Xchanging/ Agencyport

Provisional findings report

Notified: 24 March 2015

The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

Page

Appendices

Summary

1. On 8 December 2014, the Competition and Markets Authority (CMA) referred the completed acquisition by Xchanging plc (Xchanging)[1] of Agencyport Software Europe Limited, Agencyport Software Europe (Regional Hub) Limited, Agencyport Software Bermuda Limited and Agencyport Software Europe Offshore Corporation, comprising all of Agencyport Software Group's European operations (together referred to as Agencyport) for further investigation and report by a group of CMA panel members (the Group). We are required to publish our report by 24 May 2015.

2. Xchanging is a provider of business processing, technology and procurement services to large organisations. Its turnover in 2014 was £573.5 million, generated from sales in 48 countries. Its Xuber business unit specialises in insurance software, which it sells in the UK and in other countries. Prior to the merger, Agencyport was part of the Agencyport Software Group, an insurance software provider owned by Thomas H. Lee Partners (THL), a private equity firm.

3. In particular, both Xchanging and Agencyport sell insurance software to companies operating in the London market, comprising mainly Lloyd's of London (Lloyd's) and the London Company Market (LCM). Xchanging also provides business processing services ('bureau services') to participants in these two insurance marketplaces.

4. Lloyd's and the LCM deal primarily with non-life (general) insurance and reinsurance and tend to underwrite more low volume, high value risks than is the case for general insurers in the rest of the UK and Europe. They are both 'subscription' or 'syndicated' marketplaces, in which large risks are shared between a number of insurers. In Lloyd's, members join together in syndicates, which are in turn managed by managing agents (MAs), which employ underwriters and handle the day-to-day running of a syndicate's infrastructure and operations.

5. The syndicated nature of Lloyd's and the LCM has created the need for each to have a central processing unit (the 'bureau') that handles transactions between the market participants such as: claims payments, accounting settlement, placing and document exchange. All Lloyd's transactions are processed through its bureau. Use of the bureau is not mandatory in the LCM and it is estimated that 65% of LCM business is not processed through it. Apart from insurers and reinsurers (collectively referred to as carriers) and

[1] Acting through its wholly owned subsidiaries Xchanging Holdings Limited and Xchanging, Inc.

Lloyd's MAs, other participants in these marketplaces include brokers, coverholders, and managing general agents (MGA). A number of changes are affecting the London market, including the increasing consolidation and internationalisation of carriers and Lloyd's MAs, as well as the modernisation of infrastructure and processes.

6. A number of processes and parties are involved in the life cycle of an insurance policy, from the point at which a potential policyholder approaches a broker with a view to insuring a risk to the settlement of a claim and renewal of policy. The full range of processes can be handled by specialised software, the functionality of which will vary depending on which type of market participant (Lloyd's MAs, other insurers or reinsurers, brokers or MGAs/coverholders) uses it, although there is some commonality between the different software packages used by the various actors. In particular, policy administration systems (PAS) enable Lloyd's MAs and carriers to manage the entire life cycle of insurance policies. Because Lloyd's and the LCM are 'subscription' markets, PAS for use by Lloyd's MAs and LCM carriers need to incorporate functionality to manage processes associated with the bureaux.

7. Both Xchanging and Agencyport provide PAS with Lloyd's and LCM bureau functionality to Lloyd's MAs and LCM carriers. The supply of PAS is generally regarded as highly fragmented across Europe, with suppliers focusing on meeting local demand in a limited number of geographies. Local providers of PAS to Lloyd's MAs and LCM carriers include: Agencyport, Eurobase International Group (Eurobase), NIIT Technologies Limited (NIIT), Northdoor plc (Northdoor) and Sequel Business Solutions Limited (Sequel). There are also a number of large suppliers with a substantial presence: Accenture (Duck Creek), Computer Sciences Corporation (CSC), eBaoTech Corporation (eBaoTech), Guidewire Software, Inc. (Guidewire), SAP AG (SAP), Sapiens International Corporation (Sapiens) and Xchanging.

8. We first considered whether the acquisition of Agencyport by Xchanging was a 'relevant merger situation' within the meaning of section 35 of the Enterprise Act 2002. We provisionally concluded that it met the share of supply test and provisionally concluded that a 'relevant merger situation' had been created.

9. We then defined the relevant product markets in which to assess the effects of the transaction. This involved a detailed assessment of the implications of the requirement to build bureau functionality into PAS for use in Lloyd's and the LCM on demand-side and supply-side substitutability for the parties' PAS. We also considered whether the market could be segmented on the basis of the size and/or international presence of customers, before examining whether the in-house and bespoke supply of PAS is in the same market as

off-the-shelf or packaged PAS. We provisionally concluded that the transaction should be analysed in the following product markets:

(a) The provision of packaged PAS with Lloyd's bureau functionality to Lloyd's MAs (the Lloyd's PAS market).

(b) The provision of packaged PAS with LCM bureau functionality to LCM carriers (the LCM PAS market).

10. We did not consider it necessary to reach a conclusion on the exact geographic market. We considered that a supplier's geographic location was relevant insofar as it might affect its ability to serve UK customers (and whether UK customers would consider buying from that supplier). To the extent that suppliers based in different countries did serve (or had the ability to serve) UK customers, we took this into account in the competitive effects of the merger.

11. Before turning to the assessment of the competitive effects of the merger, we considered what would have been the competitive situation in the absence of the merger (the counterfactual), focusing on whether THL would have been likely to sell Agencyport and to whom. We provisionally found that THL would have been likely to sell Agencyport to the second highest bidder in the formal bidding process it had carried out and that neither this bidder nor any of the other bidders presented any competition concerns.

12. Our assessment of the effects of the merger started with an analysis of the competitive process involved in the supply of PAS to Lloyd's MAs and LCM carriers, including the switching costs faced by customers and frequency of switching, procurement processes, the criteria used by customers to assess potential suppliers and key contract terms. We found that the costs and risks associated with switching were high and that subsequently customers changed suppliers rarely. The form of the selection process varied across customers, and was generally a combination of tenders and individual negotiations. Contractual arrangements varied across customers and prices were ultimately negotiated individually.

13. Overall, the evidence we received from customers showed that customers are sophisticated and well informed: they conducted periodic reviews of the PAS offerings to assess whether or not they should switch supplier, they put considerable effort into the purchasing decision, through which they obtain detailed information on the various offerings and suppliers (including information from other customers' experience of the product); and they took into account a range of factors in their purchasing decisions, including

expected levels of service, cultural fit with the customer, maintenance and upgrades after the product is purchased.

14. We then turned to the assessment of the effect of the loss of a competitor (Agencyport) in the Lloyd's PAS market and/or the LCM PAS market. We first calculated market shares and analysed tendering data in the Lloyd's PAS market and the LCM PAS market. We then analysed qualitative evidence gathered from customers and competitors on the current and likely future competitive positions of Xchanging and the other suppliers remaining in the two markets following the acquisition of Agencyport. In making this assessment, we took account of changes likely to affect demand and supply in the Lloyd's PAS and LCM PAS markets in the timeframe within which we analysed the effect of the merger. We noted the dynamic nature of competition in the relevant markets, including the changing fortunes of suppliers, driven by product launches or upgrades, varying successes in systems implementations, or lack of investment in new product development by suppliers at various points in time.

15. Our analysis of market shares showed that historically, the parties had held a substantial share of the two relevant markets. The tendering data showed that, in the past five years, Sequel had won the highest number of bids, followed by NIIT and Agencyport. However we noted that neither analysis was likely to be a reliable indicator of future competitive constraints in the relevant markets, as there were significant product launches and upgrades in the relevant markets. We therefore gathered extensive evidence through hearings with suppliers and customers to establish how Xchanging and Agencyport could have been expected to compete in the future and which suppliers would have been likely to exert a competitive constraint on them.

16. We found that at the time of the merger, there were at least five companies actively competing in the relevant markets, in addition to the two merging parties. We considered that two of those (NIIT and Sequel) had consistently served the relevant markets and could be expected to continue to do so in the future. Another two (Eurobase and CSC) had not been significant competitors historically but were now likely to be in a better position to compete. Another competitor (Northdoor) offered a different solution, which would only appeal to a subset of Lloyd's MAs and/or LCM carriers and we saw no evidence to suggest that its competitive position would change in the future.

17. We also found that although Guidewire was a notable player in the wider insurance software industry and had sold claims management solutions to customers in the London market, until it had established some track record specifically in the Lloyd's and/or LCM PAS market, it would not exert a material constraint on suppliers serving those two markets.

18. In reaching a view, we took account of the sophistication of customers and their ability to deploy a range of strategies to influence suppliers' offerings or increase their bargaining power in negotiations. We provisionally concluded that, under such circumstances, following the merger, customers were likely to be left with a large enough set of credible options to discipline the behaviour of suppliers and thus prevent increases in prices, degradation of service quality or a decrease in levels of innovation in the relevant markets. We therefore provisionally concluded that the merger was unlikely to result in a substantial lessening of competition (SLC) in the Lloyd's PAS and the LCM PAS markets as a result of the loss of Agencyport.

19. We also considered representations made to us that following the merger, because Xchanging would be able to offer a wider bundle of products to customers, its competitors would be unable to match the attractiveness of Xchanging's offer and would be foreclosed, ie they would be forced to exit the relevant markets. The concerns expressed by parties appeared primarily to emanate from Xchanging's pre-existing position as the sole provider of central bureau services and the competitive advantage that it was alleged to derive from this in the supply of other products to participants in both Lloyd's and the LCM. We considered that, if there was such a competitive advantage, it was unlikely to be material, and provisionally concluded that even if it was material, Xchanging would hold it absent the merger and therefore the merger was unlikely to lead to competition concerns in this respect.

20. We provisionally conclude that the merger between Xchanging and Agencyport has not resulted and may not be expected to result in an SLC substantial lessening of competition within any market or markets in the UK for goods or services.

Provisional findings

1. The reference

1.1 On 8 December 2014, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 ('the Act'), referred the completed acquisition by Xchanging plc (Xchanging)[2] of Agencyport Software Europe Limited, Agencyport Software Europe (Regional Hub) Limited, Agencyport Software Bermuda Limited and Agencyport Software Europe Offshore Corporation, comprising all of Agencyport Software Group's European operations (together referred to as Agencyport) for further investigation and report by a group of CMA panel members (Inquiry Group).

1.2 The CMA must decide:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.

1.3 Our terms of reference are in Appendix A. We are required to publish our final report by 24 May 2015.

1.4 This document, together with its appendices, constitutes our provisional findings, published and notified to Xchanging in line with the CMA's rules of procedure.[3] Further information relevant to this inquiry, including a non-confidential version of the submission received from Xchanging, as well as summaries of evidence received in oral hearings, can be found on our webpages.

1.5 Throughout this document, where relevant, we refer to Xchanging and Agencyport collectively as the Parties.

2. The companies and the industry in which they operate

Xchanging and its UK operations

2.1 Xchanging is a provider of business processing, technology and procurement services to large organisations. It is quoted on the London Stock Exchange and as at 4 July 2014,[4] it had a market capitalisation of approximately

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[2] Acting through its wholly owned subsidiaries Xchanging Holdings Limited and Xchanging, Inc.
[3] *Rules of procedure for merger, market and special reference groups*, (CMA17) Rule 11.
[4] Date of the acquisition of Agencyport.

£410 million. It employs over 7,200 people in ten countries and provides services to customers in 48 countries. It generated £29.4 million profits from sales of £573.5 million in the financial year ended 31 December 2014, of which £387.6 million was generated in the UK.[5]

2.2 Xchanging was founded in 1999. In 2004, it acquired Rebus Insurance Services Holdings Limited (Rebus), a supplier of insurance software, and, as part of this acquisition, it also acquired a small information technology (IT) services operation in India.

2.3 Since 2010, Xchanging has made four acquisitions in the IT sector:

(a) Data Integration Ltd, a UK networking, security and communication technology provider, acquired in 2010;

(b) AR Enterprise S.r.l., a provider of software packages and IT solutions for the securities brokerage and asset management industry in Italy, acquired in 2012;

(c) MarketMaker4, a US provider of e-Sourcing technology services, acquired in 2013; and

(d) Total Objects Limited (TOL), a provider of software to the insurance industry, including to managing general agents (MGAs),[6] in the UK, the acquisition of which was announced on 3 July 2014 and completed on 18 December 2014 following clearance by the CMA.[7]

2.4 Xchanging comprises three divisions:

(a) Procurement – provides procurement and human resources services to organisations.

(b) Business processing – provides technology infrastructure and managed services for processing policies and premiums as well as handling claims, to the insurance market, and provides securities processing, investment account administration and fund administration.

(c) Technology – provides technology infrastructure management services, insurance software and application services.[8]

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[5] Initial submission, paragraph 3.2, Xchanging 2014 annual report.
[6] MGAs have authority to quote, set conditions, and bind insurance on behalf of an insurer, and typically handle specialist lines of business (see paragraph 2.17(f)).
[7] Initial submission, paragraph 3.16.
[8] Annual report 2014.

2.5 Xuber, a business unit located in its technology division, specialises in insurance software. Xuber has resources located in the UK, US, India and Malaysia. It generates sales from three regions: the UK, Europe and the Middle East; the US (including Bermuda); and Malaysia and the Far East.

2.6 In 2014, the Xuber business unit achieved sales of £[✂]million and an EBITDA of £[✂]. It generated [✂]% of its sales in the UK, [✂]% in the US and [✂]% in Malaysia. During the period 2011 to 2014, Xuber achieved a compound annual growth rate in its revenues of [✂]%.

2.7 Xchanging also provides 'bureau services'[9] to Lloyd's of London (Lloyd's) and the London Company Market (LCM)[10] through two joint ventures which it entered into in 2001: the bureau services to Lloyd's are provided by Xchanging Claims Services Ltd, which is 50% owned by Lloyd's and 50% by Xchanging. Bureau services to the LCM are provided via Ins-sure Holdings Ltd, which is 25% owned by each of Lloyd's and the Insurance Underwriters Association (IUA) and 50% by Xchanging.

Agencyport and its UK operations

2.8 Prior to the merger, Agencyport was part of the Agencyport Software Group, an insurance software provider owned by THL, a private equity firm. Before the sale of the business to Xchanging, Agencyport Software Group comprised two distinct divisions: Agencyport, comprising the European operations of the Agencyport Software Group; and Agencyport US, a US-based insurance software business with offices in Boston (Massachusetts) and Portsmouth (New Hampshire). The US business provides portal solutions for high volume insurance carriers in the commercial and personal marketplaces, in particular through its AgencyPortal platform.[11]

2.9 Agencyport is headquartered in London, with other offices in Cwmbran and Leeds, and has 159[12] employees. Agencyport provides insurance software for Lloyd's managing agents (MAs),[13] MGAs, commercial lines insurers and reinsurers, and international and domestic private medical insurance insurers.[14]

2.10 The business went through a period of corporate change between 2009 and 2011, following its acquisition by the Sword Group in 2009. [✂] After its

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[9] Described in paragraph 2.19.
[10] Described in paragraphs 2.13 to 2.16.
[11] Initial submission, paragraph 3.12.
[12] As at 4 July 2014.
[13] Defined in paragraph 2.17.
[14] Initial submission, paragraph 3.14.

acquisition by THL in 2011, a new chief executive was put in place and the new senior management team [✄].[15]

2.11 In 2014, Agencyport achieved revenues of £ [✄] million and an EBITDA margin of [✄]%. Over the period 2011 to 2014, Agencyport achieved a compound annual growth rate in its revenues of approximately [✄]%.

Industry background

The London market within the wider insurance industry

2.12 Insurance is the primary way by which businesses and individuals reduce the financial impact of a specific risk materialising. For a fee, the risk is transferred to an insurer, who is able to pool the risk by insuring a number of different customers and/or a number of different lines of business. The global commercial insurance industry gross written premium ('GWP') in 2013 was estimated to be £307 billion.[16]

2.13 The 'London market' is a distinct, separate section of the UK insurance and reinsurance industry, and is centred on the City of London. It comprises the LCM, Lloyd's, business written overseas (but controlled by London market participants), and protection and indemnity (P&I)[17] clubs. The core of its activity is the conduct of internationally traded insurance and reinsurance business. This is mostly non-life (general) insurance and reinsurance, with an increasing emphasis on high-exposure risks. The majority of the companies underwriting in the London market are non-UK registered companies or non-UK owned. It is the only centre in which all of the world's 20 largest insurance groups are represented. The London market had a total GWP of £60 billion in 2013.

2.14 Over 70% of London market business goes through Lloyd's or the LCM. The remaining 30% is accounted for by business written in P&I clubs and business written overseas. This is shown in Table 1.

[15] Initial submission, paragraph 3.11.
[16] *London Matters – The Competitive Position of the London Market* published by the London Market Group and Boston Consulting Group, page 4.
[17] P&I clubs provide international maritime insurance. They are mutual insurance associations that provide risk pooling, information and representation for their members, typically ship owners, ship operators or demise charterers.

Table 1: Breakdown of London market business

	GWP 2013, £bn
Lloyd's	26.1
LCM	17.4
Business written overseas	15.0
P&I clubs	1.6
Total	60.1

Source: London Matters, the competitive position of the London Insurance Market.

2.15 Lloyd's is a 'subscription'[18] insurance marketplace (often referred to as the 'Lloyd's market') where its members join together in syndicates in order to insure and share risk. Although historically a syndicate was formed from a group of 'Lloyd's names',[19] syndicates are now supported by corporate capital. Lloyd's has a particular focus on high value/low volume risks and 'exotic' risks, ie unusual risks which are difficult or impossible to insure elsewhere. The most dominant line of business at Lloyd's is property (£6.1 billion in direct premium[20] in 2013) followed by casualty (£4.9 billion), and marine and energy (£3.9 billion).[21]

2.16 The LCM is also a subscription insurance market. As is the case with Lloyd's, insurers in the LCM tend to underwrite more low volume, high value risks than is the case for general insurers in the rest of the UK and Europe. Property is the most dominant class of business, accounting for just under one quarter of total premium income. Liability and marine are also important lines of business.

Key participants in the London market

2.17 Key operators in the London market include insurers and reinsurers (collectively referred to as carriers), syndicates, underwriters, Lloyd's MAs, brokers, Lloyd's service companies (or coverholders), and MGAs. Many London market participants underwrite business in both Lloyd's and the LCM. Further detail on each type of market participant is provided in Appendix C, paragraphs 3 to 20 and shows the relationships between the various participants. In short, their respective roles are as follows:

(a) An insurer agrees to take on risks on behalf of a customer (the policyholder, once a policy is taken out), in exchange for a fee (the

[18] A market in which large risks may be shared between a number of insurers.
[19] 'Lloyd's names' are high net worth individuals whose exposure to the insurance risks they underwrite is unlimited.
[20] GWP excluding reinsurance business.
[21] IUA: London company market statistics report, October 2014.

premium). Reinsurers take on a share of large risks from insurers, in return for a share of the original premium received from the policyholder.[22]

(b) Syndicates are groups of members which provide capital and join together to insure and share risk.

(c) Lloyd's MAs are companies set up to manage one or more syndicates, on behalf of Lloyd's members. The MA employs underwriters (ie individuals who conduct detailed risk assessments of potential clients to determine the appropriate premium and terms for the policy) and handles the day-to-day running of a syndicate's infrastructure and operations.

