Anticipated acquisition by Mortgage Brain Limited of Mortgagestream Limited

The OFT's decision on reference under section 33(1) given on 20 March 2012. Full text of decision published 16 July 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Mortgage Brain Limited** (**Mortgage Brain**) is active in the supply of mortgage sourcing software, an electronic mortgage trading platform and point of sale (POS) compliance software to mortgage introducers, including mortgage brokers and independent financial advisers (IFAs). It is owned equally by six lenders: Santander; Barclays; Lloyds Banking Group; Nationwide; Northern Rock; and Royal Bank of Scotland. For the financial year ended 31 March 2011, Mortgage Brain achieved a UK turnover of £[ ] million.

2. **MortageStream Limited** (**MortgageStream**) provides POS compliance software to mortgage introducers. In the year to 31 December 2010, MortgageStream achieved a UK turnover of £[ ] million.

TRANSACTION

3. Mortgage Brain proposes to acquire MortgageStream, subject to competition clearance. The OFT's administrative deadline is 20 March 2012.

JURISDICTION

4. As a result of this transaction Mortgage Brain and MortgageStream will cease to be distinct.

5. Since MortgageStream's UK turnover for the 2011 financial year was £[ ] million, the transaction does not meet the jurisdictional turnover threshold set out in section 23(1)(b) of the Enterprise Act 2002 (the Act).

6. Mortgage Brain and MortgageStream (the parties) overlap in the supply of POS compliance software to mortgage brokers who use third party POS compliance mortgage software and are authorised by the FSA to conduct mortgage business but not pensions and investments. This creates an estimated combined share of supply in the UK of around [more than 25] per cent, with an increment of [0-10] per cent. The share of supply test in section 23 of the Act is therefore met.

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

BACKGROUND

Mortgage intermediaries

8. Mortgages are sold either directly by the lender or through intermediaries (also known as 'mortgage introducers'). Such intermediaries can be:

- mortgage brokers who sell primarily mortgages and, to a lesser extent, related financial products[1]
- IFAs who sell mostly financial products other than mortgages, and
- estate agents offering mortgage provision services.

9. Mortgage intermediaries must comply with the FSA regulations and to ensure compliance they either:

- become directly authorised (and regulated by the FSA) (DA) or
- join an appointed representative (AR) network (an umbrella organisation authorised by the FSA which acts on behalf of its members, among other things, to ensure compliance).

10. In addition, there are mortgage clubs ('affinity clubs') that offer products and services to FSA-authorised mortgage intermediaries and benefit from collective buying conditions before lenders and other suppliers.

[1] Such as home or payment protection insurance.

Mortgage compliance software

11. To comply with FSA regulations mortgage intermediaries must complete five distinct pre-sales stages when advising or recommending mortgages to end customers.[2] Mortgage compliance software helps them manage their clients' applications whilst complying with the FSA's rules at the point of sale.[3]

MARKET DEFINITION

12. The parties overlap in the supply of POS compliance software for mortgages (POS mortgage compliance software).[4]

Product market

13. Mortgage Brain submits that the relevant product market in which the parties' activities overlap is the development and supply of POS compliance software.

14. As noted in the *TrigoldCrystal* case, the OFT considers that this delineation is a reasonable starting point for its competitive assessment, based on third party responses on demand-side aspects.[5] However, as a result of customer preferences, the OFT additionally considers whether it would be appropriate to define a separate markets for POS compliance software for 'mortgages-only'. It also considers whether this frame of reference should include software supplied to third parties and that developed in-house for own used in the same relevant candidate market.

