which shared services may be tendered). Secondly, it examined the ability and incentive of Xchanging to lessen such competition by foreclosing Capita/TOL, and the likely effect of any such foreclosure on competition.

Competition for central or shared services

- *Competition for central/shared services for Lloyd's in London*

168. As regards Lloyd's in London, there were some indications from third parties and from the Parties' internal documents, that Lloyd's may have been considering introducing competition in the provision of central/shared services. [✂]. Therefore on this basis the CMA does not consider that, absent foreclosure, Capita/TOL would be likely to compete for the provision of central/shared services in London.

- *Competition for central/shared services in Lloyd's Singapore hub*

169. Capita/TOL is the incumbent supplier of central/shared services to MAs active in Lloyd's Singapore hub. The CMA understands that Xchanging also bid to supply these services to Lloyd's Singapore hub. In the event that the Lloyd's Singapore hub central/shared services are tendered by MAs in future,[74] the CMA considers that Xchanging and Capita/TOL would be likely to compete with one another absent the foreclosure of Capita.

170. [✂].[75]

---

[72] [Xchanging internal document].
[73] The Parties' response of 21 November 2014.
[74] [✂]
[75] *Merger Assessment Guidelines*, at paragraph 5.4.15.

- *Competition for central/shared services in other Lloyd's international hubs*

171. As regards international hubs (other than Lloyd's Singapore hub), documents published by Lloyd's indicate that it intends to expand into developing markets and will be seeking to establish local presences in several new countries,[76] and other potential hubs were also mentioned in Xchanging's internal documents.

172. Therefore, on the information currently available to it, the CMA considers that it is likely that Xchanging and Capita/TOL will compete against each other for the supply of central/shared services to other international hubs in the future, absent foreclosure.

Analysis of possibility of input foreclosure

173. The CMA typically frames its analysis of input foreclosure, as with other non-horizontal effects, by reference to the following three questions:

    1. Ability: would the merged firm have the ability to harm rivals, for example through raising prices or refusing to supply them?

    2. Incentive: would it find it profitable to do so?

    3. Effect: would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to an SLC?77

- *Ability*

174. The CMA considered whether the Merger would give Xchanging the ability to prevent Capita from sourcing the technology products and services used in the provision of its central/shared services to companies in Lloyd's Singapore hub and other future Lloyd's international hubs. The CMA also considered whether the Merger would give Xchanging the ability to foreclose any other potential competitor in the provision of central/shared services.

175. As explained above, TOL currently provides Capita with software that Capita uses as an input to provide central/shared services to MAs using Lloyd's Singapore hub. This software is provided under a contract of a fixed duration. The CMA considered whether there are other software providers available to replace TOL's input and/or whether the termination of this contract would

[76] See for example Lloyd's Annual Report for 2013.
[77] *Merger Assessment Guidelines*, at paragraph 5.6.6.

impede Capita's ability to compete, or would effectively do so, against Xchanging for the provision of central/shared services.

176. The Parties submitted that as Capita licences TOL's broker software for use in supplying central/shared services to MAs in Singapore, [✂].[78]

177. The CMA was told by [✂] that [✂]. As set out in paragraph 148, the CMA considers that there at least three other credible broking software suppliers other than the Parties and there is also a tail of other additional smaller competitors who supply broker software to MAs.

178. [✂]. The CMA considers that there would be sufficient time for Capita to source and develop a solution with an alternative supplier to TOL without interruption to its services.

179. [✂]

180. [✂]

181. The CMA therefore considers that it is likely that Capita would remain incentivised to develop an alternative solution for Lloyd's MAs' service companies in Singapore with a new supplier.

182. [✂]

183. The CMA does not consider that there is credible evidence that the Parties will have the ability to frustrate Capita's provision of shared services to Lloyd's MAs in Singapore. [✂]

184. On the evidence outlined above, the CMA does not consider that there is a realistic prospect that Xchanging will have the ability to foreclose Capita. The CMA has not therefore needed to consider incentive and effect.

Conclusion on vertical foreclosure

185. The CMA therefore considers that there is no realistic prospect that Xchanging will have the ability post-Merger to remove the competitive constraint posed by Capita/TOL on Xchanging through a strategy of input foreclosure. Accordingly, the CMA has concluded that there is no realistic prospect that that the Merger will result in the loss of actual or potential competition for the provision of central/shared services in Lloyd's in London,

[78] As referenced by the press release launching Capita's services for Singapore which did not mention TOL.

for central/shared services in Lloyd’s Singapore hub and for any such services in other future Lloyd’s international hubs.

Conglomerate effects

186. The Merger brings together Xchanging’s activities in the supply of outward reinsurance software, binder management solutions, business intelligence, and business process outsourcing with Agencyport’s activities in the supply of exposure modelling software and, under one counterfactual, also TOL’s activities in the supply of binder management software and outward reinsurance software. The Merger therefore increases the set of credible products that can be provided by the same firm.