(d) Brokers act as intermediaries between prospective policyholders and insurance companies. They are independent from carriers and receive a commission for placement of insurance and reinsurance. Lloyd's brokers are accredited by Lloyd's and are able to place business with Lloyd's underwriters (through Lloyd's MAs).

(e) Coverholders have binding delegated authority, ie they are authorised to enter into insurance contracts on the insurer's behalf, and perform the duties of the insurer. Like brokers, they receive a commission for their services.

(f) MGAs have authority to quote, set conditions, and bind insurance on behalf of an insurer, and typically handle specialist lines of business. An MGA's role ranges from that of a broker to that of a fully-fledged insurer, depending on how much authority the insurer delegates to it.

2.18 The International Underwriting Association of London (IUA) is the representative and market organisation for non-Lloyd's international and wholesale insurance and reinsurance companies operating in the London market. It is not mandatory for companies operating in the LCM to be members of the IUA, but the majority of them are. All Lloyd's MAs are full members of the Lloyd's Market Association, which represents the interests of the Lloyd's community, providing professional and technical support to its members.

2.19 The syndicated nature of Lloyd's and the LCM has created the need for each to have a central processing unit (the 'bureau') that handles transactions between the market participants such as: claims payments, accounting

[22] Reinsurance may be 'proportional', ie the reinsurer takes an agreed proportion of the entire risk under a policy, or 'non-proportional', for example 'excess of loss' reinsurance. Excess of loss cover means the primary insurer takes 100% of the risk up to a given level and the reinsurer takes all or an agreed proportion of the risk above that level. Most policy administration systems (PAS) can manage proportional outward reinsurance but not non-proportional outward reinsurance.

settlement, placing and document exchange. All Lloyd's transactions are processed through its bureau. Use of the bureau is not mandatory in the LCM and it is estimated that 65% of LCM business is not processed through the bureau. However only two out of the 43 members of the IUA are not bureau customers and less than 10% of the LCM business is carried out by non-IUA members.[23] The bureau is used typically for marine and aviation business and business that is partly underwritten in the LCM and partly in Lloyd's. As explained in paragraph 2.7, the bureaux are managed through two joint-ventures involving Xchanging, the IUA and Lloyd's.

Changes affecting the London market

2.20 A number of modernisation projects are currently underway in the London market designed to improve central services and update certain other processes. For example:

(a) the Central Services Refresh Programme (formerly Project Darwin), which is being carried out jointly by Lloyd's and the LCM, is designed to deliver improved services and infrastructure for the market back office. It is intended to make it easier to do business in the London market (among other things, by removing certain London-specific back office processes) and enable improvement in the acceptance, capture and storage of more consistent and richer risk and claims data; and

(b) the Data Capture Service (Project Genesis), which provides an outsourced, shared service taking input from insurers of Market Reform Contract[24] information in any format and turning it into rich, structured ACORD[25] standard data. It does this once on behalf of all subscribing insurers, to be made available to insurers' back office systems and to core central processes.[26]

2.21 In the past decade, there has been an increasing trend for commercial specialty carriers to open offices around the globe. This push has been in response to the preference of the prospective policyholders for placing business in their local geographies, if they can access similar levels of underwriting expertise and capacity to those available in global hubs. End customers appreciate local service and local knowledge. In turn, brokers'

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[23] P&I do not use the bureau and the IUA estimated that less than 5% of business processed through the LCM bureau is written overseas.
[24] Market Reform Contract, an ACORD based standard adopted by the London insurance market for risk placement documentation.
[25] ACORD is the insurance industry non-profit association dedicated to improving the way insurance companies do business through the use of technology.
[26] Lloyd's Market Association: London Market Modernisation Activity, a Bluffer's Guide to Process Change in the London market, pages 15 and 16.

strong relationships with their customers and their desire to be close to them has driven them to open (or acquire) local offices in markets around the world. As the broking industry consolidates and globalises, brokers are increasingly impartial as to the location of the placement.[27] This trend of internationalisation represents a potential challenge to the future growth of the London market.

2.22 A customer [✂] told us that the Lloyd's market was going through change (and had been for several years). Historically many of the Lloyd's MAs had been owned by key traders and smaller UK entities, but now there were fewer owners of MAs in the market and those owners also had other insurance operations within their group. Both Xchanging and Agencyport told us that this process of consolidation and internationalisation of ownership was continuing, citing the recent merger between XL and Catlin as an example of this trend.

The software requirements of participants in the London market

2.23 Appendix C sets out the various processes and parties involved in the life cycle of an insurance policy, from the point at which a potential policyholder approaches a broker with a view to insuring a risk to the settlement of a claim and renewal of policy.

2.24 The full range of processes can be handled by specialised software, the functionality of which will vary depending on which type of market participant (Lloyd's MAs, other insurers or reinsurers, brokers or MGAs/coverholders) uses it, although there is some commonality between the different software packages used by the various actors.

2.25 PAS, also known as transaction processing systems, enable Lloyd's MAs and carriers to manage the entire life cycle of insurance policies and typically include the following functionality:

(a) product definition;

(b) sales;

(c) commissions management;

(d) application management;

(e) underwriting;

[27] 'London Matters – The Competitive Position of the London Market' published by the London Market Group and Boston Consulting Group, pages 24 and 29.

(f) policy issuance;

(g) billing and collections management;

(h) reinsurance (or ceding);

(i) ongoing policy administration;

(j) claims management; and

(k) support for personal and commercial, or even specialty lines.

2.26 Packages will often also include basic technology functions, such as workflow and process management, or will even contain an enterprise service bus[28] facilitating integration with other applications such as the general ledger or customer and agent portals.

2.27 Some suppliers have also developed stand-alone claims management systems that are capable of handling complex claims management processes and stand-alone ceding systems capable of handling both proportional and non-proportional reinsurance.[29] When customers use such stand-alone systems alongside a PAS, the equivalent capability in the PAS is 'switched off' to enable the stand-alone product to be integrated with the PAS.

2.28 Other key software used in the London market includes:

(a) Aggregate exposure and modelling software, which allows carriers to monitor risk accumulation in a variety of ways and supports outwards reinsurance programmes.

(b) Data warehousing and business intelligence products which assist customers with data analysis and reporting. Data warehouses are central repositories of integrated data from one or more disparate sources.

(c) Binder management solutions, which manage the communication of information by means of 'bordereaux'[30] from MGAs with delegated authority from the relevant insurer, thus enabling the insurer to keep track of the risks it has underwritten via each MGA (as well as claims activity

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[28] A model used for designing and implementing communication between mutually interacting software applications.
[29] In the past PAS sold in the London market only handled proportional reinsurance (ie did not have the functionality to handle non-proportional reinsurance) and non-complex claims management. Modular or componentised PAS which integrate these functionalities have recently been launched in the London market. This is discussed in more detail in the competitive effects section (paragraphs 6.61 and 6.62).
[30] Bordereaux are reports by an insurance company listing the risks to which it has been exposed but which it has reinsured. Although MGAs are not, strictly speaking, exposed to risks (as they underwrite on behalf of an insurance carrier) the term bordereaux is used in this context in respect of the monthly reports sent by MGAs to insurers informing them of their position in relation to premiums, claims and risks.

and premiums received) and check that the activities of each MGA are in line with the terms of its delegated authority.

The specific functionality requirements of Lloyd's and the LCM

2.29 As described in paragraphs 2.15 and 2.16, both Lloyd's and the LCM are subscription markets and use central bureaux to manage back office processes such as collection of premium and settlement of claims.

Lloyd's

2.30 The key functionality included in software supplied to Lloyd's MAs relates to the interface with the Lloyd's bureau. The bureau communicates with MAs by means of electronic messages, of which the key types are 'USM' cash collection/disbursement messages, and 'SCM' claims messages. Most Lloyd's bureau messages are now available in the ACORD format, though some still use the older EDIFACT format. Once a message is received, a Lloyd's MA's PAS must be able to act on the message and carry out various processes which would normally be instigated manually, eg book premium received, handle a claim etc. If a broker has oversold a particular risk (ie the risk has been oversubscribed), then a scale-back message is sent electronically to the MA's PAS, which must be able automatically to adjust the premium in its ledger and its record of the quantum of risk assumed.

2.31 PAS for Lloyd's MAs also require data in certain formats in order to be able to cope with regulatory reporting requirements which are specific to Lloyd's.[31] Further, such systems must be able to support Lloyd's unique accounting requirements[32] and include some Lloyd's specific data (eg risk codes).

LCM

2.32 The key differences between a Lloyd's MA's requirements and those of a carrier operating in the LCM (LCM carrier) are:

(a) All Lloyd's MA transactions are settled centrally through the bureau. Therefore they have no requirement to enter 'cash' into the system. LCM carriers choose, on a transaction by transaction basis, whether or not to use the bureau and, to the extent they choose not to, would need the

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[31] Hearing with NIIT.

[32] Lloyd's syndicates close off their accounts three years after the start of the year in which business was written, eg a 2014 syndicate would normally declare results following the end of December 2016 and members would be paid their share of underwriting profit (or meet their share of any loss) in 2017.

capability to enter cash from brokers, producing agents, direct from clients etc.

(b) Lloyd's has a different set of messages from the LCM. For example, in Lloyd's the MA receives a signing message from the bureau which confirms (signs) the policy, at which point the MA knows when the payment will be made (centrally by the bureau). In the LCM there is a different set of messages (signing and payment are separate messages). There are such differences for claim messages also.

(c) The LCM does not have the Lloyd's-specific data (eg risk codes) or reporting requirements.

2.33 The IUA told us that there were some (mostly subtle) differences in processing checks between the Lloyd's and the LCM bureaux, but the differences were more pronounced in some areas, eg claims procedures. It said that the ACORD standards were being adopted for all future developments across the London market, which would completely harmonise the messages for Lloyd's MAs and LCM carriers.

The suppliers of insurance software

2.34 According to Celent, a research and consulting firm focused on the application of IT in the global financial services industry, a distinguishing characteristic of the specialty[33] insurance industry is its global nature. An increasing number of insurance enterprises are meeting broker and policyholder needs at Lloyd's, but also in the broader London market, the EU, Bermuda and other offshore locations, and within the US on both an admitted and non-admitted basis.[34] This view was echoed by Athito, a consultant specialising in providing advice to participants in Lloyd's and the LCM on specific technology systems, who told us that the insurance industry was becoming more global, mainly because there had been a lot of mergers and acquisitions over the last ten years, so companies that were historically London-centred now had more of a global reach, and vice versa.[35] Celent further noted that each insurer would have a unique set of requirements in lines of business and countries where these were written. The combination of these criteria would limit the choice of vendors.

2.35 Gartner, Inc. (Gartner) [36] another research company focusing on the IT industry, noted that the supply of European non-life insurance PAS was highly

[33] Defined as insurance covering complex and/or unusual risk.
[34] Global specialty core systems 2014, September 2014.
[35] Hearing summary.
[36] Gartner: Market Guide for European Non-Life Insurance Policy Administration Systems, 21 July 2014.

fragmented and dominated by smaller vendors that were operating in only their home markets and a handful or fewer of neighbouring markets. Gartner said it was aware of more than 50 providers of non-life insurance PAS (most of them headquartered in Europe) that were currently competing in this segment. Half of these companies had fewer than 250 employees, and 58% of the vendors had annual revenue of less than €50 million.[37]

2.36 Gartner stated that most suppliers of PAS focused on different industry segments. Some suppliers were primarily focused on Lloyd's; others had greater experience in supporting large, complex business or specialty lines. However, there were some suppliers which aimed to provide a system capable (with some configuration) of operating across a number of different segments and geographies, and which might be considered by very large insurance companies seeking to minimise the number of PAS they operated across the world. While not a complete list, such suppliers included: Accenture (Duck Creek), CSC, eBaoTech, Guidewire, SAP, Sapiens, and Xchanging.

2.37 Of the larger suppliers with a substantial international presence, the evidence we have gathered shows that, in addition to Xchanging, only CSC currently supplies PAS to customers in the Lloyd's and/or the LCM, while Guidewire has sold stand-alone claims management systems:

- *(a)* CSC employs approximately 80,000 globally, with approximately 700 focused on its GraphTalk A.I.A insurance package.[38] CSC's PAS for international and reinsurance business is called SICS. Overall, the company generated revenue of £8.2 billion[39] in the year to 28 March 2014. As at July 2014, according to Gartner, its current PAS was installed in nine clients in Europe. CSC told us[40] that the current version of its SICS product was installed in four non-life companies in the London market as well as two life companies.

2.38 Guidewire has more than 1,100 employees and created revenue of £192 million[41] in year to 31 July 2013 (53% from software licences and maintenance). In addition to PAS, the company also offers separate claims and billing components. According to Gartner, as at July 2014 Guidewire's current PAS was installed in five clients in Europe. Guidewire told us that it

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[37] £40.3 million. Conversion rate: €1 = £0.8063.
[38] GraphTalk A.I.A is product and PAS for managing a whole insurance business: life, pensions, health and general insurance.
[39] $13.0 billion. Conversion rate used: £1 = $1.59.
[40] Hearing summary.
[41] $300.6 million. Conversion rate used: £1 = $1.56.

had 180 customers in 20 countries with a turnover of just over £219 million,[42] of which the UK represented approximately 10%. It had 15 UK clients, of which four operated in the London market and used its claims management system. [✂]

2.39 There are however a number of smaller suppliers which have specialised in one or both of these markets, or which started their existence in the Lloyd's or LCM, and which have built up an established position as a result. These include: Agencyport (now part of Xchanging), Eurobase, NIIT, Northdoor, and Sequel.

2.40 Eurobase told us that it had established a significant presence in Lloyd's and the LCM in the 1990s. For strategic reasons, it decided to diversify into other insurance segments and into banking in the 2000s, but still had two remaining clients in the London market which used its PAS. It had now made a major investment in its PAS with a view to targeting the London market again.[43]

2.41 NIIT (through Room Solutions Limited, which it acquired in 2006) has provided insurance products to the London market since 1993/1994. It has an annual turnover of about £[✂]and a staff in excess of [✂]. It told us that it has three products of commercial value: Navigator – a PAS used to manage policies, risks, reinsurance and claims; Exact Advantage – an exposure management system; and Acumen – an analytics engine. All three cater to Lloyd's and the LCM as well as the wider international insurance market place. The three products were launched together under one suite called AdvantageSuite on 1 October 2014.[44]

2.42 Northdoor has approximately 80 employees. It generated revenue of approximately £23 million in the year to 30 June 2014,[45] in different industries such as banking, media and insurance. Northdoor describes itself as an IT consultancy and solutions provider. It supplies a PAS called NdexInsure. As a vendor of PAS, it serves primarily Lloyd's.[46]

2.43 Sequel initially did not supply software, but rather provided services to the insurance market. Therefore it supported companies that had legacy applications. In 2000 one of its clients asked it to write a new software package as the client was unable to find what it wanted in the marketplace. Sequel created Eclipse underwriting and, after it had been implemented for the client, Sequel sold it to other Lloyd's MAs. In parallel, it also wrote Eclipse

[42] $360 million. Conversion rate: £1 = $1.65.
[43] Hearing summary.
[44] Hearing summary.
[45] Northdoor annual report for year ended 30 June 2014.
[46] Gartner: Market Guide for European Non-Life Insurance Policy Administration Systems, 21 July 2014.

Broking for brokers. Sequel told us that initially it had started with around ten people, but now had around 150 in its two offices in London and Malaga. Its development centre was based in Malaga. It had achieved considerable growth over the last few years and in 2014 had achieved revenues of £17.9 million. Its core market was London and it had clients in Lloyd's and the LCM.[47]

The parties' products and how they overlap

Xchanging's products

- *Legacy products and services*

2.44 Xchanging supplies a range of insurance software. Three of the products (Iris, Genius and Elgar) were developed several decades ago by EPG Limited, a company acquired by Rebus in 1996, and the two PAS (Iris and Genius) are not actively marketed anymore[48] (although Xchanging continues to provide support and maintenance services to its existing clients):

(a) **Iris**: a solution for Lloyd's, LCM and international reinsurance underwriters which supports insurance and reinsurance business and provides risk processing, claims management, technical accounting and ceded reinsurance functionality;

(b) **Genius**: a global solution for commercial property and casualty insurance customers, but without Lloyd's and LCM messaging capability. It supports all major lines of business, including specialist and niche lines, handling multiple classes and complex policies;

(c) **Elgar**: a solution for excess of loss recoveries and general credit control system, developed to help the efficient administration of all aspects of outward reinsurance programmes, to speed recovery and improve cash flow; and

(d) **Brokasure**: designed to process business across the insurance and reinsurance marketplace supporting both the London market and international brokers. Brokasure provides automation of the entire broking life cycle, including integration with other core systems and the provision of electronic accounting and placing functionality.[49]

[47] Hearing summary
[48] [✂]
[49] Initial submission, paragraph 3.8.

2.45 Xchanging also offers a bordereaux management solution, Binder 360, which converts non-standard risk, premium and claim bordereaux into standard formats.[50]

- *Xuber*

2.46 In 2012, Xchanging launched a platform, under the Xuber umbrella brand, to replace Iris, Genius and Elgar, and to consolidate and enhance its historic software solutions. The Xuber platform is a common software architecture which underlies a suite of four packages aimed at insurers, reinsures, brokers and MGAs (Xuber for Insurers, Xuber for Reinsurers, Xuber for Brokers[51] and Xuber for MGAs).[52] Xuber for Insurers is marketed as a 'componentised'[53] PAS consisting of four modules: Xuber Policy, Xuber Claims, Xuber Billing and Xuber Ceding, each of which can be deployed separately or as part of a fully integrated end-to-end PAS.[54]

2.47 Xchanging first focused its sales efforts on potential customers in the US. [✄]

- *TOL's products*

2.48 Following its acquisition of TOL, Xchanging also supplies the following insurance software products:

(a) **Global XLPro**: designed to manage the entire outward reinsurance process (ie including both proportional and non-proportional reinsurance), it captures all the rules and methods that apply to each individual contract. Any operation performed by the system will review all the claim, premium and risk data against every contract according to pre-defined rules which will automatically identify all possible recoveries and costs;

(b) **Global XB**: a broking software solution, designed for insurance brokers and which covers every aspect of the broking process from obtaining the business to accounting and settlement;

(c) **Global XII**: a front office solution for MGA products which communicates with Global XB for automated processing for broking functionality;

(d) **MessageCloud**: a messaging gateway which manages ACORD, XML, web services and EDI messaging enabling data sharing between

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[50] Ibid, paragraph 3.9.
[51] Xuber for Brokers is still to be developed.
[52] Initial submission, paragraph 3.6.
[53] A PAS consisting of modules, each of which can be deployed separately or as part of a fully integrated end-to-end PAS
[54] Initial submission, paragraph 3.7.

coverholders, Lloyd's brokers, underwriters and approved third parties; and

(e) **BinderCloud**: a managed service approach to straight through binder processing, which automates the bordereaux management process.[55]

Agencyport's products

2.49 The Agencyport PAS was initially developed in the 1990s, launched and targeted at Lloyd's MAs. It originally launched the first generation of the OPEN Box product (now OPEN Core Platform: Lloyd's) and later adapted this solution to launch a product targeted at non-Lloyd's commercial carriers (OPEN Co, now OPEN Core Platform: Commercial). Agencyport subsequently launched its OPEN Health product in 2001 and its OPEN Xposure platform in 2002. It re-launched its products under the OPEN Core brand in 2013, retaining the same architecture, but making its PAS web-enabled.