[2] See further OFT decision of 17 March 2011 on the anticipated acquisition by MBL Holdings Limited of TrigoldCrystal Group Limited (*TrigoldCrystal* decision), paragraphs 9 and *ff.*
[3] See further paragraphs 13-16 of the *TrigoldCrystal* decision.
[4] Mortgage Brain, most competitors and customers agree that POS mortgage compliance solutions often include functionalities for processing other products. Most commonly, they include general insurance products, since they are often sold contemporaneously to mortgages to the same customers. Unless otherwise specifically stated, POS 'Mortgage-only software' includes POS mortgage compliance software and some accessory software solutions.
[5] The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. If appropriate, the OFT then considers if substitution on the supply-side allows several products, which are not demand-side substitutes, to be aggregated into one wider market (see Merger Assessment Guidelines a joint publication by the OFT and the Competition Commission (OFT 1254)- (*OFT/CC Merger Assessment Guidelines*) paragraphs 5.2.17 and *ff.*)

Mortgage–only compliance software

15. On the demand side, customers told the OFT in the *TrigoldCrystal* case[6] that POS compliance software that includes pensions and investments (IFA Software) does not compete to any significant extent with mortgage-only compliance software. Those customers submitted that POS compliance software for broader types of products including pensions and investments is substantially more expensive than mortgage-only compliance software and that it is targeted at IFAs, and not specifically financial intermediaries whose main business is mortgage broking.

16. Customers and competitors in the OFT's present investigation have corroborated the above findings of the *TrigoldCrystal* case. Customers of the merging parties indicated that they would not switch to more general IFA software solutions following a five per cent price rise of mortgage-only software solutions. This would suggest limited demand-side substitution.

17. On the supply-side, Mortgage Brain argued that suppliers of IFA software solutions are capable of producing software packages targeted at the mortgage sector. It submitted some examples of competitors who have historically operated in the pensions and investment market and who have recently launched products specifically targeting mortgage brokers. It cited software developers such as Focus Solutions, Intelliflo, Distribution Technologies, and Avelo.

18. Evidence from competitors on this point was mixed. The main argument from competitors against Mortgage Brain's statement was that it would involve significant investment (and time lapse) and the return on that investment is uncertain.

19. On the basis of the evidence above and on a conservative basis, the OFT believes that it is appropriate to distinguish mortgage-only POS compliance software from IFA POS compliance software.

Self-supplied compliance software is not included

20. The OFT also considered whether self-supply by customers of the merging firms should be included in the relevant market. The OFT will generally include self-supply if the ability of customers to choose this option affects the profitability of a price rise. Many customers indicated that self-supply would not be cost effective. On this basis, the OFT does not include self-

[6] See footnote 3 above.

supply of specialist software in the relevant market.

Customer groups

21. In determining whether there are separate customer groups, the key question is whether some customers could get better terms for the same requirements. In such instances, depending on the circumstances of the case, the OFT may decide to define two or more relevant markets, or it may decide to define only one relevant market and note the scope for price discrimination within it.

22. The OFT may define narrow relevant markets by customer group when:

- customers who pay a low price cannot resell to those who would otherwise pay a high price
- suppliers can identify those with a high willingness to pay, or those in a weak bargaining position, and therefore can adopt a different negotiating stance toward them, and
- customers have different preferences, or have access to different sets of suppliers.[7]

By type of mortgage intermediary

23. Mortgage Brain did not consider that there were any distinct customer segments. However, POS compliance software suppliers tend to target mortgage brokers separately from IFAs. These two groups tend to use different software; in particular IFAs were less likely to use mortgage POS compliance software. While there was limited evidence that suppliers charge different prices to the two groups when they required the same software (only one competitor noted that it was possible to charge different prices), the OFT considers, on a conservative basis, that it is useful to distinguish between mortgage brokers and IFAs. This will help the OFT to distinguish between the functionality of the different software. In addition, competitors informed the OFT that in some cases IFAs' requirements for mortgage functionality may be less demanding than for mortgage brokers because IFAs focus more on other financial products such as pensions and investments. This may suggest that IFAs can negotiate lower prices than mortgage brokers for mortgage compliance software.

[7] See *OFT/CC Merger Assessment Guidelines*, paragraphs 5.2.29 to 5.2.30.