187. Following concerns raised by two third parties, the CMA has assessed the possibility of the Merger giving rise to conglomerate effects. The CMA considers that, in principle, if customers have a strong preference for one-stop shopping, and if competitors are unable to match the attractiveness of the bundle offered by the parties, then this strategy could ultimately lead to a realistic prospect of an SLC in one or several markets for insurance software.

188. One third party also raised concerns that Xchanging may increase the frequency of the updates to the central processing services (which Xchanging provides as a monopolist) that all software providers need to comply with through adaptations of their software packages in order to make these packages less reliable. Xchanging might also reduce the notice period given to software providers to comply with such changes [✂]. While the CMA cannot exclude at this stage that Xchanging might in fact deteriorate its competitors’ offerings through this strategy, the CMA considers that the acquisition of TOL (or Agencyport) does not materially affect Xchanging’s ability or incentive to do so. The third party itself told the CMA that ‘these acquisitions do not alter Xchanging’s position in this regard’.[79] As a result, the CMA has not considered this strategy any further.

189. The Parties submit that, as regards business processing outsourcing, Xchanging provides both central/shared services and business outsourcing services to the Lloyd’s and London Companies’ market through two joint venture companies. Almost all of the business processing/outsourcing services provided by Xchanging are through these joint ventures. Given the nature of these joint ventures, it is clear that Xchanging does not have the ability to take decisions unilaterally to favour its own business, nor does it

[79] This comment was provided by the third party in response to the CMA’s question: ‘explain whether Xchanging would be able to increase the frequency of the updates and/or reduce the notice period even in the absence of the mergers with TOL and Agencyport’.

have the incentive to do so given that it only has a [✂]% shareholding. Moreover, its position in this regard will not be affected by the Merger.

190. As regards bundling of other software products, the Parties submit that, pre-Merger, Xchanging offered a large suite of products, including many of the products that would be included in a hypothetical bundle. There is no evidence that Xchanging has either (i) benefited as a result of offering the suite of products, or (ii) that it resulted in the exclusion of any competitors. Similarly, pre-transaction, TOL also offered a range of products/services including broker software and binder management software.

191. In this case, the CMA considers that the features of this market are unlikely to support a bundling strategy. The CMA tested the complainants concerns with customers which largely confirmed that one-stop shopping was not an important consideration for them. Moreover, given that customers only change supplier infrequently, it would take a very long time for a supplier to exclude competitors, and the costs incurred over this period are unlikely to outweigh the potential benefits to the supplier after competitors have been excluded.

192. The CMA considers that the Parties would not, therefore, have the ability to foreclose competitors by engaging in this strategy. Given the lack of ability, the CMA has not needed to consider the incentives of the Parties to engage in this strategy and the likely effect of any such behaviour.

193. Irrespective of whether bundling might be a profitable strategy in this market, the CMA considers that the merger effect is likely to be limited. Xchanging is already present in all of the different segments of the market except to a certain extent, binder management software. Therefore, if bundling is a possible strategy in this market, this risk is likely to arise in each counterfactual as well as in the Merger scenario. The CMA considered that the merger effect was likely to be limited in the context of *Xchanging/Agencyport* also.[80]

194. The CMA therefore concludes that there is no realistic prospect of a SLC as a result of conglomerate effects. This is the case under either counterfactual (ie, under the prevailing conditions of competition or those where the Agencyport transaction is unwound). [81]

---

[80] *Xchanging/Agencyport*, at paragraph 191.

[81] This finding is consistent with the CMA's first phase decision in *Xchanging/Agencyport* (see paragraphs 184 to 192).which considered the same facts (although the merger effect between the two transactions differs depending on the counterfactual, but this is not relevant given that the CMA does not consider that there is a realistic prospect of an SLC on any plausible basis).

Third party views

195. The CMA received responses from a range of customers including Lloyd’s Brokers, Carriers and MGAs/coverholders and others such as insurance software consultants, and customer associations such as the London & International Insurance Brokers’ Association and Lloyd’s Market Association. Responses from these third parties regarding the impact of the Merger on competition were mixed, with a number of third parties expressing concerns regarding the Merger, because there were few or no credible alternatives to the parties, while a similar number of third parties did not raise concerns regarding the Merger. These have been reflected in the decision where relevant.

196. A number of responses were also received from various competitors and other relevant bodies such as Lloyd’s. A number of responses from competitors raised concerns about the Merger, however some did not raise concerns. These comments have also been reflected in the competition assessment above.

197. Third party comments have been included where relevant in the decision.

Conclusion on the realistic prospect of an SLC

198. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of non-proportional ORI software for Lloyd's Carriers.

Exceptions to the duty to refer

De minimis

199. Where the CMA’s duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, choose not to refer the merger under investigation for a phase two investigation on the basis that the market concerned is not of sufficient importance to justify the making of a reference.[82] This is considered below in relation to the CMA’s finding that the Merger may be expected to result in the realistic prospect of an SLC in relation to the supply of non-proportional ORI software for Lloyd’s Carriers.