2.50 Agencyport's current suite of OPEN products consists of:

(a) OPEN Core Platform: Lloyd's – core PAS tailored for Lloyd's;

(b) OPEN Core Platform: Commercial – PAS configured for the LCM and commercial carriers;

(c) OPEN Core Platform: Health – multi-channel PAS for domestic and international health insurers;

(d) OPEN Core Platform: MGA – multi-channel PAS configured for MGAs distributing insurance products;

(e) OPEN Xposure – a risk exposure and aggregation solution; and

(f) OPEN Data Warehouse – out-of-the-box data warehouse solution for clients of the OPEN Core Platform.[56]

2.51 The OPEN Core Platform is an enterprise-wide, web-based solution for end-to-end business processing. Agencyport provides the following services to its OPEN Core Platform users:

[55] Initial submission, paragraph 3.10.
[56] Initial submission, paragraph 3.15.

(a) hosting: hosted systems operation and management of Agencyport software from a dedicated data centre in Leeds. This team also provides remote systems management;

(b) web services: OPEN Web Services is a library of pre-build, configurable connectors for OPEN Suite solutions that facilitate ready integration with bespoke and third party applications such as Thunderhead (dynamic document creation) and SharePoint (document repository);

(c) database services: Agencyport has a dedicated team and supporting tools focused on delivering successful migration projects to enable clients to move away from legacy applications; and

(d) (for Lloyd's users) messaging services: this is the provision of a messaging service that monitors the messaging between OPEN Core Platform: Lloyd's clients and the Lloyd's bureau. This service ensures the messages have been transacted and, should there be any challenges / issues, these are resolved as part of the service.

Overlap between the parties' products

2.52 Our review of the parties' product portfolios (including TOL's products, now part of the Xchanging portfolio) shows that they overlap as follows:

(a) In the provision of PAS with Lloyd's and LCM bureau functionality.

(b) In the provision of PAS suitable for other UK commercial insurers.

(c) In the provision of business intelligence and data warehousing products.

(d) In the provision of core software[57] for MGAs.

2.53 As explained in paragraph 2.46, the Xuber platform is a suite of software products that is not directly comparable to Xchanging's legacy products or Agencyport's current software. A comparison of the functionality of the four Xuber modules against Agencyport's OPEN Core, Iris, Genius and Elgar is shown in Appendix D.

2.54 We therefore recognise that the software packages that are now marketed as PAS may differ from legacy products in the range of functionality offered to customers. We take this into account in our analysis of the competitive effects of the merger. Despite these differences, the evidence we have gathered from

[57] This type of software combines some of the functionalities for PAS for insurers and some of the functionalities of software used by brokers.

industry participants (customers, competitors and consultants) shows that they regard both Xuber for Insurers and Agencyport's OPEN Core: Lloyd's and Commercial as 'PAS solutions or products'. In the rest of this document, we use the term PAS[58] to encompass all software that includes core policy administration capability, regardless of the breadth of other functionality it offers (eg in relation to claims management or non-proportional reinsurance). This includes:

(a) issuing and managing quotes;

(b) policy administration and transaction processing;

(c) claims recording;

(d) accounting and reporting; and

(e) proportional outwards reinsurance.

- *PAS with Lloyd's and LCM bureau functionality*

2.55 As explained in paragraphs 2.29 to 2.33, a PAS for use in Lloyd's and the LCM requires the development of specific functionality.

2.56 Xchanging's Iris PAS was targeted at Lloyd's and the LCM, while its Genius software was targeted at the global property and casualty insurance market (and lacks Lloyd's and LCM functionality, although it can be installed with LCM messaging capability). Its Xuber platform integrates both Lloyd's and LCM functionality and is also suitable for non-London market carriers. Agencyport's OPEN Core: Lloyd's has been designed for Lloyd's MAs. OPEN Core: Commercial is for all non-Lloyd's carriers, including LCM carriers.

- *PAS suitable for other UK commercial insurers*

2.57 Both parties supply PAS to commercial insurers that do not require the Lloyd's or LCM functionality, as they do not need to make use of a bureau and therefore do not require messaging capability.

2.58 We received no indication from customers or competitors at any stage in our investigative process (both in phase 1 and phase 2) that the merger could give rise to competition concerns in relation to customers outside of the London market.

[58] In singular and plural.

2.59 We have received evidence from third parties that such insurers have different software needs and a wider choice of software supplier than insurers using the Lloyd's and LCM bureaux:

(a) Suppliers of software with Lloyd's and/or LCM bureau functionality are able to supply to other commercial insurers (but the reverse is more difficult).[59]

(b) The requirements outside of the London market are for software capable of handling high volumes of simple transactions.[60]

2.60 We therefore do not consider this further in the remainder of this document.

- *Business intelligence and data warehousing solutions*

2.61 Although both parties offer such products, they do not in practice compete with each other: Xchanging's Xuber Analytics tool

> has been developed specifically to provide analytics around the Xuber software suite… [and] is only offered alongside the Xuber for Insurers suite (ie it is not sold as a separate, standalone product [✂]).[61] Similarly, Agencyport's OPEN Data Warehouse is a reporting and analytics tool specific to OPEN suite products… [, which] is not sold as a separate product because it is only compatible with the OPEN Suite of products.[62]

2.62 Given this evidence, we did not consider this further.

- *Core software for MGAs*

2.63 The evidence we received showed that the parties' sales of software for MGAs are negligible. Agencyport supplies MGA software to [✂] MGAs in the UK,[63] Xchanging (including TOL) serves [✂] MGAs in the UK.[64]

2.64 There appear to be a large number of MGAs that operate in the UK. The Managing General Agents' Association estimated that there are currently 'over 300 fully fledged MGAs operating in the UK';[65] the Lloyd's market alone

59 Sequel hearing summary, a customer [✂].
60 Sequel hearing summary.
61 [✂]
62 Initial submission, paragraph 5.22 (emphasis that was present in the original text has been removed).
63 The parties submitted that Agencyport served [✂] UK MGAs (paragraph 6.42 of the initial submission). [✂]
64 [✂]
65 See the MGAA executive summary.

appears to have as many as 3,892[66] coverholders (which are 'a type of managing general agent particular to Lloyd's).[67]

2.65 On the basis of the evidence that Agencyport and Xchanging between them only supply core software to fewer than 1% of MGAs operating in the UK, we therefore consider it unlikely that this merger may lead to competition concerns in the supply of core software for MGAs and do not consider this further in the remainder of this report.

3. The merger and relevant merger situation

Outline of the transaction

3.1 THL's business consists of investing in growth companies with a view to a successful exit at the end of an investment cycle. In 2013, it felt that Agencyport was performing well, which led to THL actively considering the sale of the business. The decision to sell Agencyport was taken by Agencyport Software Ltd[68] in August 2013.

3.2 At THL's instigation, the board of Agencyport Software Ltd hired Arma Partners LLP ('Arma') as financial advisers to invite bids for Agencyport and to conduct the sale. In April 2014, Arma approached 44 potential bidders, of whom 13 were industry players and the remaining 31 were private equity firms. In May, indicative bids were received from Xchanging and 11 private equity firms. Final bids were received from 6 counterparties, including Xchanging. Xchanging's final offer, submitted on 20 June, was the highest received. Xchanging's bid was £[✂] the other bids ranged from £[✂] million to £[✂] million.

3.3 On 4 July 2014, Xchanging announced the completion of the acquisition of the entire issued share capital of Agencyport for a cash consideration of £64.1million.[69]

The rationale for the merger

3.4 Xchanging told us that the transaction would provide significant benefits to customers of both Parties. It considered that Agencyport's software offering was highly complementary to its existing Xuber insurance software product range and provided a good strategic fit with the Xuber business. In particular,

[66] See the coverholders directory on the Lloyd's website as at 5 February 2015.
[67] See: *Local knowledge and expertise,* on the Lloyd's website.
[68] Holding company for the four businesses constituting Agencyport and the two businesses constituting Agencyport US.
[69] See Xchanging's website.

the transaction would enable Xchanging to expand into new markets, to add new products to its Xuber suite and to market its products (including the existing Agencyport products) to a wider range of customers. The transaction also supported Xchanging Group's strategy of investment in its products and intellectual property (IP), and specifically increased its product range and IP assets in insurance. As regards Agencyport, the transaction provided access to Xchanging's global capability and customer base, in particular in the US, together with an alignment to a strong brand and access to the finance and broader skill set necessary to continue investments in the product portfolio.[70]

3.5 The rationale for the acquisition was set out in a briefing presentation to the Xchanging board in the following terms: [✂].[71]

3.6 Xchanging also anticipates that cost synergies of £[✂] million will arise from the transaction.

Jurisdiction

3.7 Under section 35 of the Act and our terms of reference (see Appendix A), we are required to report on whether a relevant merger situation has been created.

3.8 Section 23 of the Act provides that a relevant merger situation is created if:

(a) two or more enterprises have ceased to be distinct and within the statutory period for a reference;[72] and

(b) either the 'share of supply test' or the 'turnover test' (as specified in that section of the Act) is satisfied.[73]

Enterprises ceasing to be distinct

3.9 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'. A 'business' is defined as 'including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods are supplied other than free of charge.[74]

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70 Initial submission, paragraphs 4.1 and 4.2.
71 [✂]
72 As set out in section 24 of the Act.
73 Section 23 of the Act provides that the value of the turnover in the UK of the enterprise being taken over must exceed £70 million or, in relation to the supply of goods or services, at least one quarter of all such goods or services which are supplied or acquired in the UK or a substantial part of the UK are supplied by or to one and the same person.
74 Section 129(1) of the Act.

3.10 A company that owns a business operating as a going concern (in this case both Xchanging and Agencyport) with the necessary assets, employees and customer contracts would clearly satisfy the definition of an enterprise for the purposes of the Act.

3.11 The Act provides that two enterprises 'cease to be distinct' if they are brought under common ownership or control.[75] The transaction described in paragraph 3.3, with Xchanging purchasing the entire issued share capital of Agencyport, brings under the common ownership of Xchanging enterprises which were previously separate.

3.12 We are therefore satisfied that two enterprises have ceased to be distinct as a result of the transaction.

Share of supply test

3.13 The share of supply test is satisfied if the merger creates or otherwise increases a share of at least one quarter in the supply of goods or services of any description in the UK, or in a substantial part of the UK.[76] The concept of goods or services of 'any description' is broad. For the purpose of the jurisdictional test in section 23 of the Act, the CMA is able to apply such criterion or such combination of criteria as it considers appropriate. The share of supply used for the purpose of the jurisdictional test is different from a market share, and goods or services to which the share of supply test is applied need not correspond with the market defined for the economic analysis.[77] The relevant point in time for calculation of the share of supply is immediately before the reference is made.[78]

3.14 The Parties overlap in the provision of PAS to Lloyd's MAs in the UK.

3.15 Based on information received from London market participants and suppliers of PAS with Lloyd's and LCM functionality, we estimated that the Parties had a [40–50]% combined share of the supply of PAS to Lloyd's MAs in the UK, based on customer count. This is an increment of [10–20]%.[79]

3.16 The Parties therefore have a combined share of supply of over 25% for the supply of PAS to Lloyd's MAs in the UK. We therefore provisionally concluded that the share of supply test is met.

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[75] Section 26 of the Act.
[76] Section 23(2)(b) of the Act.
[77] *Merger Assessment Guidelines* (CC2), paragraph 3.3.5.
[78] Section 23(9) of the Act.
[79] The parties' share of 2013 revenue was [30–40]%. The analysis we conducted to derive these numbers is set out in Appendix F.

Timing of the reference

3.17 Under section 24 of the Act, a reference of a completed merger may be made if two or more enterprises have ceased to be distinct no more than four months before the date of the reference. The four-month period starts to run from the date on which the enterprises cease to be distinct,[80] or the date on which notice of material facts about the completion of the transaction has been given to the CMA or made public. The Act allows for the extension of the four-month period in which a reference can be made, under certain circumstances.

3.18 The transaction completed on 4 July 2014 and the four-month deadline ended on 4 November 2014. This was extended by agreement with the parties to 2 December 2014.

3.19 Once the duty to make a reference arises, the Act further allows for extension of the four-month deadline where undertakings in lieu (UIL) of a reference are sought. If the parties indicate that they do not intend to give UIL, the extension ends ten working days after receipt by the CMA of the parties' statement.[81] This means the four-month clock starts running again, and the CMA must make the reference before the end of this period.

3.20 The parties indicated on 3 December 2014 that they did not intend to offer UIL. The reference was made on 8 December 2014, ie less than ten working days after receipt by the CMA of the parties' statement, and was therefore made in time.

Provisional conclusions on relevant merger situation

3.21 We are therefore satisfied that a relevant merger situation has been created.

4. Market definition

4.1 The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of the merger. The relevant market (or markets) is the market within which the merger may give rise to an SLC and contains the most significant competitive alternatives available to the customers of the merged companies. However, market definition is not an end in itself, and the boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in a mechanistic

[80] As defined in section 27 of the Act.
[81] Section 25(5)(b) of the Act.

way. The CMA may also take into account constraints outside the relevant market (or markets).[82]

4.2 We first assess the relevant product markets. We examine demand-side and supply-side substitutability for the Parties' PAS solutions (paragraphs 4.3 to 4.26). We then consider whether the market can be segmented on the basis of the size and/or international presence of customers (paragraphs 4.27 to 4.35), before examining whether the in-house and bespoke supply of PAS is in the same market as packaged PAS[83] (paragraphs 4.36 to 4.46).

Product market

4.3 Our assessment of the relevant product market starts with the supply of products in which both merging parties are active. Using the theoretical framework of the hypothetical monopolist test, we qualitatively explore the scope for substitution between products, either by customers (demand side) or by suppliers (supply side) in response to a small but significant non-transitory price rise.

4.4 Xchanging did not provide a view on what it considered to be the relevant product market(s) for the assessment of the competitive effects of the merger. Its position was that the product market should be drawn more widely than had been set out by the CMA at paragraph 47 of its phase 1 decision to refer the acquisition for further investigation (the referral decision), which concluded that the appropriate product frame of reference for the competitive assessment was the supply of PAS to Lloyd's MAs. It presented four key arguments in support of its views:[84]

(a) all insurance carriers (both within and outside of Lloyd's) have very similar PAS requirements;

(b) the Parties supply a PAS with the same software foundation to both Lloyd's and non-Lloyd's insurers,[85] and indeed the Parties are not aware of any software provider that supplies a PAS only to Lloyd's MAs;

(c) it is relatively easy to add the incremental Lloyd's functionality to any non-Lloyd's PAS; and

[82] *Merger Assessment Guidelines*, paragraphs 5.2.1 and 5.2.2.
[83] A PAS that is available 'off-the-shelf', as opposed to a PAS that is developed for a specific customer.
[84] CMA, *Completed acquisition by Xchanging of Agencyport Software Europe*, full text decision.
[85] [✄]

(d) the conditions of competition to customers inside and outside of Lloyd's do not differ (contrary to the assertion made by the CMA).[86]

4.5 As set out in the *Merger Assessment Guidelines*,[87] in applying the hypothetical monopolist test, the CMA's starting point is the merging parties' products (narrowly defined). Xchanging and Agencyport both supply PAS with London market bureau functionality. As explained in paragraphs 2.29 to 2.33, the LCM and Lloyd's functional requirements are different both from each other and from the functional requirements of PAS sold to other insurers. In addition, Agencyport markets and implements its OPEN Core Platform differently in each of these two insurance markets, while Xchanging historically offered different products: Iris to Lloyd's MAs and Genius to LCM carriers. We therefore considered separately substitutability issues relating to the supply of:

(a) PAS with Lloyd's bureau functionality, and

(b) PAS with LCM bureau functionality.

4.6 We considered whether it would be appropriate to start our product market analysis using a narrower categorisation, eg assessing substitutability for each of the key functionalities which are included in a PAS (as described in paragraph 2.25), in view of the fact that Xchanging offers a componentised PAS (described at paragraph 2.46). However, we did not think it would be appropriate to do so, because all the suppliers of PAS to Lloyd's MAs and LCM carriers provide software packages which cover all of the key functionalities, and because generally customers do not mix and match core PAS components, ie buy one component from one supplier and another from another one. Although there is currently uncertainty as to how componentised products will compete in the future, evidence we received from Agencyport suggests that most customers are likely to implement core components from a single supplier gradually, rather than mixing and matching all components from different suppliers. Therefore, we do not discuss whether there should be separate product markets based on these distinctions and leave the assessment of the importance of these features to the competitive assessment.

PAS with Lloyd's bureau functionality

4.7 As explained in paragraph 2.19, MAs and carriers which wish to participate in Lloyd's are mandated to use a PAS with Lloyd's bureau functionality. Lloyd's

[86] Initial submission, paragraph 6.2.
[87] *Merger Assessment Guidelines*, paragraph 5.2.11.

MAs typically procure PAS for themselves, and for the syndicates they represent.[88] Carriers elsewhere which choose to buy the Parties' PAS products do not make use of that functionality and as discussed in paragraph 2.59 have a wider choice of software. We therefore focused our analysis of demand-side substitutability on Lloyd's MAs.

Demand-side substitutability

4.8 We considered whether Lloyd's MAs were able and willing to switch to PAS without Lloyd's bureau functionality. The evidence we received from customers and competitors consistently showed that even if such products were very similar to PAS with Lloyd's bureau functionality, there was a compulsory requirement for Lloyd's bureau functionality that could not be set aside by Lloyd's MAs.

4.9 We therefore considered that for Lloyd's MAs, a PAS without Lloyd's bureau functionality was not a substitute for a PAS with Lloyd's bureau functionality.

Supply-side substitutability

4.10 As set out in the *Merger Assessment Guidelines*, there are circumstances where the CMA may aggregate several narrow relevant markets into a broader one on the basis of considerations about the response of suppliers to changes in prices. It may do so when:

(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; in this case aggregating the supply of these products and analysing them as one market does not affect the authorities' decision on the competitive effect of the merger.[89]

4.11 Xchanging argued that:

[88] Initial submission, paragraph 7.5.
[89] *Merger Assessment Guidelines*, paragraph 5.2.17.

(a) 90% of the software coding is in common for PAS with or without Lloyd's bureau functionality and Lloyd's bureau functionality can be made dormant if not required;[90]

(b) for a modern architected software package that has a generic messaging capability, the necessary modifications to the code are straightforward and can be added relatively easily; and[91]

(c) suppliers who operate within Lloyd's also operate outside Lloyd's.[92]

4.12 It estimated that the investment costs of developing Lloyd's bureau functionality (in accounting terms) to an existing PAS were low, in the region of £500,000 – 1,000,000 and take less than [✂] to develop, with the economic cost of entry (ie the incremental costs) being lower for a number of potential entrants.[93] It further argued that the very fact that a sizeable proportion of Lloyd's MAs have developed their own in-house or bespoke solutions to operate in Lloyd's,[94] as well as recent examples of providers outside Lloyd's adding such functionalities[95] are evidence of the low cost and time associated with the introduction of such features.