By size of mortgage intermediary

24. The OFT also considers, on a conservative basis, that it is appropriate to make a distinction between large and small mortgage intermediaries. This is because both the merging parties and their competitors stated that they offered discounts for a greater number of user licences that tend to be purchased by larger customer. Larger customers also tend to use tenders in their procurement, whereas smaller customer have a more informal evaluation process. Larger customers include DA mortgage introducers and AR networks.

25. Smaller customers tend to be DA who do not form part of any AR network.

26. No evidence was presented to the OFT indicating that estate agents form a distinct customer sub-segment of the wider mortgage broker customer group or that a distinction should be made between large DA firms and AR networks. Competitors to the merging parties considered that the tendering process of both customer groups are largely the same and did not report any difference in price charged to AR networks compared to larger DA firms.

27. In defining customer segments, the OFT also considers whether it is possible to widen the market because of reselling from one group to another. Given that suppliers license their software to specific firms, this is not possible in the supply of mortgage POS compliance software. The only scope for reselling would be if a DA mortgage intermediary joined an AR network, which would entail a significant change to the business model and cost structure of the mortgage intermediary. The OFT therefore discounts this as a credible type of reselling.

Geographic scope

28. UK based mortgage intermediaries must comply with rules specific to the UK that are set by the FSA. These mortgage intermediaries therefore require POS compliance software that has been developed for the UK specifically. Third-parties confirmed this view including the limited scope of supply-side substitution with products targeted at non-UK markets. The relevant geographic frame is therefore the UK.

Conclusion on market definition

29. The OFT has left open the precise product scope for the supply of POS mortgage compliance software. In the competitive assessment the OFT excludes self-supply and draws a distinction, on a conservative basis, between POS compliance software that includes pensions and investments functionality and software that does not include such other financial products in addition to the standard mortgage-compliance functionality. The OFT also considers the impact of the merger on mortgage brokers and IFAs as well as making a distinction by size of firm. The OFT considers that for all of the above frames of reference, the appropriate geographic market would be a national one.

COMPETITIVE ASSESSMENT- HORIZONTAL UNILATERAL EFFECTS

Development and supply of mortgage-only POS compliance software in the UK

Market shares

Mortgage Brain's estimates

30. Mortgage Brain estimated the parties' combined market share will be [five-15] per cent of the 16,495 firms authorised to sell mortgages by the FSA ([five-15] per cent supplied by Mortgage Brain and [0-10] per cent by MortgageStream). They argued that, of these 16,495 firms, 5,067 were 'mortgage-only' in the sense that they were registered by the FSA to advise on mortgages, general insurance and protection but not investments and pensions. They estimated that together they supplied [10-20] per cent of these 'mortgage-only' firms.

31. The OFT questioned Mortgage Brain's approach in calculating the parties' combined market shares in this way. Firstly, firms vary significantly in size. Some may have many users (100 or more) of the software, whereas others may be sole traders. If the merging parties supply most of the larger firms, shares based on a firm count would significantly understate their shares in the supply of the software.

32. Secondly, it is not clear how many of the firms registered with the FSA use (or demand) the type of POS compliance software supplied by the merging parties and their competitors. As noted in the market definition discussion, some may develop the software in-house, commission the development of bespoke software or use non-specialist software like Microsoft Excel.

33. Thirdly, the merging parties may have included firms active in general insurance and protection but not mortgages. For example, the merging parties included all firms supervised by [ ], an AR network. They conceded that although [ ] is registered to conduct mortgage business, its current focus is clearly insurance and health insurance (the OFT only identified a few of the brokers it supervised as providing mortgage advice).

34. The FSA reports[8] that as of 31 December 2011 there were 3,937 firms that conduct mortgage (and other home finance) mediation as their main regulated activity, 2,425 of which are supervised by an AR network and 1,512 that are DA by the FSA. The OFT considers that these are the firms that relatively more likely to use the type of POS software provided by the merging parties and its closest competitors.