[82] OFT1122 – Mergers, Exceptions to the duty to refer and undertakings in lieu of reference guidance, December 2010. This guidance was originally published by the Office of Fair Trading (OFT) and has been adopted by the CMA Board (**Guidance on the exceptions to the duty to refer**).

Markets of insufficient importance

200. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.[83]

201. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* discretion exception where clear-cut undertakings in lieu of a reference (**UILs**) could be offered by the Parties to resolve the concerns identified.[84]

202. In most cases, a clear-cut UIL will involve a structural divestment. The CMA therefore considered whether the Parties could have divested either of their respective non-proportional ORI software products.

203. The Parties submitted that there were no clear cut UILs available in principle because neither of the Parties' Global GLOBAL XL Pro or Elgar products could be clearly separated in physical and commercial terms from either of the Parties' respective existing businesses and sold to an effective purchaser, for the following reasons:

   (a) In relation to Elgar, [✂] and that any purchaser would need to make significant investments in order to be competitive, therefore it would be highly unlikely to be attractive to any potential purchaser, particularly due to the small size of the market and its turnover of [✂] or less.

   (b) With respect to Global GLOBAL XL Pro, there was an integrated underlying platform for each of the TOL's software products which means it would not be possible to split out this product from its other software products.

204. The CMA considers there is significant doubt that the divestment of either party's product would meet the 'clear-cut' standard, meaning that the CMA does not consider UILs to be available 'in principle' in this case.[85] On this basis, the CMA has proceeded to examine whether to exercise its *de minimis* exception in this case.

---

[83] *Guidance on the exceptions to the duty to refer*, paragraph 2.8–2.11 and 2.16.
[84] *Guidance on the exceptions to the duty to refer*, paragraph 2.2.
[85] *Guidance on the exceptions to the duty to refer*, paragraph 2.27.

Application of the de minimis exception

205. The CMA considers that where the annual value in the UK of the market concerned is, in aggregate, less than £3 million (and where no clear-cut undertakings in lieu are in principle available) a reference to phase two will generally not be justified. The CMA would expect to refer a merger where the value of the market concerned was less than £3 million only exceptionally, and where the direct impact of the merger in terms of customer harm is particularly significant and/or where that merger is highly replicable in the relevant sector.[86]

206. The CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact[87]. The CMA will also consider the wider implications of a *de minimis* decision[88]. Each is considered in turn below.

Market size

207. The CMA has concluded that the Merger gives rise to a realistic prospect of an SLC in the supply of non-proportional ORI in the UK. Based on the evidence it has received, the CMA estimates that the annual market size for non-proportional ORI software is approximately [less than £3 million].

Strength of the CMA's concerns

208. The CMA's considers that it may be the case that the Merger will lead to an SLC in the market for the supply of non-proportional ORI software. However, the strength of its concern is mitigated by existing competition [✂].

Magnitude of competition lost

209. The CMA notes that Xchanging's current non-proportional ORI product Elgar has relatively small total UK sales of less than [✂]. Furthermore the CMA considers that the extent of the harm to customers is likely to be limited given that there is one remaining competitor [✂]. Accordingly the CMA does not

[86] *Guidance on the exceptions to the duty to refer*, paragraphs 2.15.
[87] *Guidance on the exceptions to the duty to refer*, paragraph 2.28.
[88] *Guidance on the exceptions to the duty to refer*, paragraphs 2.40–2.43.

expect that the Merger will lead to large price increases or equivalent non-price effects.[89]

Durability

210. In relation to the loss of potential future competition between Xuber Ceding and TOL's product, the CMA notes that there are other constraints in the market [✂]. This all suggests that any harm may be of reasonably short duration and/or mitigated in the medium term. Accordingly the CMA does not expect that the direct impact of the Merger in terms of customer harm will be particularly significant.

Replicability

211. The CMA has also considered the risk that using the *de minimis* exception in this case may create an expectation that mergers involving comparable competitive conditions and similar competition concerns would also not be referred for a second phase investigation on the basis of the CMA exercising its discretion to apply the *de minimis* exception. The CMA considers that there is only a limited risk of this given the specific facts of this case and, in particular, the highly specialist nature of the products in question.

212. On balance, having taken account of all relevant factors in the round, the CMA considers that the public cost of a reference would be greater than the impact of the Merger on consumers. The CMA therefore considers that, to the extent that its duty to refer may be met, it is appropriate for the CMA to exercise its discretion to apply the *de minimis* exception in this case.

Conclusion on the application of the de minimis exception

213. Taking all the above factors into consideration, the CMA considers that the market concerned in this case is not of sufficient importance to justify the making of a reference. As such, the CMA considers that it is appropriate for it to exercise its discretion to apply the *de minimis* exception pursuant to section 33(2)(a) of the Act.

[89] *Guidance on the exceptions to the duty to refer*, paragraph 2.34–2.37.

Decision

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

Sheldon Mills
Senior Director Mergers
Competition and Markets Authority
9 December 2014