4.13 Xchanging also submitted that the conditions of competition were similar in the supply of PAS to Lloyds MAs and to LCM carriers (so that the second condition for supply-side substitution was also met), and therefore that the relevant product market should be wider than the supply of PAS to Lloyd's MAs on the basis of supply-side substitution. It made two points:

(a) most LCM carriers did in fact interact with the bureau, so that the range of options available to LCM carriers was in fact similar to the range of options available to Lloyd's MAs; and

(b) the incremental cost of developing just Lloyd's or just LCM bureau functionality, once a messaging framework was developed, would be substantially lower than the cost of developing Lloyds or LCM bureau functionality 'from scratch', and this was supported by evidence we received from two customers which said that they thought it would be relatively straightforward to set up messaging capabilities for the LCM.[96]

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90 Initial submission, paragraphs 1.9(a), 6.6, 9.6, and 9.38(c).
91 Initial submission, paragraph 6.8(d).
92 Initial submission, paragraphs 6.4 to 6.13.
93 Initial submission, paragraph 6.15.
94 Initial submission, paragraph 6.16(a).
95 Initial Submission, paragraph 6.16(b).
96 Composite summary of customer telephone calls.

4.14 We first considered whether a PAS without Lloyd's bureau functionality could be considered a supply-side substitute for a PAS with Lloyd's bureau functionality, by examining the extent to which a supplier providing a PAS without Lloyd's bureau functionality would have the ability to develop a PAS with Lloyd's bureau functionality quickly.

4.15 We obtained evidence from customers and PAS suppliers on the cost and speed with which a PAS with Lloyd's and LCM bureau functionality could be developed. Third parties indicated that adding the Lloyd's and LCM-specific software components was difficult and required significant investment and time, with estimates of the costs of doing so ranging between £1 million and £6 million and estimates of the time required ranging between 12 and 36 months,[97] although some third parties indicated that adding the LCM functionalities was simpler than adding the Lloyd's bureau functionality. Eurobase told us that adding London market message processing capability to an existing PAS was not just a case of bolting on messaging. The impact of putting messaging into a PAS changed the whole system. It said it was not just a simple interface. Adding messaging was very test-intensive because all the different types of messages that came through had to be checked to see that the messaging combination worked.[98]

4.16 In addition, third parties identified a number of additional barriers to entry, including having a track record of successful delivery of a PAS to one or more Lloyd's MAs. Based on evidence provided by customers, it appears to us that a new supplier would need to achieve between two and five successful implementations for Lloyd's MAs or LCM carriers, with some months of successful operation post-implementation to be viewed as credible competitors. This evidence is set out in more detail in Appendix E.

4.17 This evidence shows that suppliers of a PAS without Lloyd's bureau functionality are unlikely to have the ability quickly (generally within a year) to shift capacity to the development and implementation of a PAS with Lloyd's bureau functionality. This also applies to suppliers whose PAS already includes LCM bureau functionality: the Lloyd's messaging system is different from the LCM's (see paragraphs 2.32 to 2.33) and would require substantial development.

4.18 However, we noted that the same key companies provide PAS with Lloyd's bureau functionality and PAS with LCM bureau functionality. Therefore, even though the two products are not supply-side substitutes in the sense that it would not be possible for a supplier providing PAS with LCM bureau functionality only, quickly to shift capacity to supplying PAS with Lloyd's bureau

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97 [✂]
98 Hearing summary.

functionality (due to the product development costs and times set out above), in practice, given that the same key companies provide both products, we considered it possible that this could provide a basis for expanding the product market.

4.19 The second condition for supply-side substitution, however, appears not to be met. Although the same key suppliers operate both in Lloyd's and in the LCM, the conditions of competition appear to differ. This is because whilst customers are mandated to use the central bureau messaging in Lloyd's, in the LCM they may decide whether to use these services on a transaction-by-transaction basis and may therefore decide to use a software without the LCM bureau functionality. Further, two customers told us that the effort required to make a PAS compliant with the LCM was lesser than to make the software compliant with Lloyd's. One customer, for example, adapted its PAS to include LCM bureau functionality but not Lloyd's, where it uses a PAS with bureau functionality. The range of options available to customers in the LCM may therefore differ from those available to customers in Lloyd's.

4.20 We therefore provisionally concluded that it is not appropriate to widen the market for PAS with Lloyd's bureau functionality to include PAS with LCM bureau functionality.

PAS with LCM bureau functionality

4.21 We next considered possible substitutes for PAS with LCM bureau functionality. This software can be used by UK commercial insurers operating outside of Lloyd's and the LCM. However, as discussed in paragraph 2.59 these carriers have a wide choice of software suppliers. We therefore focused our analysis of demand-side substitutability on LCM carriers.

Demand-side substitutability

4.22 As explained in paragraph 2.19, LCM carriers are not obliged to use the LCM bureau and only 35% of LCM business is processed through the bureau. However nearly all participants in the LCM make use of the bureau for at least a proportion of their transactions. We therefore sought views from LCM carriers on the importance of the use of the LCM bureau and therefore the attractiveness of a PAS with LCM bureau functionality relative to a PAS without it.

4.23 LCM carriers generally expressed mixed views regarding the importance of the central service functionalities:

(a) One customer [✂] told us that having a PAS system that could integrate with the bureau was key. It said that a large proportion of its business was processed through the bureau, so it said it needed to use messaging in the LCM. It stated the advantage was straight through processing as the broker would submit a transaction to the London Processing Centre (LPC) and then the messages would be automatically processed each night in the [✂] system without anyone having to re-key them. This not only limited the amount of staff needed, it also ensured the accuracy of the data. The customer thought it would be a major disadvantage to operate without using the bureau. It said that brokers had a preference to place business through the bureau because it decreased the amount of work that they had to undertake. Therefore if they were looking to place business and they had a choice between two companies where the terms were similar but one company operated using the bureau and the other didn't, the customer thought that the business would be placed with the one that used the bureau facility. The customer said that it used the bureau more for high value, lower volume transactions. High volumes wouldn't go through the LPC.

(b) Another customer [✂] said [✂] that the system had to have the ability to support messaging for the LCM. It also believed that ACORD based messaging was crucial for future developments in delivering workflow efficiencies, particularly the removal of manual processes and hard copy document storage. It currently only requires one FTE to process settlements received via the bureau. However, if a system had been chosen which did not have bureau messaging capabilities, an additional 4 to 5 people at least would be needed to manually input the transactions, which would mean not only an increase in costs, but also a significant decrease in processing efficiency in both the finance and claims departments.

(c) A third customer [✂] said it would not contemplate adding on messaging capabilities to its PAS [✂] for use in the LCM because it did not use the bureau, it only used the bureau for Lloyd's business. It had considered using the bureau on the LCM side but, having spoken to its underwriters, it had been told that the amount of business where the broker actually asked for this functionality was minimal. Hence bureau messaging wasn't deemed to be on the critical path of things that this customer had to implement. It did however say that it thought it would be relatively straightforward to setup, even if it were not cost effective for it to do so.

4.24 The ability to substitute between a PAS with and one without LCM bureau functionality will depend on a customer's specific preferences. LCM carriers may decide to purchase a product without the functionality to interface with the bureau but, as explained by [✂], this would require the customer to process its transactions manually, as opposed to using the automated central bureau services. Manual processing may require hiring additional staff and a less efficient process, as shown by the evidence given to us by [✂]; it is therefore unlikely that a small but significant non transitory price increase (or deterioration of quality) would result in significant switching from a PAS designed for the LCM to a PAS that does not have the specific functionality for this market. We therefore provisionally consider that a PAS without LCM bureau functionality is not a demand-side substitute for a PAS with such functionality. However, we take into account the extent to which some customers may have the ability to switch to a PAS without LCM bureau functionality in our competitive assessment (Section 6).

Supply-side substitutability

4.25 As regards supply-side substitution, arguments relating to the cost and time needed to develop LCM bureau functionality are similar to those applying to the development of Lloyd's bureau functionality. Although there are some differences in the specific software requirements for PAS, third parties generally indicated that the development of such functionality is complex, time consuming and costly.

4.26 We therefore consider that suppliers of PAS without LCM bureau functionality are unlikely to have the ability quickly (generally within a year) to shift capacity to the development and implementation of a PAS with LCM bureau functionality.

Customer segmentation

4.27 We considered whether it was possible to identify among the Lloyd's MAs and LCM carriers sub-categories of customers that had access to a different set of suppliers due to their specific requirements or preferences, and whether it would be appropriate to identify different product markets based on such customer segmentation, in line with the *Merger Assessment Guidelines.*[99]

4.28 We considered whether requirements and options may differ between the following sub-categories of Lloyd's MAs and LCM carriers:

(a) Large and small carriers.

[99] *Merger Assessment Guidelines*, paragraphs 5.2.28 to 5.2.30.

(b) Carriers with international operations and carriers focused on the London market.

4.29 Xchanging told us that 'insurance companies frequently carry out a number of market activities and are active in a number of jurisdictions. [ ] The key driver for the development of Xuber was to target large, multinational customers that are looking for a single global end-to-end solution'.[100] This was said to be in contrast to the smaller customers who might be more attracted to Agencyport's 'simpler and more rapidly installed system'.

4.30 Sequel told us that it did not see a distinction between small and large clients as it considered its software to be appropriate for both, and it would target all sizes of customers, from start-ups to large companies. It said that two differences based on size would be that the smaller clients would not have large enough IT budgets or departments to build their own software, and in terms of buying software, a large company would do business outside of London so would try to buy a solution that could deal with various local requirements, not just London. It speculated that of those in Lloyd's and the LCM, there were probably around 100 companies which operated in different countries.[101]

4.31 NIIT indicated that innovation in the market was driven by a number of factors – principally from the regulatory requirements affecting the Lloyd's market and competition between insurers. When NIIT invested in the new suite of products, it promoted them both to the London market in general and to the players within Lloyd's – many of which had a global presence. NIIT would market its new PAS product first to its existing customers, then to the London market, before European countries and in the longer term the US. Exact and Acumen were products that were not Lloyd's or country-centric and could be sold elsewhere in the world. Of the 50 or so Lloyd's MAs, it was estimated 15 to 20 could be looking at requirements beyond Lloyd's due to their international operations.[102]

4.32 A customer [✂] told us that its parent company, [✂] had a programme of work to move all of the group to one single processing system for insurance and reinsurance [✂], and the customer would be moving to the group platform later in 2015. The customer said that its parent company [✂] had a bespoke software solution [✂]

[100] Initial submission, paragraph 6.8(a).
[101] Hearing summary.
[102] Hearing summary.

4.33 Another international carrier [✂] however, indicated that there might be some advantage in reporting but overall it might be better to have more than one system. It said that different markets had different requirements and software systems needed to meet the local business requirements. There were different local needs and requirements and not all insurance software fitted requirements in all areas. It was necessary to provide additional functionality to meet all requirements. Even in the US there were a limited number of suppliers that were compliant for all states. This customer also said that all large suppliers said they had solutions that catered for all markets and needs. Such suppliers included Guidewire, CSC and SAP though it had not seen evidence of such solutions working in practice.

4.34 Another international carrier [✂] told us that it would be interested in one solution to deploy across its entire operations. It, however, said that no one vendor had everything that it wanted. [✂] Its requirements pointed to the purchase of multiple systems that satisfied the company's needs. It said that many of the syndicates that were part of Lloyd's were built out and were looking for an international solution. Those looking for a single platform included itself and new entrants to the market with capital who were looking to establish a Lloyd's presence and who might be looking at a single platform that was built out.

4.35 Overall, the evidence we received from suppliers and customers shows that the size and/or international presence of customers may affect their preferences for which PAS to use, and the set of options available to them. However, customers' preferences for certain functionalities in PAS products appear to vary considerably between individual customers, and the size and international presence do not appear to represent a clear determining factor for such preferences. Segmenting Lloyd's and LCM customers on this basis would therefore be of limited usefulness in assessing the effect of the merger. For these reasons, we did not consider it appropriate to define separate relevant markets based on the size or international footprint of customers; though we took these factors into account as part of the competitive assessment (Section 6).

In-house and bespoke PAS

4.36 We considered whether a PAS developed in-house by a Lloyd's MA or LCM carrier and a PAS developed by a third party specifically for a Lloyd's MA or LCM carrier were in the same market as a packaged or off-the-shelf PAS that would be implemented with a limited amount of bespoke configuration for a given customer.

4.37 Xchanging told us that a number of Lloyd's MAs had developed their own bespoke PAS software, which included the relevant Lloyd's bureau functionality. The fact that non-specialist software companies found it both feasible and economic to develop PAS for a single deployment confirmed that a specialist software company with an existing PAS could readily add Lloyd's bureau functionality to target a number of Lloyd's MA opportunities.[103]

4.38 The evidence we received from customers showed that there was a spectrum of options available to those which did not wish to purchase a packaged system when they considered replacing their current PAS. At one end of the spectrum, customers may develop a PAS through their own internal IT department. These solutions are referred to as ‘in-house’ PAS. Customers, however, may also hire a software house or a consultancy firm to develop a bespoke PAS for them or in collaboration with them. In this case the extent to which the PAS is ‘bespoke’ may vary depending on the specific arrangements between individual customers and suppliers. Some customers may require a fully bespoke PAS of which they retain the IP rights; other customers may share the IP rights with the supplier; others may purchase a basic ‘off-the-shelf’ product but require a large degree of customisation; others may collaborate with the supplier to develop part of the software package (of which the supplier retains the IP rights) in exchange for a discount.

4.39 The evidence received from customers and suppliers showed that, even though certain customers still use in-house PAS, these were no longer considered attractive compared to the current packaged systems and that customers did not generally use the option of developing a PAS in-house as leverage to obtain better terms in negotiations.[104]

4.40 However, the views were more mixed in respect to the use of bespoke PAS, as some of the customers[105] we talked to were in the process of implementing bespoke PAS or considered this to be a viable option,[106] while others told us that bespoke systems were not viable for them because they needed a large IT department to maintain and support the software after implementation.[107]

4.41 Xchanging told us that the term bespoke was misleading as it implied that the software was built to order from the ground up, when in reality, what the CMA had identified were products with a greater or lesser degree of customisation.

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103 Initial submission, paragraph 6.16(a).
104 [✂], NIIT hearing summary.
105 [✂]
106 [✂]
107 [✂]

In particular, Xchanging argued that Northdoor, a provider of bespoke PAS, was a strong competitor and should be included in the relevant market.

4.42 Northdoor told us its business model was different from the business model of other PAS suppliers. It said that its main aim was to sell consulting services. It said that it offered a 'shared IP model' which allowed customers to integrate the product into their 'systems landscape', where new customers gained access to what other customers had done, with the option to further develop it. Northdoor said it also offered lots of integration services.

4.43 Athito told us that Northdoor's typical approach was to deliver a bespoke product to a client. The base system provided by Northdoor would likely be the same as that of the immediately previous client which would be enhanced and tailored for the new client; Northdoor would then build a single code for the new individual client. Athito considered this was important from a client's perspective because it would not receive enhancements or updates as it would if it used a more generic 'product' available from other vendors. However, this approach suited some organisations which wanted more control and bespoke development than a typical 'product' vendor would provide.

4.44 One customer [✂] told us that it would not consider Northdoor because although it had a reasonable product, it did not want to take on ten to 20 .net developers to develop it after Northdoor had provided it with the code. It wanted a configurable product.

4.45 Overall, we considered that the PAS offered by Northdoor was only likely to be a viable option for a subset of customers which had a large enough IT department to maintain and develop such a solution.

4.46 We therefore provisionally concluded that in-house PAS are not in the same market as packaged PAS. With regard to bespoke PAS, given the variety of arrangements that can exist between customers and suppliers, the fact that some customers are not able to purchase such PAS because they do not have a large enough IT department, and the fact that customers purchasing such PAS would not receive enhancements and updates, we provisionally excluded such PAS from the relevant product markets. However, we took into account the competitive constraints of bespoke PAS offered by certain suppliers on a case-by-case basis as part of the competitive assessment, and in particular, we considered the constraint posed by Northdoor in our analysis of the competitive constraint from other suppliers.[108] (See paragraphs 6.128 to 6.131 where we discuss Northdoor.)

Provisional conclusions on the relevant product markets

4.47 Based on the evidence and analysis set out in paragraphs 4.3 to 4.46, we provisionally decided to assess the effect of the merger in the following product markets:

(a) The provision of packaged PAS with Lloyd's bureau functionality to Lloyd's MAs (referred to as the Lloyd's PAS market in the remainder of these provisional findings).

(b) The provision of packaged PAS with LCM bureau functionality to LCM carriers (referred to as the LCM PAS market in the remainder of these provisional findings).

Geographic market

4.48 With regard to geographic market definition, Xchanging argued that the provision of PAS to carriers (including to Lloyd's MAs) was global in scope and that there were no impediments to competition affecting PAS providers based overseas. It rested its view on four arguments:

(a) A global geographic market was consistent with the global nature of the insurance market, the multinational companies operating in the market, and the nature of software markets with very low transport/distribution costs. There were no barriers to participants in the insurance market purchasing software solutions from software providers around the world and insurers were increasingly seeking a single software solution for their global business, without a local presence being required. There was evidence of companies without a local presence (such as eBaoTech) supplying Lloyd's MAs.

(b) Software providers from around the world were able to adapt existing solutions to supply Lloyd's MAs quickly and easily without having to undertake significant investment. Providers of software to Lloyd's MAs also supplied their software to customers outside of the UK.

(c) This view was supported by independent market research, and in particular the Celent report referred to in paragraph 2.34 above.

[108] We also calculated market shares with and without Northdoor in the data set, and found that its inclusion did not make a material difference to the market shares; see paragraph 6.52.

4.49 A local presence was not required in relation to the software developers and support and maintenance staff, as illustrated by the location of a proportion of Xuber's own staff in India.[109] The only customer who commented on the location of its suppliers was [✂], who submitted that it had only ever had UK suppliers, but currently a significant proportion of its supplier [✂]'s support resources was based offshore. [✂]

4.50 Athito told us that some of the global PAS suppliers did not think it was worthwhile opening up an office in their local markets. However, without a local presence and local industry knowledge, it made it difficult for software companies to convince MAs to buy the products on offer. Athito said that London was a very unique market, which ran on a subscription basis and had adopted unique business practices, ie the brokers would contact the underwriters, whereas elsewhere the insurer would approach the customer to market themselves. Added to this, there was the need to be able to process the messaging from the bureau. Therefore to have a software package that could deliver what was needed by the London market, the vendor would need a team that understood the London market and had a package that had been developed to service London. Athito said that the timing of IT support could also be a problem, depending on where the team were located. It could obviously be managed using infrastructure, but local skills were very important.

4.51 Athito also told us that every London market software supplier had been founded in London and mainly serviced the London market, although they were now looking to expand globally. It added that the London market insurers might be global, but their approach was to set up a small branch office locally and to retain their core functions in the UK. In this way, they would service the local requirements by buying a localised PAS which had functionality that was specific to that market and they would not need to use the massive London-market transactional system. This meant that the local staff would be familiar with using the PAS given to them, rather than a London market software package.[110]

4.52 We noted that all suppliers selling PAS to Lloyd's MAs or LCM carriers had a substantial operational presence in the UK but did not necessarily provide maintenance and support services from the UK. We saw no reason why either a PAS with Lloyd's functionality or a PAS with LCM functionality could not be developed outside of the UK. We however noted that at least one successful implementation of a PAS in the local area was critical to success in the

[109] Initial submission, paragraphs 6.24 to 6.32.
[110] Hearing summary.

relevant product markets (paragraph 4.16) and that significant local presence was likely to be necessary to achieve this.