35. The parties supply [20-30] per cent of the 3,937 firms that list mortgage broking as their main activity ([15-25] per cent by Mortgage Brain and [0-10] per cent by MortgageStream).[9] The FSA lists a further 3,681 DA firms as conducting mortgage and other home finance mediation but not as their main activity (for example some IFAs).[10] The merging parties supply two per cent of these firms ([0-five] per cent by Mortgage Brain and [0-five] per cent by Mortgage Stream).[11]

36. Given the doubts about what the problems with estimating these shares using FSA registered firms, the OFT places limited weight on them. However, the difference in the merging parties' shares in these two customer segments demonstrates the merging parties' particular strength in supply to mortgage brokers, compared to IFAs. The parties' share of [20-30] per cent to the businesses mainly active in mortgage broking may still understate the parties' share of third-party supply of POS compliance

[8] Available at www.fsa.gov.uk/about/who/management/teams1/retail/statistics

[9] Mortgage Brain supplies its branded product, *The Key* to [ ] mortgage brokers and MortgageStream supplies [ ] (and the merging parties supply [ ] altogether).

[10] The FSA does not report this for (IFA) firms supervised by an AR network so the OFT has not estimated the merging parties' shares to this customer segment.

[11] On the basis that the merging parties supply [ ] Directly Authorised IFAs ([ ] by Mortgage Brain and [ ] by MortgageSteam).

mortgage software. As with the parties' own estimates, it does not take into account usage, nor does it strip-out self-supply.

37. The merging parties also argued that their combined share based on user numbers for all types of professional intermediary advising on mortgages was 14 per cent. However, the OFT places limited weight on this estimate as it does not strip-out self-supply and because the OFT could not verify the parties' assumptions with independent data (on the total number mortgage advisors and the number of additional users such as administrators per advisor).

Third parties' estimates

38. Through third-party enquiries, the OFT has identified a number of 'Mortgage Systems Providers' that actively compete with the merging parties in the supply of POS compliance software for mortgages. This includes [ ], [ ], [ ], [ ], and [ ].

39. These competitors focus particularly on the mortgage sector. Most only offer software for mortgages, general insurance and protection but some have expanded their software's functionality into pensions and investments, namely [ ] and [ ]. All supply their software to third-parties; mainly mortgage brokers but also IFAs. Based on total user numbers provided by these competitors and the merging parties, the OFT estimates that the merging parties' combined share in the supply of POS compliance mortgage software is at most [45-55] per cent ([30-40] per cent for Mortgage Brain and [10-20] per cent for MortgageStream). Table 1 below provides the merging parties' shares against these competitors that mainly focus on mortgages.

Table 1 Shares of supply of POS compliance software that mainly focuses on mortgages

	User numbers	Share of users (per cent)
Mortgage Brain (The Key)	[ ]	[30-40]
MortgageStream	[ ]	[10-20]
Merging parties combined	[ ]	[45-55]
TrigoldCrystal (Momentum)	[ ]	[20-30]
Mortgage Keeper	[ ]	[10-20]
Lifetime (360Lifecycle)	[ ]	[10-20]
Home Buyer Systems	[ ]	[0-10]
CDS (Client Core)*	[ ]	[0-10]
Total	[ ]	100

Source: Relevant companies by user numbers.

* CDS has only just launched its system and is expecting to sign up a customer with around [ ] users.

40. The market shares above indicate that the merging parties will face a constraint from at least five other competitors that mainly focus on mortgages. While among these competitors the merging parties' combined share may be as high as [50-60] per cent, their products are differentiated and, as set out below, the OFT considers that the merging parties are not particularly close competitors. This is assessed below.

Closeness of competition

41. Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete closely. Unilateral effects may arise because a price increase becomes less costly when the differentiated products of the two firms are brought under common ownership or control. To assess whether the merger results in unilateral effects under differentiated products, the OFT considers:

- closeness of substitution between the merging firms' products
- variable profit margins of the merging firm's products, and
- price sensitivity of customers.[12]

[12] See *Merger Assessment Guidelines*, paragraphs 5.4.6 to 5.4.9.

Closeness of substitution

42. In the present case, no customers considered the merging parties to be close competitors. Some customers considered that the merging parties' software would complement, rather than compete, with each other.

43. Mortgage Brain submitted that while both merging parties develop and supply POS compliance software in the same market, they target firms of very different profiles. As such Mortgage Brain considered that competition between the parties is much less than may be expected from the above estimated market shares.

44. The parties provided data on their revenues by customer size (presented in Figure 1 below). On the one hand, around [70-80] per cent of revenues from Mortgage Brain's The Key are from customers with more than 100 users. In contrast, only [0-10] per cent of MortgageStream's revenues are from customers with over 100 users. These larger customers are typically AR networks or large DA firms.

Figure 1 Merging parties' breakdown of revenues by customer size in the supply of POS compliance software

[ ]

Source: OFT analysis of the merging parties' customer data

45. On the other hand, most ([70-80] per cent) of MortageStream's revenues are from small customers (with fewer than 20 users), whereas only [0-10] per cent of revenues from Mortgage Brain's, The Key, are from small customers. These customers are typically smaller DA firms.

46. The difference in the revenue mix of Mortgage Brain and MortgageStream suggests that they are not particularly close competitors. This suggests that MortgageStream is not exerting a significant competitive constraint on Mortgage Brain in the supply of POS compliance software to larger customers. Likewise, it suggests that MortgageBrain only exerts a limited competitive constraint on Mortgage Stream in the supply to smaller customers.

47. Consistent with Mortgage Brain's submission, customers' replies indicated that there are a number of reasons why Mortgage Brain is stronger in the supply to larger firms and MortgageStream more successful with smaller

firms. Larger firms tend to require more customisation and on-going support, which Mortgage Brain has more resource for compared to MortgageStream. Smaller firms tend to seek simpler and easier to use software systems. The perception among some third-parties was that MortgageStream was very easy to use, which could explain its success with smaller customers.

48. The differences in the functionality of the merging parties' software also limit competition between Mortgage Brain and MortgageStream to some extent. Mortgage Brain offers mortgage-sourcing and mortgage trading software fully integrated with its POS compliance software, The Key (as well as offering The Key on a standalone basis). MortgageStream does not offer mortgage-sourcing and mortgage trading software. Some third-parties also indicated that MortgageStream had a very strong back-office and Customer Relationship Management system, whereas they considered The Key to be mainly a POS compliance system. This corroborates the merging parties' submission that The Key places a great deal of emphasis on compliance and that MortgageStream has some back office functionality not found in The Key (such as a ledger facility to manage the business and bank accounts).

49. The parties submitted information on [ ] recent tenders for mortgage POS compliance software that either (or both) of the merging parties actively participated in.[13] These are typically undertaken by larger firms but not smaller ones. Mortgage Brain's The Key was short-listed [ ] times and ultimately selected [ ] times. In contrast, Mortgage Stream was only short-listed [ ] times and won [ ] contracts. There were only [ ] instances where both The Key and MortgageStream were short-listed. In both these instances, MortgageStream was selected. While this points towards some competition between the merging parties, the lack of times that MortgageStream was short-listed suggests that the extent of competition is limited.

Variable profit margins and price sensitivity of customers

50. As the marginal cost of supplying software is low, variable profit margins are likely to be high. There was mixed evidence on the price sensitivity of customers. Some customers indicated that it was easy to switch, whereas others (mainly larger customers) considered that switching would be costly.

[13] There may have been other selection processes where the merging parties were not involved and of which they had no knowledge.

Conclusion on closeness of competition

51. While it is clear that Mortgage Brain and MortgageStream compete to some extent in the development and supply of POS compliance software, the OFT does not consider that they are particularly close competitors. This is on the basis of the evidence above that the products are not close substitutes including: the different functionality of their software, their different customer profiles and the limited competition in recent tenders between the parties.