4.53 We have not found it necessary to reach a conclusion on the exact geographic market. We consider that a supplier's geographic location is relevant insofar as it may affect its ability to serve UK customers (and whether UK customers would consider buying from that supplier). To the extent that suppliers based in different countries serve (or have the ability to serve) UK customers, we took this into account in the competitive effects of the merger (Section 6).

Provisional conclusions on the relevant markets

4.54 We therefore provisionally decided to assess the effect of the merger in:

(a) the Lloyd's PAS market; and

(b) the LCM PAS market.

5. Counterfactual

5.1 Before we turn to the effects of the merger, we need to assess what we expect would have been the competitive situation in the absence of the merger. This is called the 'counterfactual'.[111] It provides a benchmark against which the expected effects of the merger can be assessed. The CMA will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments.[112]

5.2 Xchanging told us that the appropriate counterfactual was a continuation of the pre-merger situation. It also commented that a forward looking dynamic analysis of competition should take account of all suppliers' investment cycles and future plans.[113]

5.3 THL told us that the tender process would have taken place irrespective of whether Xchanging had taken part. It was THL's intention to try to sell Agencyport, subject to the receipt of a satisfactory offer. THL said that, if Xchanging had not participated in the tender process and the remaining bidders had made the same offers, Agencyport would likely have been sold to

[111] *Merger Assessment Guidelines*, paragraph 4.3.1.
[112] *Merger Assessment Guidelines*, paragraph 4.3.6.
[113] Initial submission, paragraphs 7.106 to 7.111.

the remaining highest bidder, as the next highest bidder's price was sufficient in value.

5.4 We therefore provisionally conclude that absent the merger, the vendors would have been likely to sell Agencyport to an alternative purchaser, namely the second highest bidder. Neither this second highest bidder nor any of the other five bidders supplied any of the products or services provided by Agencyport in the UK. The most likely alternative purchaser would therefore not have presented any competition concerns.

5.5 In carrying out our competitive assessment of the effects of the merger, we have taken account of likely future developments that may have an impact not only on the competitive constraints that the parties could have been expected to exert on each other but also the future competitive constraints from other suppliers of PAS on the Parties in the relevant markets (see paragraphs 6.57 to 6.152).

6. Assessment of the competitive effects of the merger

6.1 In this section, we first examine the competitive process, including: the costs of switching and frequency of switching (paragraphs 6.5 to 6.14), customers' reasons for switching (paragraph 6.15), the procurement process they go through (paragraphs 6.16 to 6.24), the criteria they use to select suppliers (paragraphs 6.25 to 6.28), and contract terms, including pricing (paragraphs 6.29 to 6.33).

6.2 We then move on to assessing the effects of the merger resulting from the loss of an independent supplier in the Lloyd's PAS market and the LCM PAS market.

6.3 Finally we consider concerns that were expressed to us by customers and competitors about Xchanging's overall competitive strength across the products and services it sells to participants in Lloyds and the LCM.

The competitive process

6.4 Our assessment of the competitive process relies primarily on evidence gathered in 18 hearings with Lloyd's MAs and LCM carriers.

Switching costs and frequency of switching

6.5 The evidence we have received from Xchanging and customers consistently shows that switching to a new PAS is a costly and lengthy process.

6.6 Xchanging provided a breakdown of the activities that would need to be carried out for a customer to change PAS supplier. In addition to the cost associated with the identification of the functional requirements of that specific customer and with the selection of the supplier, Xchanging identified the following actions (some or all of) which need to be undertaken for a customer to switch supplier:

(a) PAS modification/bespoke enhancements;

(b) PAS configuration;

(c) physical installation or establishment of managed environment;

(d) PAS integration with other applications in the carrier's IT infrastructure;

(e) initial data load (data migration);

(f) training;

(g) testing;

(h) go live;

(i) decommission old PAS; and

(j) post-implementation support.

6.7 The implementation process may involve the customer's IT team, the software provider and/or a third party approved implementer or system integrator.

6.8 Xchanging submitted that the costs of replacing a PAS will vary depending on the size and complexity of the customer. It provided estimates of the possible implementation costs for a medium size customer with 250 users to switch to a different PAS. These amounted to between £[✂] and £[✂] overall, with the largest items being the costs of data migration [✂] and the costs of PAS configuration [✂].

6.9 Customers who commented on this matter indicated that switching to a new PAS involved significant costs, ie generally between £1 million and 4 million[114] and a significant amount of time, ie between one and two years.[115] Customers' responses, however, were less clear about the cost of upgrading their existing system. Some indicated such costs are smaller[116] than the cost

[114] We have excluded two outliers [✂] who estimated switching cost below £1 million or above £4 million.
[115] [✂] estimated the time required for switching to a new PAS as one to two years; [✂] as one year; and [✂] as more than two years.
[116] [✂]

of moving to a new system, because data migration would be easier, whereas others indicated that the costs were similar.[117]

6.10 To put these switching costs in context, the average spend of Lloyd's MAs on PAS in 2013 was around £0.5 to £0.6 million.[118]

6.11 Switching costs do not only involve monetary costs but also potential disruption to the business and significant risks associated with changing supplier.[119] PAS is indispensable for carriers and MAs to carry out their business activities, so any uncertainty around the reliability of the product and/or the services provided by a new supplier represents a material risk for customers. [✂] for example said it needed to ensure that it could pay claims in a timely manner and keep accurate well reconciled records. If this slipped, its reputation would be severely damaged.

6.12 Compared to switching costs, benefits from a newer designed PAS appear to be limited: customers told us that PAS is a relatively commoditised product because its primary function is to perform accurately and consistently certain specific functions. Having a newer or better PAS does not appear to affect customers' competitive strength to any significant extent, so their incentives to move to a better product are small.

6.13 Customers change PAS infrequently. Xchanging submitted that customers tended to change provider every 5 to 10 years on average. Based on responses received from customers and competitors to our questionnaire, we estimated that both the Lloyd's and LCM PAS customers have been with their incumbent supplier generally for over ten years.[120]

6.14 We therefore found that switching was infrequent due to the high costs and risks associated with switching to a new PAS, compared to the relatively modest benefits customers perceived they would derive from buying a newer product.

6.15 Our discussions with customers identified seven reasons that might lead a PAS customer to switch to a new supplier:

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117 [✂]
118 CMA estimate, based on information from customers on their average yearly spend (including licensee fees, implementation fees, other spend (not related to license fees), etc.) and suppliers' revenue data, where such data was available. Revenue/cost data relative to customers with in-house or bespoke solutions has not been included in the calculations.
119 [✂]
120 This may also be an underestimate of the average time customers stay with their suppliers. For example, one customer which recently changed supplier and therefore stayed with the same supplier for a short amount of time is counted as if it was changing supplier more frequently, even though it may stay with that supplier for many years going forward. However, we consider that this estimate may still provide a convincing indication that customers do not switch supplier very often.

(a) product obsolescence;[121]

(b) supplier requiring its customer to switch to a newer product;[122]

(c) dissatisfaction with the supplier's service delivery, product or responsiveness to the customer's needs;[123]

(d) market consolidation;[124]

(e) move to a common solution across geographies;[125]

(f) phasing out of in-house solutions;[126] and

(g) service offshoring by current supplier.[127]

Procurement processes

6.16 Xchanging told us that in most cases, contracts to supply PAS to Lloyd's MAs are awarded on the basis of competitive tender (taking into account the specific requirements of the customer, such as whether any customisation is required, or existing data needs to be migrated from existing software).[128]

6.17 It told us that prior to starting its vendor selection process, a customer may first draw a list of functional and/or non-functional requirements. Based on these requirements, it will then identify potential suppliers and will take some or all of the following steps in order to select one:

(a) Establishment of a 'long list' of potential suppliers.

(b) Request for information (RFI) from the 'long list'.

(c) Scoring of 'long list' to reduce to 'short list'.

(d) Initial product presentations.

(e) Request for proposal (RFP).

121 [✂]. [✂] also indicated that its high-level review of the market had been triggered because it had heard that Xuber was moving towards an enterprise solution.
122 [✂]
123 [✂]
124 [✂]
125 [✂]
126 [✂]
127 [✂]
128 Initial submission, paragraph 7.32.

(f) In depth presentations or workshops.

(g) Selection of preferred supplier.

(h) Pre-engagement study to establish project scope.

(i) Commercial negotiations and contract with new PAS supplier.

(j) Notice to old PAS supplier.

6.18 We asked Lloyd's MAs and LCM carriers[129] to describe their selection processes and found that the exact approach they adopted to select a supplier differed among customers.

6.19 First, several customers told us that they carry out an informal periodic assessment of the main suppliers' commercial propositions in order to keep abreast of developments in the market and to establish whether there were reasons to consider switching from their existing supplier.[130] One customer, for example, said it conducted annual reviews and that if it were to find a solution that met the business' needs better/benefitted the company more than any of its existing PAS, it would consider changing its PAS.[131] Another customer said it had been looking at PAS suppliers on an ongoing basis and so had undertaken reviews in 2007, 2010, 2012 and 2014.[132]

6.20 As explained in paragraph 6.14, Lloyd's MAs and LCM carriers are generally unwilling to change PAS suppliers primarily due to the high switching costs and the risks associated with switching to a new product. Some customers therefore appear to try and negotiate a better commercial proposition with their existing supplier before considering switching to other suppliers.[133]

6.21 Some customers also indicated that as part of their selection process, they contact suppliers' current customers to gather intelligence on product quality and suppliers' reliability.[134] One customer also told us that it had worked jointly with other customers to approach their supplier together and managed to obtain software developments that the supplier was otherwise unwilling to provide.[135]

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[129] In questionnaires sent to carriers and MAs in both phase 1 and phase 2 of our investigations and in hearings held in the course of phase 2.
[130] [✂]
[131] [✂]
[132] [✂]
[133] [✂]
[134] [✂]
[135] [✂]

6.22 Some customers also appear to have flexibility over the time in which to change PAS. One customer, for example, indicated that the implementation timing was not business critical and some customers indicated that they were willing to delay the purchase of PAS by several years if there were no attractive alternatives available from other suppliers.[136] We consider that the very fact that customers periodically monitor the market suggests that they can generally choose the optimal time for them to switch supplier and may also use this as a negotiation tool.

6.23 The actual selection processes adopted when selecting a supplier vary between customers, although the majority of those which gave us evidence adopt a formal process. Others carry out more informal negotiations with suppliers. At one end of the spectrum, customers which engage in more formal tenders appear to start with a longer list of suppliers, which they narrow down to a shortlist of a handful of suppliers or less through formal requests for proposals, observation of products' and suppliers' characteristics, discussions with suppliers as well as the opinion of suppliers' customers. Customers then arrange meetings with the shortlisted suppliers and attend product demonstrations to finally select their preferred supplier.[137] At the other end of the spectrum, some customers appear to carry out a less structured (but not necessarily less in-depth) process to select the winning vendor.[138]

6.24 In some cases customers outsource the software selection process to consultants, such as Athito; large consultancies, such as PricewaterhouseCoopers LLP and Ernst & Young; or contractors and individuals, such as former IT directors who have set themselves up as individual companies. These companies assess the different options available and score them against customers' needs.

Criteria used to assess suppliers and their products

6.25 Customers consider a number of features of the products sold and the suppliers themselves in deciding which product to select. In some cases they produce score cards which set out and weigh the features of each suppliers and compare different suppliers' offerings with each other.

6.26 Relevant product characteristics identified by the customers which gave us evidence include:

136 [✂]
137 [✂]
138 [✂]

(a) **Lloyd's market and/or LCM bureau functionality.** Several customers[139] told us that the capability to process Lloyd's and/or LCM messaging was the key feature of a PAS product.

(b) **User-friendly software interface.** Unlike segments where the PAS is used by employees doing back-office works, within Lloyd's and the LCM it appears that underwriters are more directly involved in the use of the PAS. A user-friendly interface was therefore perceived as an important feature by some customers.[140]

(c) **Successful implementations in Lloyd's and/or the LCM.** Customers tend to be reluctant to use PAS products that are not proven, ie that have not been successfully deployed for a few customers for a sufficiently long period of time. Customers may not be willing to take the chance of using an unproven product, as this may increase implementation time, risk and cost.[141] In particular, Lloyd's MAs and LCM carriers appear to attach particular importance to successful implementation of the product to customers which operate within Lloyd's and the LCM, respectively.[142] However, others may be willing to be the first customer, as this may permit them to input into the development process.[143]

(d) **International/global capability.** Large customers with operations abroad as well as in the UK may have a preference for systems that can be deployed across all their operations.[144] However, other customers[145] appeared to be sceptical about the ability of any existing system to cope with multiple jurisdictions.

(e) **Componentisation.** Some customers appear to attach some weight to componentisation, as it permits carriers to update some components but not others and makes the process less costly and disruptive.[146]

(f) **Software configurability.** Customers have different requirements and may have a preference for software that can be configured to better suit such requirements.[147]

139 [✂]
140 [✂]
141 [✂]
142 [✂]
143 [✂]
144 [✂]
145 [✂]
146 [✂]
147 [✂]

(g) **Web-based platform.** Some customers may have a preference for software that can be integrated with web-based services.[148]

6.27 Customers also assess the potential suppliers themselves against certain criteria, in particular:

(a) **Supplier's reputation.** A supplier's reputation both in terms of its product and delivery appears to be highly rated by customers. Some customers referred specifically to the importance of the suppliers' track record in Lloyds.[149]

(b) **Supplier's financial stability.** Contracting a supplier that is not financially stable may entail the risk that such supplier would not make sufficient investments in the product and that it may stop supporting it altogether, forcing the customer to incur the switching costs associated with changing supplier.[150]

(c) **Supplier's relative size.** Customers appear to value engaging with suppliers of the 'appropriate size', that is not so small that it would be vulnerable but not so large that the customer would have little sway over it.[151]

(d) **Relationship and cultural fit.** Some customers appear to attach value to softer elements, such as the extent to which they perceive they would be able fruitfully to collaborate with a supplier.[152]

6.28 Price appears to play a role towards the final stages of the selection process. Once a shortlist of suitable suppliers has been produced based on the assessment against the features described above, price becomes important to determine the final choice.[153]

Contractual terms/pricing

6.29 Contract terms appear to vary across customers and appear to be themselves subject to negotiations. A common structure generally consists of contract length of three to five years, after which the contract can either be renewed on the same contractual basis or it becomes a yearly rolling contract.[154]

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148 [✂]
149 [✂]
150 [✂]
151 [✂]
152 [✂]
153 For example, [✂] considered price only at the end of the selection process, when suppliers had been shortlisted from around 30 to two.
154 [✂]

6.30 The price is generally formed of two elements: a one-off licence fee, often paid upfront, and maintenance fees, generally paid on a yearly basis. However, there are also other types of contractual arrangements. One is a SaaS (Software as a Service) type of arrangement, whereby the service is 'rented' to the customer (as opposed to the licence being sold to the customer).

6.31 Xchanging's stated pricing structure for Xuber is based on [✄]. Xchanging told us that in practice, prices charged [✄].

6.32 Agencyport appeared [✄].

6.33 Agencyport told the CMA that it [✄].

Provisional conclusions and implications

6.34 The evidence discussed in paragraphs 6.5 to 6.14 shows that customers in Lloyd's and the LCM are reluctant to change their PAS supplier as this involves high risks, high costs and few benefits. As a result, customers tend to change supplier infrequently, every ten years or more, and put considerable effort into the purchasing decision.

6.35 Before starting a full selection process, some customers try to negotiate improvements of their current supplier's commercial offering (eg software improvements or updates). If the outcome of such negotiations is unsatisfactory, customers consider switching to another supplier.

6.36 The form of the selection process varies across customers, and is generally a combination of tenders and individual negotiations. Customers assess suppliers against a number of elements, some pertaining to product characteristics, some related to the supplier's reputation and reliability. Price, instead appears to acquire more importance in the later stages of the selection process, when suppliers have been shortlisted based on product and supplier's characteristics.

6.37 Contractual arrangements vary across customers. Commonly contract length is between three to five years, after which contracts are sometimes renegotiated, sometimes renewed, either in the form of yearly rolling contracts or in the same form as the original contract.

6.38 Prices are ultimately negotiated individually. A common pricing structure consists of an initial one-off licence fee and yearly maintenance fees; however, other contractual arrangements are also available and the exact terms vary in any case across customers and are themselves subject to negotiations.

6.39 Overall, the evidence we received from customers shows that customers are sophisticated and well informed: they conduct periodic reviews of the PAS offerings to assess whether or not they should switch supplier, they put considerable effort into the purchasing decision, through which they obtain detailed information on the various offerings and suppliers (including information from other customers' experience of the product); and they take into account a range of factors in their purchasing decisions, including expected levels of service, maintenance and upgrades after the product is purchased. Customers also appear to share information on PAS and their suppliers with each other (we were told that in one case they even worked together to approach a supplier jointly and managed to obtain software improvements). Some customers also appear to be able to delay the time of purchase if they are unsatisfied with the offerings available.

6.40 We note that in markets with high switching costs (such that customers are locked-in to an extent once they have made a decision to purchase), there may be a strong incentive on suppliers to compete to gain new customers, in the expectation of reaping high profits once customers are locked in. However, in the Lloyd's and LCM PAS markets the potential to make high profits once a customer has been gained appears to be limited. This is because customers are sophisticated and appear to take into account the price, quality and likely levels of servicing over the lifetime of the product when making a decision on which PAS to purchase. In other words, at the point at which they decide which PAS to purchase, they take into account the fact that they will face high switching costs, and this informs their decision on which PAS to purchase. In particular, for instance, the ongoing price for the product (in the form of maintenance and ongoing fees) is negotiated at the outset.

6.41 Although servicing quality is more difficult to control at the time of purchase, the evidence we have reviewed suggests that customers share their experiences of PAS solutions and providers and therefore have strong visibility over the quality of service provided to other customers. A supplier which lowered the quality of a customer's service on the basis that this customer is locked-in would damage its reputation in the relevant markets and undermine its ability to win new customers in the future.

6.42 For these reasons, we provisionally consider it is likely that, despite the high switching costs, there is competitive pressure on PAS suppliers both at the time where they bid for new customers and over the lifetime of their relationship with existing customers.

Theory of harm 1: unilateral effects

6.43 In our issues statement, we stated that the concern under this theory of harm was that, as a result of the merger, Xchanging would have the ability profitably to increase the prices of its products and/or decrease service levels, and/or would have a lesser incentive to innovate[155] because in bidding for contracts it would face competition from one fewer competitor.

6.44 As stated in the *Merger Assessment Guidelines*, where products are differentiated, for example by branding or quality, unilateral effects from the merger are more likely where the merger firms' products compete closely. Unilateral effects are also more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.[156]

6.45 Xchanging told us that the parties were not close competitors prior to the merger, that absent the merger they would not have become close competitors in the future, and that other competitors imposed a significant competitive constraint on both parties. Its key arguments were that:[157]

(a) the Parties' market shares were not high and were well below the level at which competition concerns generally arise;

(b) the tendering data over the last five years confirmed that the Parties were not close competitors in bidding for contracts for Lloyd's MAs;

(c) the Parties' products were differentiated (with Xchanging's Iris product being a legacy product) which reduced the extent to which they were viewed as substitutes;

(d) tendering data showed that over the last five years competitors had been [✄] successful [✄] in winning contracts to supply PAS to Lloyd's customers;

(e) the Parties' pre-merger internal documents showed that the Parties considered a broad set of competitors;

[155] We received specific representations from one customer that the loss of competition resulting from the merger would be detrimental to investment and innovation. This customer told us that over the last ten years, on the central services side, if any of the products needed developing or updating, it would be the customers who would pay for them. It feared that if Xchanging managed to acquire a strong position in the Lloyd's or LCM PAS market, any specific development would have to be paid by the customers, or risk not being done.
[156] *Merger Assessment Guidelines*, paragraphs 5.4.6 and 5.4.12.
[157] Initial submission, paragraphs 1.22 and 7.1.

(f) external market reports provided independent confirmation of the competitiveness of these competitors' offering;

(g) there had been recent investment by competitors (including NIIT and Guidewire) as well as additional access to capital as a result of investment in the competing companies; and

(h) third party comments supported the credibility of these competitors, as well as a third party confirming that it could sponsor entry.

6.46 In order to form a view on whether the merger may be expected to lead to unilateral effects in the Lloyd's PAS market and/or the LCM PAS market, we considered the extent to which the Parties would have competed against each other absent the merger. An important element of this assessment was the extent to which the Parties competed with each other before the merger in each of these markets and the extent to which the products of other suppliers (whether they are within or outside the two markets) could be expected to exert a competitive constraint on Xchanging following the merger.

6.47 We first calculated market shares and analysed tendering data. We then analysed qualitative evidence gathered from customers and PAS suppliers (including the Parties) on the current and likely future competitive positions of Xchanging and the other suppliers remaining in the two markets following the acquisition of Agencyport. In making this assessment, we took account of changes likely to affect demand and supply in the Lloyd's PAS and LCM PAS markets in the timeframe in which we analysed the effect of the merger. Our assessment of the evidence is set out at paragraphs 6.153 to 6.172.

Market shares and tendering data

Market shares

6.48 Xchanging estimated the Parties share of the Lloyd's PAS market based on their 2013 revenue and an estimate of the Lloyd's PAS market size calculated by multiplying the volume of GWP within Lloyd's in 2013 (£25 billion) by 0.2%, representing an estimate of the proportion of revenue that Lloyd's MAs spend on software. This resulted in a Lloyd's PAS market size of £50 million and a combined share of [✂]% for the Parties. Xchanging noted that this methodology was used for the purpose of presenting the transaction to the Xchanging board.

6.49 We noted that Xchanging market size calculations included in-house developed software and were based on the assumption of a simple correlation between GWP and software spend that was not consistent with the pricing policies of Lloyd's PAS suppliers. In particular, we noted that historically, most suppliers charged customers on a per user basis rather than on the basis of GWP. We also noted that Xchanging's business plan for Xuber estimated the Lloyd's PAS market to be £[✄] million and the LCM PAS market to be £[✄] million. For these reasons, we considered that the estimates provided by Xchanging were not reliable, and we calculated our own estimates of market shares based on data on PAS spend.

6.50 We obtained data on PAS spend by Lloyd's MAs and LCM carriers from both customers and suppliers in order to derive estimates of market share by revenue. We also calculated a share of the two relevant markets on the basis of customer numbers.

6.51 We found that the Parties' share of supply of the Lloyd's PAS market by revenue exceeded 30% and that by customer count, it exceeded 40%, as shown by Table 2. We noted that our market size calculation was in line with [✄].

Table 2: Market shares in the Lloyd's PAS market, 2013

	Market share (Lloyd's market)		
Supplier name	*Revenue method (customer data)*	*Revenue method (supplier data)*	*Count market shares based on number of customers*
Market size	**£24.9m**	**£26.1m**	**46***
Xchanging (%)	[5–10]	[5–10]	[10–20]
Agencyport (%)	[20–30]	[20–30]	[20–30]
Combined (%)	[**30–40]**	[**30–40]**	[**40–50]**
NIIT(%)	[40–50]	[40–50]	[30–40]
Sequel (%)	[5–10]	[5–10]	[10–20]
Eurobase (%)	[0–5]	[0–5]	[0–5]
CSC† (%)	[0–5]	[0–5]	[0–5]
eBaoTech‡ (%)	[0–5]	[0–5]	[0–5]
Unknown (%)	[0–5]	[0–5]	[0–5]

Source: CMA analysis of data received from customers and suppliers.
*Some Lloyd's MAs use more than one PAS supplier.
†One customer informed the CMA that it used CSC's products but did not give its estimate of spend. We have, therefore, estimated the spend based on average spend on PAS in Lloyd's.
‡One customer informed the CMA that it used eBaoTech's products but did not give its estimate of spend. We have, therefore, estimated the spend based on average spend on PAS by Lloyd's MAs.

6.52 Lloyd's MAs using in-house PAS have been treated as 'outside' the market for the purposes of these calculations. We also did not take into account suppliers which provide bespoke PAS to MAs. The largest of these is Northdoor. If we were to include Northdoor, market shares of the Parties would be as follows: Xchanging [5–10]%, Agencyport [20–30]% and combined [30–40]% (customer data); Xchanging [5–10]%, Agencyport [20–30]% and combined [30–40]% (supplier data); and Xchanging [10–20]%, Agencyport [20–30]% and combined [30–40]% (count method). Therefore the addition of Northdoor to the analysis does not make a material difference to the outcome.

6.53 We found that the Parties' share of supply of the LCM PAS market by revenue and customer count exceeded 40%, as shown in Table 3. We noted that our market size calculation was [✂].

Table 3: Market shares in the LCM PAS market, 2013

	Market share (LCM)		
*Supplier name**	*Revenue method (customer data)*	*Revenue method (supplier data)*	*Count market shares based on number of customers*
Market size	**£12.6m**	**£12.5m**	**36**
Xchanging (%)	[30–40]	[30–40]	[30-40]
Agencyport (%)	[5–10]	[10–20]	[5-10]
Combined (%)	**[40–50]**	**[40–50]**	**[40-50]**
Sequel (%)	[10–20]	[5–10]	[10-20]
NIIT (%)	[5–10]	[5–10]	[5-10]
EBIX (%)	[5–10]	[5–10]	[0-5]
CSC (%)	[0–5]	[0–5]	[0-5]
Unknown (%)	[20–30]	[20–30]	[30-40]

Source: CMA analysis of data received from customers and suppliers.
*We have not included those carriers using in-house solutions in the calculations as they are outside of the relevant market.
†Our research suggests that EBIX provides PAS to only one carrier in the LCM. While it is not a 'core' PAS, we have included it on the basis that this insurer did not list any other products it used.

6.54 Our methodology is explained in Appendix F. We recognise that the data present limitations (see paragraph 14 of Appendix F). Nevertheless we note that the response rate to our questionnaire was high and consider that these market share calculations are significantly more reliable than the calculations provided by Xchanging, as they are based on data obtained from customers on their actual spend and actual revenue figures from suppliers, rather than on estimates of spend based on GWP. We also note that none of the customers of suppliers we talked to were able to provide market size estimates due to the absence of reliable publicly available data.

Tendering data

6.55 We also analysed the results of recent known 'tenders' that have taken place in Lloyd's in the past five years, using information provided by Xchanging supplemented by additional information provided by customers and other suppliers. The notion of tender we have adopted is a broad one, which encompasses formal tenders, as well as informal discussions and negotiations. Our analysis, described in paragraphs 29 to 32 of Appendix F showed that out of [✂] known 'tenders',[158] Xchanging was involved in [✂] of these tenders and Agencyport in [✂]. Xchanging and Agencyport competed

[158] Xchanging defined a tender as a process in which customers have identified a list of possible suppliers with whom they discuss price and approach. However, we note that in some cases customers remained with the same supplier and it is unclear whether they went through a competitive process to select their supplier. Given the broad definition of 'tender' herein adopted, we have included such instances in the tendering data nonetheless.

against each other ten times. Agencyport was therefore present as a bidder in [✂] of the [✂] tenders where Xchanging was involved ([✂]%) and Xchanging was present in [✂]of the [✂] tenders where Agencyport was involved ([✂]%).

6.56 Out of the [✂] known tenders, Agencyport won [✂] and Xchanging won [✂]. It also showed that Sequel, NIIT, Northdoor, CSC, Eurobase, and eBaoTech all won some bids. The most successful competitor was Sequel with [✂] bids won, followed by NIIT ([✂]), Agencyport ([✂]) and Northdoor ([✂]).

Closeness of competition between the Parties

Xchanging's submission

6.57 Xchanging told us that market shares of legacy products were not significant on any measures. It considered tendering data to be a more accurate reflection of pre-merger competition between itself and Agencyport, and that it showed that they were not close competitors.

6.58 It told us that the Parties would not become close competitors in the future for the following reasons:

(a) Agencyport's OPEN Core software and Xchanging's Xuber/Iris software were differentiated and therefore not close competitors: Xuber for Insurers was componentised, whereas OPEN Core Platform: Lloyd's was not.

(b) Customers that were tendering to replace the claims component of their PAS were likely to have a clear preference towards a componentised solution and therefore were unlikely to view OPEN Core as a sufficient alternative.

(c) [✂]

(d) [✂] although it also told us that in the absence of the merger it would have [✂] in the London market (with its Xuber product) in competition with multiple vendors, including Northdoor.[159]

(e) Although Xchanging's intention was to [✂].

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159 The definition of Tiers 1 to 5 carriers relates to the GWP they write: Tier 1: over Euro 5bn; Tier 2: between Euro 1 and 5bn; Tier 3: euro 500m and euro1bn; Tier 4: euro 100 and 500m; tier 5: less than euro 100m. (Celent, February 2014).

(f) Agencyport was not a strong competitor and it could not be assumed that the historical/current market position of Agencyport would continue in the future.

(g) [✂][160]

6.59 In the subsection that follows (paragraphs 6.60 to 6.69), we first present evidence on the extent to which the products offered by the Parties are differentiated in terms of their functionality. We focus mainly on the extent to which componentisation is a differentiating factor, as this appears to be the main difference between the Parties' offering in terms of product functionality. We then consider Xchanging's strategy for Agencyport's PAS post-merger (paragraphs 6.70 to 6.81). Finally we examine customer and competitor views on the closeness of competition between the Parties (paragraphs 6.82 to 6.90).

Product functionality and componentisation

6.60 We asked Xchanging and Agencyport to list the activities that are supported by their PAS. This is set out in Appendix D, Table 1, which shows that from a functionality point of view, Agencyport's OPEN Core Platform: Lloyd's is comparable to Xuber for Insurers. [✂]

6.61 We sought evidence from customers, competitors and Athito on the importance of componentisation and the extent to which it is a material factor in customers' decision to buy a PAS:

(a) One customer said that it thought the distinction between componentised and end-to-end platforms had no tangible relevance and described componentised solutions as 'smoke and mirrors'. It thought that most customers would buy a whole PAS and not just one component. Another customer said that a supplier suggested that componentised platforms were more suited to larger customers and end-to-end platforms were aimed at smaller customers. However this customer did not consider the two options to be substantially different and described the distinction made by the supplier as 'marketing spin'. Two customers said that an end-to-end platform had benefits: it was less complex because it required less passing over of data and making changes and maintenance would be cheaper.

(b) Some customers said they preferred a componentised solution, as this gave them the opportunity to fit the best components together.

[160] Initial submission, paragraphs 7.48 to 7.105.

(c) Athito told us that when looking at PAS there was actually very little to componentise. Whilst the systems were large and complex their complexity was around the fact that they were integrated and strived to provide a total solution. If one were to look at the components that could be derived from the various PAS offerings these were quickly distilled into policy management, recording risk details, premiums and the like and claim management as two distinct components. Outside of that the other functions that a PAS performs were not easily represented as a componentised solution.[161]

(d) It added that the ability to provide componentised solutions might be interesting to some Lloyd's MAs; however, the implementation of a new component would not necessarily mean the decommissioning of existing legacy systems; some implementations of components were in conjunction with legacy systems, with the new component managing a specific business activity such as claims or rating, but using a feed from the legacy system, managing the process, then feeding data back into the legacy at certain points to maintain the underlying system of record.

(e) Eurobase said componentisation was when the product was segmented into different business functions and it thought it was a strength to have a componentised product. It said that customers might have self-built components that they would want to interface with and it said it had clients that only used certain of its components. Therefore having a componentised product allowed clients to operate their business processes flexibly and did give vendors wider coverage of the market. However, Eurobase stated that a componentised solution had the underlying risk of needing to interface and integrate various systems to ensure the integrity of the data and it thought there were drawbacks to having disparate systems and possibly multiple vendors.[162]

(f) NIIT told us that in relation to componentised solutions, there was an economic advantage to purchasing the entire suite as overall cost of ownership was lower and it improved productivity and efficiency. Individual components could be purchased and combined with components from another supplier but there was a risk in terms of efficiency, quality of data and data flows, upfront implementation costs, and overall running costs.

(g) Sequel told us that several years ago there had been a move towards buying best of breed solutions for all the applications and then gluing

[161] Hearing summary.
[162] Hearing summary.

them together, and clients liked the flexibility of having a modular solution. It said it was possible to buy from different suppliers, but there might be issues around integration. However, even if a client bought an end-to-end application, the vendor still had to integrate it with the other pieces of software that the client had.

6.62 Agencyport told us that larger organisations tended to look for a gradual replacement of their legacy software, to remove some of the risk associated with replacing complex systems in one go. [✄] However, it was able to integrate its products with the components of other suppliers, including claims management products. Agencyport noted that there was a move away from integrating best-of-breed elements purchased from multiple suppliers towards customers buying the suite of products or components from the same supplier.

6.63 Agencyport told us that its plans to move to a componentised offering were at an early stage before the merger. Its offering was an end-to-end product which it priced in such a way so as to differentiate it from component vendors. It knew that over time, it would have to be able to deploy parts of its product to solve parts of customers' problems. Although it was something it was starting to think about, it was still early days.

6.64 We noted that a number of Agencyport's strategy documents, going as far back as 2010, identified an ambition to supply a componentised PAS, although it was identified as a low priority in its 2012 business plan. However, two documents dated February 2014 set a date of 2015 for the launch of modules for the OPEN Core MGA, Commercial and Lloyd's platforms. Agencyport told us that at that time, it had identified that it would be advantageous to develop the OPEN Core Suite into a componentised offering in order to compete more closely with Guidewire and other providers of claims management products. It had however considered that there were other areas of development that were a higher priority (as demonstrated, in its view by the product development objectives it set in February 2015) and therefore no concrete plans were made in respect of developing a componentised solution.

6.65 In our view the evidence set out in Agencyport's 2014 internal documents indicates a higher level of commitment to componentisation before the merger than Agencyport suggested in its post-acquisition representations to us. We also did not consider its February 2015 objectives, set well over six months after the acquisition and after it had agreed with Xchanging to [✄], to be indicative of its strategic intentions prior to the merger.

6.66 Athito said that componentisation was not a differentiating factor between the Parties: the Xuber suite might be a series of individual products, but

Agencyport had also [✂]. From a functional perspective Athito did not believe that Agencyport's PAS would necessarily be more attractive to smaller customers and Xuber to larger ones. However, it said that from a cost perspective this might be true as the Xuber price point appeared high in comparison to Agencyport's PAS and other vendors.

6.67 We noted that most suppliers of PAS to Lloyd's MAs either already marketed a componentised solution or had plans in train to do so in the future.[163]

6.68 The evidence we received from customers and competitors on componentisation as a source of differentiation is mixed, but we considered that this might be because the technology was still in its infancy. Based on Agencyport's internal documents and Athito's evidence, we considered it likely that absent the merger, Agencyport would have developed a componentised solution in the near future, and probably from 2015, and that any existing differentiation between the parties stemming from componentisation, if any, would then be significantly eroded. We noted that this was in line with a more general trend towards componentisation among suppliers, which further suggested that componentisation was unlikely to be a source of differentiation in the future.

6.69 Given this, we did not consider the argument put forward by Xchanging in 6.58(b) to be a persuasive one. First, parties told us that componentisation meant that the risk of implementation would be staged as modules got rolled out. In that sense, once a module is rolled out, all other competitors, whether they offer an end-to-end platform or a componentised one, would be at a disadvantage. In any event, given that [✂], and given that in the past customers have bought specialised claims management solutions to bolt on legacy PAS, we do not agree with Xchanging's contention that 'customers that are tendering to replace the claims component of their PAS are likely to have a clear preference towards a componentised solution'.

Xchanging's strategy and plans for Agencyport's PAS

6.70 In order further to assess the closeness of competition between Agencyport and Xchanging, we examined internal documents. We noted that Xchanging's competitive analysis generally identified Agencyport as one competitor among others and it had devised plans to [✂]. We also considered its plans for Agencyport's products following the merger.

[163] [✂]

6.71 In our 23 February hearing with Xchanging, we asked attendees to explain what Xchanging's product strategy for Agencyport's PAS products had been prior to completing the acquisition and in the subsequent months. We were not satisfied with the answers provided, as the attendees were unable to comment on Xchanging's valuation of Agencyport or to explain clearly how the strategy had evolved in the months before and after the transaction. We therefore sent some clarification questions on 25 February, to which Xchanging responded on 5 March, appending a number of internal documents in support of its answers. In the light of these answers, we considered it necessary at this stage to request the attendance of Xchanging's Chief Technology Officer (CTO) to another hearing, held on 16 March, in order to obtain further clarification. The CTO had led Xchanging's software development activities since 2004 and the business unit from 2011/12 until the appointment of Xuber's current Executive Director.

6.72 On 19 March, we wrote to Xchanging, seeking an explanation for what appeared to us to be a material discrepancy in the evidence submitted and received a large amount of new material from Xchanging on 20 March. We are still considering the implications of this evidence, the manner in which it was identified and the timing of its submission to us, both in terms of the conclusions we draw in paragraph 6.81 and in terms of our process more generally.

6.73 We set out in the following paragraphs the evidence received (up to and including on 16 March), starting with two internal documents that were produced as part of Xchanging's consideration of the Agencyport's acquisition.

6.74 A presentation to the Xchanging Board seeking approval to make a final offer for Agencyport set out Xchanging's plans for Agencyport's products following the merger. A slide in this document showed that it [✂].

6.75 Xchanging's valuation of Agencyport showed that [✂].

6.76 In its 5 March response, Xchanging told us that at the time when the presentation referred to in paragraph 6.74 was produced, no substantive discussions or considerations had taken place as regards the long-term product strategy.

6.77 In the same response, it provided a slide that it said had been prepared just before the acquisition completed on 4 July 2014. It was an update of the slide referred to in paragraph 6.74. In this, the first statement quoted in paragraph 6.74 was modified to read: [✂]. The other statement we quote in paragraph 6.74 was deleted but no other change was made. Xchanging also stated that this showed that by the end of June 2014 its [✂]. [✂] CTO (who had been directly involved in the production of the slide) however said in the subsequent hearing that the purpose of the changes was simply to remove TOL products and was not an indication of a change in strategy. The CTO added that the two slides were essentially the same and that any change in strategy had taken place in August, after Xuber's current CEO had started in his role. We therefore attached no weight to this evidence (ie to the updated slide 7).