Other competitors

52. The OFT identified a number of other competitors with software that mainly focuses on pensions and investments but may also include some mortgage functionality. These include [ ], [ ], [ ], [ ], [ ] and [ ]. These companies mainly target IFAs but may also offer their software to mortgage brokers.

53. Mortgage Brain considered that these 'IFA Providers' are the main threat to mortgage-based systems, like MortgageStream and Mortgage Brain's The Key. The merging parties stated that IFA Providers have entered the market and are generally larger and well funded, making it difficult for mortgage related systems to compete.

54. Based on third-party responses, the OFT has verified that there are at least two IFA Providers ([ ] and [ ]) that compete with the merging parties in the supply of POS compliance software for mortgages, although for the reasons discussed above their actual constraint on the merging parties is uncertain.

Competitive assessment by type of mortgage intermediary

55. The OFT rules out any concerns in the IFA customer segment on the basis that:

    - FSA data indicates[14] that the parties have very low presence with this customer group (only [0-five] per cent of DA IFA firms that offer advice on mortgages use their POS software[15]), and

[14] See paragraph 34 above.

[15] Given that the merging parties' presence is is so low for DA IFAs, the OFT has no reason to believe that the parties' presence among all IFAs and to IFAs that are part of an Appointed Representative network would be cause for concern.

- the parties face stronger competition from IFA Providers that can offer systems that support IFAs' wider requirements in pensions and investments as well as mortgages.

56. In the mortgage broker customer segment, the merging parties will face competition from at least five other competitors that target this segment including [ ], [ ], [ ], [ ] and[ ] . Among these competitors, the merging parties' share is [40-50] per cent for all types of users (as noted in the previous section and as set out in Table 1 above). The OFT expects that in the mortgage broker customer segment, the merging parties' combined share would actually be lower because these competitors target mortgage brokers more than the merging parties. Submissions from these competitors reveal that mortgage brokers account for a higher proportion of their customers, compared to the customer mix of the merging parties.

57. As noted in the previous section, there are also IFA Providers that are active in the mortgage broker customer segment ([ ]) or are in the process of entering ([ ]) although, as stated above, their actual competitive constraint on the merging parties is currently uncertain.

Competitive assessment by customer size

58. A further distinction could be made between smaller customers (DA firms) and larger customers (both AR networks and DA firms). The OFT does not have sufficient data to calculate robust market shares in these two customer segments. However, the OFT has no reason to believe that that there would be cause for concern in these customer segments.

59. Third-parties considered that Mortgage Brain had a stronger presence with large customers, whereas MortgageStream had a stronger presence with smaller DA firms. This view is consistent with information provided by the parties on their revenues by customer size, as discussed under closeness of competition above. As already noted above, the difference in the merging parties' customer revenue breakdowns suggests that MortgageStream is not exerting a significant competitive constraint on Mortgage Brain in the supply of POS compliance software to larger customers. Likewise, it suggests that MortgageBrain only exerts a limited competitive constraint on Mortgage Stream in the supply to smaller customers.

60. On the basis of the available evidence, the OFT does not have competition concerns in any particular customer segment.

Conclusion on horizontal unilateral effects

61. On the basis of the evidence stated above, the OFT considers that there is no realistic prospect of the merger leading to non-coordinated effects in the supply of POS compliance mortgage software.

THIRD-PARTY VIEWS

62. No customers raised any competition concerns. Most competitors were also unconcerned. Two competitors, however, were concerned.

63. One competition concern (by one of the competitors) related to non-coordinated effects. As discussed above, the OFT does not consider that this is a realistic prospect following the merger.

64. The other competitor was concerned that Mortgage Brain might refuse to integrate its mortgage sourcing software with POS compliance software from its competitors following the merger. This concern about vertical input foreclosure is not credible. Given the presence of Trigold's mortgage software (see below), the OFT does not consider that the merging parties would have the ability or incentive to stop integrating Mortgage Brain's mortgage sourcing software with POS compliance software from its competitors.