6.78 Similarly, as part of its 5 March response, Xchanging put forward a brief e-mail exchange between Agencyport's Chief Executive and Xchanging's CTO of 3 and 4 July 2014 as evidence that they had agreed that [✂]. This was accompanied by an analysis of the [✂].This identified four options:

(a) [✂]

(b) [✂]

(c) [✂]

(d) [✂]

6.79 We did not consider that any of this evidence was relevant to the future strategy of Xchanging: it was focused on [✂], thus indicating that the two companies had competed directly prior to the merger. We considered this to be compatible with [✂]. We saw nothing in these papers that indicated whether or not [✂]. We noted that the discussion between Xchanging's CTO and Agencyport's CEO had taken place shortly prior to the announcement of the acquisition of Agencyport by Xchanging and therefore appeared to have been driven by [✂] at that particular point in time.

6.80 In the 23 February hearing, Xchanging told us that it had decided, around August/September 2014, that it would continue to [✂]. There were however no plans beyond that period. The documents showed its plans only [✂], it would seek to [✂]. Xchanging told us that there were no strategy documents which considered the period from [✂], but that this was not an indication that [✂]. We noted that no financial analysis had been carried out to examine the consequence of [✂].

6.81 In our view, the evidence presented by Xchanging shows that Xchanging [✂] following the merger. The fact that [✂] suggests to us that the products competed with each other in the relevant markets prior to the merger. We note that its post-merger strategy is consistent with [✂]. Although they are subject to interpretation (as discussed above), we accept that its strategy documents indicate that [✂]. However, we note that Xchanging currently [✂].

Customer and competitor views on Parties' products and competitive position

6.82 We sought to test further the strength of the competitive constraint that Xchanging and Agencyport PAS products could be expected to exert on each other (absent the merger) in the Lloyd's PAS market and the LCM PAS market going forward, by asking customers and competitors for their views on the products they offered.

- *Xchanging*

6.83 With regard to Xchanging, we received mixed views from customers about Xchanging's legacy products, Iris and Genius. Some customers told us that they were outdated, while others appeared to be appreciative of their quality. As regards Xuber, most customers had a positive impression of product quality. However, several customers indicated that at the time of its launch in 2012, Xuber was materially unfinished. This was regarded as a positive feature by one customer, [✂]. Other customers, however, tended to consider the fact that Xuber was unfinished as a weakness of its offering. Also, some customers indicated that the fact that Xuber did not have a track record of successful implementation within Lloyd's and the LCM was making Xuber less attractive to customers, as customers are generally reluctant to be the first to implement a new solution.

6.84 PAS suppliers commented that Xuber was unfinished at the time of its launch. Some suppliers said that they believed the acquisition of Agencyport was an attempt to bridge the functionality gaps in Xuber. One supplier also said that the launch of an unfinished product was damaging Xchanging's reputation. Some suppliers also said that Xchanging's new product was still unproven and therefore less attractive to customers.

6.85 Athito told us that Xuber was priced way in excess of the other products in the market and provided the example of a selection it carried out in June 2014 where Xuber was priced significantly higher than Agencyport for the same customer.

6.86 In respect of the prospect of Xchanging being successful in the future, Athito said Xchanging had suffered from issues with past projects (as have other suppliers) and there was a perception that Xchanging's product was expensive. Even with an adjustment in pricing it would take some time for them to get traction with the new product, insurers are risk averse when it comes to selecting software and Xuber was not commonly used across the market. Xchanging's position providing other systems and also professional services and outsourcing may lead clients to not wanting all their eggs in one basket.

- *Agencyport*

6.87 Customers appear to have mixed views about Agencyport's commercial offering. Some customers made positive comments about Agencyport or indicated they consider it as a credible supplier. In particular, these customers generally appreciated the user-friendly feel of Agencyport's interface. Other customers raised issues around the quality of Agencyport as a supplier, especially around delivery, although one customer said it had been told that Agencyport's software was slow and cumbersome. However, some of these customers appear to refer to older versions of Agencyport's software and to the quality of service delivery before the change of ownership and management occurred in 2011; others appear to repeat the opinion of other customers, which may be outdated. Therefore care should be taken in interpreting these comments.

6.88 PAS suppliers' views on Agencyport were mixed. Some PAS providers commented that Agencyport was a strong competitor and that its product offering was strong. However, one competitor identified reputation for delivery as one weakness; another competitor said that Agencyport was not competing strongly with Xchanging, as it targeted customers of different size; another said that, [✀].

6.89 Athito told us that Agencyport's PAS was purely web-based; it had a very well designed user interface and it could be delivered to a wide variety of devices. In addition, the underlying architecture was more open as a result of its recent refresh, which was something that customers appreciated.

6.90 Athito said that Agencyport had been bought and sold several times over the last six years and each time the management team had changed. It thought the current management had invested a lot in the product and had appropriately positioned its commercial strategy.[164]

The competitive constraints posed by other suppliers

6.91 Xchanging submitted that there was a significant constraint on the Parties provided by a large number of competitors. In particular, it stated that:

(a) NIIT was a major player in the provision of software to Lloyd's MAs and would continue to be so in future for three reasons: it had the highest number of Lloyd's MAs, and it had invested heavily in its software. [✀];

[164] Hearing summary.

(b) CSC supplied [✄] Lloyd's MAs and was capable of expanding its offering to PAS for Lloyd's MAs;

(c) eBaoTech had won a contract to supply Argo International Holdings Ltd (ArgoGlobal), a global insurance provider with ten offices worldwide and operations in Lloyd's through its Syndicate 1200. eBaoTech had had consistent commercial success on a global scale and a highly competitive product (GeneralSystem);

(d) Eurobase was the PAS supplier to [✄] Lloyd's MAs and had secured [✄] Lloyd's MAs in the last three years;

(e) Guidewire was bidding [✄]. It already had [✄] Lloyd's customers in its customer base. It was a huge global competitor which was growing rapidly;

(f) Northdoor had [✄] customers in Lloyd's, supplied large and established Lloyd's MAs and had been successful in recent tenders; and

(g) a research report by Celent identified ten competitors to the parties that were active in the provision of PAS to Lloyd's MAs. It noted that the Lloyd's website also listed numerous providers of administrative software within Lloyd's. A number of press releases showed that eBaoTech, Eurobase, Fineos Corporation (Fineos), Guidewire, Northdoor, Sequel, Unirisx, and Zov Solutions had won contracts to supply products to participants in Lloyd's.[165]

6.92 Xchanging noted that a number of its competitors had recently announced revisions, updates or new investment:

(a) As recently as October 2014, NIIT had announced the launch of its +ADVANTAGEsuite software.[166] This was a new PAS platform which, like Xuber, was designed as a highly configurable platform that could be adapted to the needs of special classes of business.

(b) In July 2014, Sequel had announced that it had received private equity backing from HgCapital.[167] The stated objective behind the investment was specifically to expand its position in the London market; and

165 Initial submission, paragraphs 8.1 to 8.51.
166 See NIIT technologies website, *NIIT Technologies Launches +ADVANTAGEsuite*.
167 See Sequel website, *HgCapital announces investment in Sequel Business Solutions*.

(c) Guidewire's R&D expenditure in developing its products highlighted its future growth intentions. Guidewire was ‘Investing primarily in Europe’.[168]

6.93 Xchanging further told us that it monitored a wide range of competing PAS suppliers, including those which operated in both Lloyd’s and the LCM. This was achieved through desk research and insider knowledge of competitors held by Xchanging employees, rather than customers, who did not tend to share any information on other PAS suppliers. It acknowledged that the documents provided to us covered a broader spectrum of competitors than purely those operating in the Lloyd’s PAS and the LCM PAS markets.[169]

6.94 Our review of Xchanging’s internal documents shows that it monitors its competitors [✄] and that consequently several of its assessments include comparisons of [✄].

6.95 We noted that the research reports and press releases quoted by Xchanging in 6.91(g) and 6.92 were not specific about the products sold by the identified providers, and that this might include stand-alone components, such as claims management solutions. These sources of evidence were also not informative about the perceptions that Lloyd’s MAs or LCM carriers had of these suppliers or how successful implementations had been. We therefore did not consider these sources of evidence to be reliable and obtained evidence directly from customers and the suppliers that had been identified through our market share and tendering data analysis as being credible alternatives.

6.96 We set out below the evidence received through responses to our questionnaires and hearings with customers and competitors. In evaluating the competitive strength of the various suppliers on a forward looking basis, we took account of the underlying cyclical nature of the industry, which is a reflection of the investments made by suppliers. This was highlighted explicitly both by Xchanging and by a number of third parties.[170]

NIIT

6.97 NIIT told us that AdvantageSuite was well received in the market. It provided customers with a system of decision making, ie it was capable of analysing risk at the point of underwriting as opposed to a system of record keeping, ie a system purely dedicated to the retrieval of information and management of claims. Customers were able to buy one combination or more of the software

[168] Initial submission, paragraph 7.109.
[169] Initial submission, paragraphs 8.43 to 8.46.
[170] Initial submission, paragraph 7.108 and Figure 12. Athito, [✄].

packages and as AdvantageSuite was componentised, they were also able to purchase one of more components within the three individual software packages (eg the geocoding engine within Exact).

6.98 Customers appeared to have mixed views about NIIT. On the one hand some customers told us they regarded NIIT as one of the key suppliers in the London market and another customers told us it was willing to consider NIIT as a supplier. On the other hand, however, some customers had reservations about NIIT’s reputation relating to delivery.

6.99 Further, some customers told us that NIIT had not invested sufficiently in the development of Subscribe in the past. One customer also raised issues about the fact that NIIT’s newly launched AdvanceSuite had not been adopted by any customer so far.

6.100 Finally, one customer had reservations around [✄].

6.101 PAS suppliers appeared to confirm customers’ views that NIIT had struggled to win new business and had reputation issues due to some failed delivery in the past. Also, one supplier raised the fact that NIIT’s new software was unproven which made it harder for it to win customers.

Sequel

6.102 Sequel told us that its aim was to achieve a larger market share in London and also to grow internationally. It said that it had just won one client in Europe and one in the US for its new software package – Sequel Impact.

6.103 It told us that presently it was focusing on areas of the business that were covered by its end-to-end applications and then expanding the functionality provided. [✄]

6.104 It said people had bought from it initially because it was reliable and known in the market for being very good at delivery. Over the years the functionality of its software had become better and more robust and it had started to innovate a lot more and create new applications. Sequel Impact was one of its new products for exposure management and it had been extremely successful. [✄]

6.105 Sequel said that it had been winning new customers, but it had also been retaining clients that it had already won. Therefore it was not having to replace lost business, but rather adding business to its portfolio and this was what was allowing it to grow.

6.106 Customers generally viewed Sequel as a strong player currently, with a strong product offering and reliable servicing. In particular, one customer noted that Sequel was the only supplier which had updated part of its software, made it work and gained traction in the market. Another customers said that Sequel's front end functionality was intuitive and easy to use and explained that this was important because underwriters input information in the system directly, without the use of back office services. Another customer noted that Sequel had had stable ownership for a long time and was financially solvent. Sequel was also regarded by one customer as the market leader.

6.107 One customer told us that, about five years ago, Sequel was offering a basic product but that it had improved its product considerably since then. However, another customer told us that, although it had improved its product, Sequel still needed to further improve, by developing a fully web-enabled solution and by making its product simpler. Another customer said that PAS products raise and fall in a bell-shaped fashion and that, although Sequel was currently the best product available, it may go down in the future.

6.108 PAS suppliers identified Sequel as a strong competitor. [✂][171]

Eurobase

6.109 Eurobase told us that its investment in the technology and functionality of its product was closely aligned to the market. It said that it had built a single product that could work in both Lloyd's and the LCM, and that to the best of its knowledge no other vendors had a single software that covered both Lloyd's and the LCM bureau functionality.

6.110 It said that it was looking to grow that business over the coming years. It said that it was presently implementing its synergy2 PAS for Newline, which is in both Lloyd's and the LCM. It was upgrading Newline from one of its legacy products onto the latest version of its software and it said that Newline was in the process of deploying it in Lloyd's, the LCM and also Australia and Singapore.

6.111 Eurobase told us that it was intending to engage with all the syndicates and the LCM directly and that it had an established network of contacts. It thought that as it was a London-based organisation and was known in the marketplace, and that with a recently proven implementation of synergy2 product, Eurobase would be well positioned when organisations were considering changing their PAS.

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[171] One supplier [✂] told us it [✂].

6.112 It was hoping that when Newline completed the final phase of deployment in the summer, people would look to see how successful the implementation had been as this would be the most recent deployment of a new system and that this would provide it with the required credibility to grow its sales of synergy2. Eurobase was confident that the functionality and technical strength of its system would help it expand its presence in the London market.

6.113 Customers' views on Eurobase were somewhat mixed. [✂]

6.114 [✂]

6.115 Other customers had mixed views about Eurobase. Some said they would give consideration to Eurobase's product: one explained its product was good and 'hard to fault', another said it would consider Eurobase among its top three choices. However, one customer said Eurobase's software did not have all the functionalities it had claimed to have [✂] and another customer said Eurobase's software was old fashioned (although it might have been referring to Eurobase's previous PAS called synergy, as it went to market in 2010/11).

6.116 [✂] told us that throughout the 1980s and 1990s Eurobase had had a poor market reputation, not due to its software, but rather due to its relationship management with the MAs. Since then, few companies in London had considered Eurobase when purchasing a PAS.

6.117 PAS suppliers also appear to have mixed views about Eurobase. [✂]

CSC

6.118 CSC told us that it probably owned the largest set of IP rights in PAS in insurance globally, and this included insurance which covered life, general and personal, accident and health.

6.119 The reinsurance business had over 80 customers worldwide, which all used SICS, its PAS.

6.120 CSC told us that its business heritage lay in reinsurance and when the SICS product was first developed over 30 years ago, it had focused on reinsurance and had been sold in Europe. When the SICS product was introduced to the London market it became more aligned to PAS whereby SICS was capable of handling reinsurance in with business, as well as direct insurance – the latter too being a high value business with the ability to insure vessels, large properties and large engineering projects. CSC said it was important with respect to Lloyd's that the system had the capability to handle reinsurance and direct insurance.

6.121 CSC has two customers which operate as Lloyd's syndicates. In the past five years, CSC said it had seen more of a need for its type of product in the London market. As syndicates had become part of larger organisations, and so more global, a product like SICS had become more attractive and affordable because of its capabilities and it satisfied more of the larger groups' requirements, rather than focusing only on the needs of the London market. [✂]

6.122 CSC said the SICS' product strength was seen when a comprehensive decision was made through a whole cross spectrum of users in an organisation – from underwriters through to claims and technical accountants. CSC said that the underwriters at the front end just wanted to capture their data quickly and move on, but SICS provided a balance of use and functionality that also responded to the business's future needs. For example, as Lloyd's had become more regulatory-focused and demanded a breakdown of data and that a higher standard be maintained, SICS' strengths had become more obvious.

6.123 CSC believed SICS was very rich in functionality and supporting the regulatory reporting data. [✂]

6.124 CSC said that feedback on pricing was more difficult to gauge as its charging mechanism appeared to be different to other suppliers. [✂], it believed it was competitive as SICS was a single product with a clear upgrade path.

6.125 Customers generally said that CSC was a large provider, whose products catered for many markets globally. Customers generally saw CSC's product as very comprehensive, but also indicated that such comprehensiveness made it complex to use. One customer explained that CSC's software was mainly designed for back office use and was less suited for being used by underwriters directly. Customers also said CSC's software was expensive and generally not suitable for smaller players.

6.126 Athito said that CSC had a very large, very complex, quite extensive package that it was adapting to fit the working practices of London. It did not have a substantial London-based team to provide local support and implementation services.

6.127 PAS suppliers did not generally consider CSC as a strong contender, although one supplier [✂] said it had recently been coming up against CSC more often.

Northdoor

6.128 Northdoor is an IT consultancy and solutions provider. Northdoor told the CMA (during the phase 1 inquiry) that it was [✄].

6.129 Customers' overall view was that Northdoor was not a strong player in the relevant markets. Although some defined Northdoor as a good player, none of the customers would shortlist it in a PAS selection process. Some customers had reservations about the risks associated with developing a PAS with a significant bespoke element, in collaboration with Northdoor. Overall, customers appeared to consider Northdoor as a supplier of a niche solution, which was not a particularly viable option for many. One customer also said that Northdoor had not invested enough in its product.

6.130 Athito told us that Northdoor's PAS was different as, instead of buying a system with a licence and ongoing updates, a customer would buy a one-off instance of the offering and the cost of ownership then fell on the client to maintain. In the long run, with no licence fee, it made things a lot cheaper, but then there would be the internal cost of maintaining the system.

6.131 PAS suppliers only briefly commented on Northdoor. Two of them identified Northdoor among their competitors, whereas one said Northdoor's proposition differed from its own solution and questioned the strength of the constraint posed by Northdoor altogether.

Guidewire

6.132 Globally Guidewire focused on general insurance and this comprised 95% of its business. It treated the London market as a separate sub market as many of the system requirements were unique. It had developed a specific functionality for the claims processing of London market insurers and it was now going through a similar process for its PAS.

6.133 [✄]

6.134 Guidewire said it had approximately 75 employees in the UK, approximately [✄].

6.135 [✄]

6.136 [✄]

6.137 Guidewire said it had a very good track record and clients had a lot of confidence in it because of complex programmes it had delivered. Switching was a large and complex process which was why the sales cycles were very long – typically 12 to 24 months. It required a very big financial commitment from both the vendor and the customer.

6.138 [✂]

6.139 [✂]

6.140 Customers provided a consistent view that Guidewire was a respected supplier with a strong product proposition. However, some customers indicated that Guidewire was priced considerably higher than other suppliers in Lloyd's and in the LCM. Several customers also identified the lack of Lloyd's and LCM functionalities (as well as a track record of successful delivery in London) as a significant gap.

6.141 Athito told us that Guidewire had a PAS but as its product was not designed specifically for the London market it needed some adapting if it were to be used in a London market environment. It was also more expensive than direct London market competitors.

6.142 PAS suppliers told us that Guidewire was not currently supplying Lloyd's as it had not developed its London market capability. Although some suppliers said Guidewire might soon develop it in collaboration with one customer, other suppliers were more sceptical. [✂] Guidewire however appeared to be active in bidding for London contracts.

Other

6.143 We have received mentions of other suppliers by a very limited number of customers.

(a) **eBaoTech:** this supplier was mentioned by Xchanging but none of the customers we have contacted mentioned it and only two had some degree of knowledge about it. In particular, one of the two said eBaoTech was a big supplier in Asia, whereas the other only said it had heard about it.

(b) **SSP:** one customer identified SSP as a good supplier. However, the same customer also noted that SSP did not offer the Lloyd's or LCM bureau functionality. Further, this customer said that two years ago SSP carried out a Lloyd's gap analysis to identify the requirements to enter Lloyd's but had not entered since. This customer said there were many elements missing in SSP's offering for it to be able to enter the London market.

(c) **Websure:** one customer mentioned Websure as having a good PAS. However, the same customer also said that Websure's PAS could not be deployed in the London market and that it was written in an older technology (although part of it was written in a newer technology). The customer was also concerned about the size of Websure, as it said it would have been its biggest client.

(d) **Oceanwide:** one customer mentioned Oceanwide, although the same customer said it only considered it for its portal.

(e) **Zov:** this supplier was mentioned by Xchanging but none of the customers we have contacted were aware of it. One supplier [✂] noted that Zov was small but a potential threat, as it had won a large client in London and had built specialist software for the London market.

(f) **In-house and bespoke solutions:** one customer [✂] said it was going to replace its LCM solution with the bespoke solution that its parent group had developed in collaboration with [✂] and which was deployed until then in other markets. This customer said that it had developed the LCM features in order to interact with the LCM bureau. Another customer [✂] told us that when replacing its PAS in the future, it could consider a bespoke or in-house solution, although it was not its favourite option but it would have to have good reason for doing it, ie if there was no package available or building its own PAS could be a source of differentiation against other carriers. It had not been in the past.

Changes impacting on demand and supply in Lloyds and the LCM

6.144 As explained in paragraphs 2.20 to 2.22 significant changes have been affecting Lloyd's and the LCM, in particular mergers and acquisition and changes in technology. We considered the likely impact of such changes on future competition in the Lloyd's and LCM PAS markets.

6.145 Agencyport told us that because of insufficient demand insurance rates were declining which was spurring the consolidation of participants in Lloyd's. In this context, suppliers of PAS to Lloyd's MAs had to look for growth opportunities outside of Lloyd's The purchasing decisions of MAs also tended to be made outside of London and to be more global in nature. CSC echoed this view, stating that a company that provided a comprehensive solution that covered Lloyd's, the LCM and overseas was attractive to London customers. Eurobase similarly said that more London market insurers were going global and this development would affect what software would be bought. It gave Newline as an example of an MA that wanted one system that could be implemented as a solution for its entire business globally. Athito on the other hand emphasised the local nature of customers' requirements in terms of PAS and said that there were only a couple (perhaps three or four) MAs where the parent company imposed an international solution and expected it to be adapted to local needs.

6.146 We considered the extent to which a trend towards the globalisation of the insurance industry was impacting demand for global PAS solutions. Using a list of international carriers operating in Lloyd's as our starting point, and complementing this with responses to a questionnaire we sent to Lloyd's MAs and LCM carriers, we established that a sizeable proportion of the carriers which operate within the Lloyd's market and/or within the LCM have an international presence and may in principle have a preference for adopting one PAS solution across their international operations.

6.147 We had hearings with several carriers with an international presence. Some of them indicated that they had a preference for deploying one PAS across their international operations. Others however indicated that the use of one PAS globally was either not desirable or not possible. Taking the evidence of all these customers into account, we consider that, although the possibility of having one PAS to deploy across one carrier's international operations may be attractive in principle to some carriers, the use of multiple specific PAS, each designed for a specific market, is still the preferred option, as suppliers are unable at present to offer products that perform sufficiently well in all markets.

6.148 The IUA told us that the changes resulting from the modernisation programme (referred to in paragraph 2.20) could make it easier in future to adjust PAS for use in the London market as processes, data and data formats would be much more precise, complete and universal than they had been in the past, reducing the need to accommodate variants and ad hoc requests. It did not envisage major changes to the functionality of PAS resulting from increased regulatory scrutiny. Xchanging told us that the extent of any regulatory changes (or indeed whether they would happen at all) was unclear at present. It expected that the primary impact on PAS would be with regard to the data that would be required to be captured and reported. Systems which had a high degree of flexibility and configurability were generally easier to adapt.

6.149 Xchanging told us that the move to ACORD messaging was lowering barriers to entry. This was echoed by Agencyport. Athito told us that the development of ACORD XML messaging had lowered the barrier to entry slightly from a technology perspective, but it was not aware of many clients that had transitioned to the new messaging without a wider change in their environment eg a new PAS. Eurobase on the other hand did not think the development of ACORD standards would make it easier for companies to construct the messaging functionality because it said it was the interaction of the functionality of the messages and the PAS that had to be dealt with, so currently if a vendor did not have any messaging to start with, it would still have to start from scratch.

6.150 A customer [✂] said that when it looked at the market again in three years' time, it hoped the marketplace would have opened up due to all of the modernisation work that Lloyd's was planning to do. The Lloyd's market was moving towards more consistency and industry standards and therefore [✂] hoped there would be other possible providers, not just the present providers which focused specifically on the Lloyd's market.

6.151 This customer said the change in the Lloyd's market was being driven by the modernisation agenda that had been implemented since 2011, including the use of ACORD standards, which aimed to make Lloyd's a simpler place to do business. [✂] thought that the modernisation taking place would make it easier for players like Guidewire and Duck Creek to enter, but it emphasised the pace/timeframe was uncertain and said that it would take around three to five years for the modernisation to take hold.

6.152 Another customer [✂] told us that it was not concerned about the merger because of the changes that were taking place in Lloyd's: the business model of Lloyd's MAs was changing. They now had a more sophisticated ownership base. It said Lloyd's was going through change and this had been taking place for a number of years. There were now fewer owners of MAs in Lloyd's than there had been historically and those owners tended to have other insurance operations elsewhere. If this customer were to replace its Lloyd's PAS, it would consider not only suppliers currently serving this market, but also potential entrants. It considered that the market place had the ability to open up to other players, and that this was the reason why both NIIT and Xchanging had developed new products.

Provisional conclusions on theory of harm 1

6.153 In reaching conclusions on whether the merger could be expected to lead to competition concerns as a result of the loss of one supplier of PAS (Agencyport) to Lloyd's MAs and LCM carriers, we weighed three types of evidence: market shares, tendering data and qualitative evidence received through a series of structured discussions with suppliers, customers and other industry players, as well as our analysis of internal documents and other evidence provided by the Parties. We consider that each type of evidence is informative in its own right and set out below how we took each into account in our analysis and the outcome of our assessment.

6.154 In principle, combined market shares in excess of 30 and 40% may suggest that a merger could result in competition concerns. However, as explained in the *Merger Assessment Guidelines*,[172] in interpreting information on market shares, the CMA may take account of the following factors: the extent to which the products are differentiated, evidence of turbulence in concentration, how widely the market is drawn and the level of variable profit margins. In this case, we note that:

(a) although PAS have historically tended to perform similar functions (paragraphs 2.25 and 2.26), recent product developments (including the development of more sophisticated claims management, analytics and ceding modules by some PAS suppliers, including Xchanging) and the range of criteria used by customers to select a supplier (paragraphs 6.25 to 6.28) show that the overall offering from suppliers (including the supplier's reputation, cultural fit with customer and delivery capability) is largely differentiated;

(b) revenue figures can vary significantly from one year to the next as each new contract accounts for a relatively high proportion of the relevant market in that year; and

(c) all bespoke solutions (including the solutions offered by Northdoor) have been excluded from the market share figures on the basis that, since they do not include ongoing maintenance services and software updates, they are a viable option for a subset of customers which had a large enough IT department to maintain and develop such solutions (paragraph 4.46).

6.155 We also note that because of the infrequency of switching by customers (paragraph 6.14) in the Lloyd's and LCM PAS markets, market shares in this case may reflect the outcome of the competitive process that took place a long time ago and provide an unreliable measure of suppliers' market power today and in the near future.

6.156 Taking each of the above into account, we do however consider that market shares provide a measure of customers' preferences on a historical basis, and given the importance of track record and reputation in the two relevant markets, we consider that they could be one indicator of a supplier's possible future success in the markets, including its ability to persuade customers to take up its new products. We therefore considered that market shares had some value as an indicator of the number and identity of the competitors that were likely to continue to serve the market in the future. We also considered

[172] *Merger Assessment Guidelines*, paragraph 5.3.2.

that with a [30–40]% combined share, the Parties would in principle be in a good position to roll out new products in this market successfully.

6.157 The tendering data we analysed focuses on competitive activity that took place in the past five years in Lloyd’s and in principle should provide a good indicator of the competitive process in the recent past. We noted that [✂] won the highest number of bids over the period, followed by [✂] and [✂]. We considered that this provided a useful indicator of the competitive strength of these three suppliers in the Lloyd’s PAS market in the recent past. However, as set out in Appendix F, the available tendering data cannot provide a full picture of current or future competition in the relevant markets. In addition, during the relevant period Xchanging was in a period of transition: it launched a new product which was not yet ready for the London market, it stopped actively selling its legacy products and it focused its sales efforts on other geographies, particularly the US. For this reason, we do not consider the fact that it has taken part in few tenders and won even fewer is a reliable indicator of its competitive position in current or future tenders in the relevant markets.

6.158 We noted the dynamic nature of competition in the relevant markets, including the changing fortunes of suppliers, driven by product launches or upgrades, varying successes in systems implementations, or lack of investment in new product development by suppliers at various points in time. As explained in paragraph 2.46 and above, Xchanging launched the Xuber platform to replace its suite of legacy products in 2012, NIIT launched its AdvantageSuite in October 2014, [✂] and we expected that Agencyport would have started to roll out a componentised solution in 2015 absent the merger (paragraphs 6.64 and 6.65). We therefore considered that historic market shares and/or tendering data were unlikely to be reliable indicators of future competitive constraints in the relevant markets.

6.159 In the light of the shortcomings of both market share and tendering data, we gathered extensive qualitative evidence from customers, suppliers and others on the extent to which the merging parties were competing closely before the merger, on the strength of the competitive constraints from other suppliers, and how this is likely to have developed in view of recent developments in suppliers’ product offerings. We set out our conclusions in paragraphs 6.160 to 6.168 below.

6.160 With regards to the closeness of competition between Xchanging and Agencyport, we did not accept that componentisation would have been likely to be a particularly significant factor in the future. We accepted that in general PAS offerings were differentiated, but this was across a number of dimensions (as shown in paragraph 6.26), not simply whether they were componentised or end-to-end, as argued by the parties. We also found that there was a general trend towards componentisation across the suppliers.

6.161 We found that at the time of the merger, there were at least five companies actively competing in the relevant markets, in addition to the two merging parties: NIIT, Sequel, Eurobase, CSC and Northdoor.

6.162 Taking into account the impact of the stage at which suppliers' products were in their life cycles on each supplier's reputation and current success in the relevant markets, we considered that, absent the merger, NIIT, Sequel, Agencyport, and Xchanging had reliably served the Lloyd's and LCM PAS markets and could be expected to continue to do so. This conclusion was based primarily on the evidence we received from customers, suppliers and other industry players, although it is also consistent with both market share and tendering data. Sequel was perceived as the strongest of the four currently (although this had not always been the case). Agencyport was well perceived, although its reputation for poor delivery was still to fully recover from [✄] (paragraph 2.10). Xchanging and NIIT were at a similar early stage in their product life cycle and were both suffering reputationally: NIIT had not sufficiently invested in its products until the launch of its AdvantageSuite and was criticised for past failed deliveries, and Xchanging's reputation was suffering from launching a product that was not finished. Taking a long-term perspective however, we considered these four players held broadly equivalent competitive positions in the relevant markets and could be expected to continue to compete in the future and absent the merger.

6.163 We found that CSC and Eurobase had been weaker competitors historically but were now in a better position to compete with the four main suppliers. Eurobase had historically focused its efforts away from the Lloyd's and LCM PAS markets, but told us that it was now hoping to build on the implementation of its new product (synergy2) with Newline to grow its market position in the Lloyd's and LCM PAS markets. We noted that this was a change of strategy for Eurobase and, as such, there was some uncertainty about its future success. A number of customers told us that CSC was not a credible option for them and CSC itself recognised that it was only suitable for certain types of customers. It has nevertheless won bids in recent years and the consolidation of the insurance industry seems likely to play to its strengths.

6.164 Northdoor's offering is different from that of other PAS suppliers. This limits the appeal of its solution to a subset of customers which have the resources and appetite for maintaining and developing their own PAS solution. We saw no evidence to suggest that Northdoor's competitive position would change in the future and concluded that it would remain a viable option only for some customers.

6.165 Although Guidewire is a notable player in the wider insurance software industry and had sold claims management solutions to customers in the London market, we considered that until it had established some track record specifically in the Lloyd's and/or LCM PAS markets, it would not exert a material constraint on suppliers serving those two markets.

6.166 We found through our hearings with customers that they are sophisticated and have a deep understanding of the options that are open to them and the strengths and weaknesses of the suppliers and their products. They initiated the decision to switch based on reviews of suppliers and carried structured procurement processes in which they decided which suppliers to involve. Due to the cost and potential risk to their core business of a poor product choice or implementation, customers had a strong incentive to find the best option for them (see paragraphs 6.16 to 6.24 for a description of the process they go through).

6.167 We also found that, as well as being sophisticated and well informed, customers had deployed a range of strategies to influence suppliers' offerings or increase their bargaining power in negotiations. This included delaying the switch to a new system by some months or years (paragraph 6.22), sponsoring entry (paragraph 2.43), and joining with other Lloyd's MAs to induce a supplier to develop its PAS (paragraph 6.21).

6.168 We provisionally concluded that, under such circumstances, following the merger, customers were likely to be left with a large enough set of credible options to discipline the behaviour of suppliers, and thus prevent increases in prices, degradation of service quality or lower levels of innovation in the relevant markets. Although the precise set of options was likely to differ from one customer to another depending on their individual circumstances, we expected that there would be a sufficient number of credible options for all customers.

6.169 We noted that, if anything, the changes affecting the London market more generally (including mergers and acquisitions, and technology changes) would over time increase the range and credibility of the various options that customers could draw on in their negotiations with suppliers.

6.170 We therefore provisionally concluded that the merger was unlikely to result in an SLC in the Lloyd's and LCM PAS markets as a result of the loss of Agencyport.

6.171 As set out in paragraphs 6.70 to 6.81, we considered Xchanging's future plans for Agencyport's PAS. Some board papers that it had produced prior to the merger showed that [✂]. During our inquiry, Xchanging told us that it [✂].

It produced little documentary evidence in support of [✂]. We considered that the available evidence on this issue was mixed and to some extent contradictory.

6.172 However, we considered that this issue was primarily relevant to our assessment of the closeness of pre-merger competition between the parties and that all else equal, [✂]. As set out in paragraph 6.170 above, having considered the totality of the evidence that was presented to us in the course of the inquiry, we provisionally concluded that the merger would not result in an SLC as a result of the loss of a competitor in the Lloyd's and LCM PAS markets. We therefore did not need to reach a view on [✂].

Theory of harm 2: conglomerate effects

6.173 We explained in our issues statement that during phase 1 of the investigation,[173] it was contended by third parties that following the merger and the acquisition of TOL, because Xchanging would be able to offer a wider bundle of products to customers, its competitors would be unable to match the attractiveness of Xchanging's offer and would be foreclosed, ie they would be forced to exit the relevant markets.

6.174 We stated that our current view was that the merger was not likely to increase materially the ability of Xchanging to foreclose competitors because:

(a) only one product (exposure modelling) would be added to Xchanging's portfolio and so far we have seen no evidence that this is an essential requirement for customers in the relevant market or markets (and in particular for MAs); and

(b) the evidence gathered in phase 1 suggests that customers do not generally have a preference for one-stop-shopping and that there may be disadvantages in purchasing bundles of software.

6.175 We also considered that because it would be likely to take a long time for a foreclosure strategy to be implemented due to significant switching costs, Xchanging would be unlikely to have an incentive to pursue such a strategy.

6.176 The evidence we gathered since publication of the issues statement was consistent with the view that the merger was not likely to increase materially Xchanging's ability to foreclose competitors. In particular, we explored with customers in hearings how they select a PAS supplier and which aspects of the offering they value (see paragraphs 6.16 to 6.28). None of the customers

[173] See referral decision, paragraphs 185 and 186.

we spoke to said that supplying a broad range of products beyond PAS was a factor in selecting a PAS supplier. In fact, some customers indicated that purchasing a full suite of products from one supplier entailed a higher delivery risk than purchasing from separate suppliers.

6.177 In the course of our investigation, additional concerns were expressed both by customers and competitors about Xchanging's overall competitive strength across the products and services it sells to participants in Lloyds and the LCM:

(a) A number of customers expressed concerns about Xchanging's position as the sole provider of central services to Lloyd's MAs. The primary source of customers' discomfort appeared to stem from Xchanging's control over the provision of central bureau services, and the perceived accretion of market power resulting from controlling a wider range of products. One of the customers said it would not be interested in buying products from Xchanging, as it didn't have products to attract them, and Xchanging's position in the market was off-putting. One customer, albeit not concerned about the merger, noted that as the supplier of bureau messaging services, Xchanging knew how Lloyd's operated, which gave it a competitive advantage.

(b) **NIIT** raised concerns that, following the merger, Xchanging had access to the entire end-to-end set of products that a player in the market needed and could leverage its central processing function to distort the market to the detriment of its competitors. NIIT was not concerned with bundling as such.[174] [✂][175]

(c) **Eurobase** was concerned that Xchanging would always be aware of all movements in the market, particularly new entrants, because it managed the bureau. Eurobase said it believed this gave Xchanging a competitive advantage in knowing who to target and it said that it thought the first vendor to consult with a new player, or someone looking to upgrade, could influence the selection process quite significantly. Eurobase said that even established MAs didn't buy a new PAS solution often and so speculated that they would be more comfortable buying from someone that they had engaged with for a longer time.[176]

(d) [✂]

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[174] Hearing summary.
[175] Hearing summary.
[176] Hearing summary.

6.178 Broadly, the set of concerns listed above relate to Xchanging's position as the sole provider of central bureau services for Lloyds and the LCM. The key concern appears primarily to relate to the alleged ability of Xchanging to use the privileged information about new MAs starting their operations within Lloyd's or new carriers starting operating within the LCM to approach these customers sooner than other providers. According to third parties, this position would provide Xchanging with a competitive advantage over other suppliers, as Xchanging would be in a better position to induce new customers to take its products.

6.179 Our analysis of customers' approach to the selection of PAS providers, however, indicates that customers are sophisticated, consider multiple suppliers and engage in a formal bidding process and/or in negotiations with them prior to making any decision on which PAS to purchase. Also, customers generally appear to share feedback on different suppliers' performance with each other and, in some cases, employ experienced consultants to carry out the selection process on their behalf (see paragraphs 6.23 and 6.24).

6.180 This evidence suggests that, even if Xchanging did have a competitive advantage deriving from being aware of the arrival of new MAs and/or carriers starting in Lloyd's or the LCM before other suppliers, such advantage would be unlikely to be material or in any case sufficient to lead to the foreclosure of competitors.

6.181 For the avoidance of doubt, our investigations, including our review of significant amounts of internal documents, have not uncovered any evidence that would suggest that Xchanging has, or believes that it has the ability to leverage its position as the provider of central bureau services in the ways described by third parties (as set out in paragraph 6.177).

6.182 We also consider that any such competitive advantage would not be merger specific. The merger does not affect Xchanging's ability to approach new customers ahead of other suppliers, as Xchanging was the provider of central bureau services prior to the merger. To the extent that this advantage is material, Xchanging would hold it absent the merger.

6.183 We therefore provisionally conclude that competition concerns are unlikely to arise in relation to this theory of harm.

6.184 Since we provisionally concluded that the merger was unlikely to result in competition concerns, we did not need to consider whether there were countervailing factors, such as entry into the relevant markets or buyer power.

7. Provisional conclusions

7.1 We provisionally conclude that the merger between Xchanging and Agencyport has not resulted and may not be expected to result in an SLC within any market or markets in the UK for goods or services.