65. The final competition concerns, shared by both competitors was about anti-competitive conglomerate effects (bundling or tying), for example, Mortgage Brain offering its mortgage sourcing software or its mortgage trading platform to existing MortgageStream clients on a subsidised basis. The implication would be rivals would not be able to match the price of the added product on a standalone basis and break-even, potentially leading them to exit the market and a reduction in competition. However, on the facts in this case, the OFT does not consider this credible for the reasons discussed below.

66. To assess the risk of anti-competitive conglomerate effects, the OFT considers the ability, incentives and effect of this strategy.[16]

67. In mortgage sourcing, the OFT considers that the merging parties would have limited ability to use conglomerate effects to weaken their competitors. To have any significant effect, Mortgage Brain would have to weaken its main competitor in mortgage sourcing software, TrigoldCrystal.

[16] Merger Assessment Guidelines, paragraph 5.6.13 (third bullet).

However, this is not credible given TrigoldCrystal's presence and because it also supplies POS compliance software. TrigoldCrystal had a [50-60] per cent share in mortgage sourcing, compared to Mortgage Brain's [30-40] per cent share in 2009/10.[17]

68. In the supply of mortgage trading platforms, it is not clear whether any conglomerate effects would have a substantial effect on competition. First, no third party raised any specific concern about the impact on the supply of mortgage trading platforms. Second, Mortgage Brain does not charge mortgage intermediaries for its mortgage trading platform (it charges lenders). Bundling this service with other software at a discount to mortgage intermediaries does not therefore seem plausible. Third, many mortgage intermediaries do not use mortgage trading platforms so bundling this software with POS compliance software would not have a sufficient impact on the merging parties' competitors. The merging parties estimate that in the 12 months to September 2011 Mortgage Brain's mortgage trading platform accounted only for [15-25] per cent of the total mortgage completions.[18] The OFT therefore considers that there is no realistic prospect of significant conglomerate effects arising from this merger in relation to bundling MortgageStream with Mortgage Brain's mortgage trading platform.

BARRIERS TO ENTRY AND COUNTERVAILING BUYER POWER

69. In light of its findings on horizontal and non-horizontal issues, the OFT has not found it necessary to conclude on barriers to entry and countervailing buyer power.

ASSESSMENT

70. The parties overlap in the development and supply of point-of-sale (POS) compliance software for mortgage intermediaries. It is not necessary to conclude on the precise relevant frame of reference. Nonetheless, the OFT draws a distinction, on a conservative basis, between mortgage POS compliance software that includes pensions and investments functionality and those that do not. The OFT also considers the impact of the merger on

[17] ME/4843/11, Proposed Acquisition by MBL Holdings Limited of TrigoldCrystal Group Limited, OFT (2011), paragraphs 88 to 93 (estimates of the merging parties).
[18] In the recent *TrigoldCrystal* case, it was found that mortgage brokers use other alternative channels such as the lenders' websites to submit mortgage applications. See paragraphs 23-26, and 83-87.

mortgage brokers and Independent Financial Advisers (IFAs) as well as making a distinction by size of firm. The OFT excludes self-supply and adopts a UK geographic frame of reference.

71. Post-merger Mortgage Brain would face competition particularly from five other suppliers that focus on mortgages-only software packages. Among these competitors, the merging parties' combined share is around [40-50] per cent. In addition, the merging parties may also face a constraint from IFA software providers, like Intelliflo, which has recently launched a POS compliance product that specifically targets mortgage brokers.

72. While the merging parties' market share could be close to [40-50] per cent amongst their main competitors, the parties are not each other's closest competitor. No customers considered the merging parties to be close competitors. MortgageStream is more popular with smaller customers, whereas Mortgage Brain's branded POS mortgage compliance package, The Key, is best suited for larger customers. This is reflected in the revenues of Mortgage Brain's The Key which mostly come from larger firms, whereas most of MortgageStream's revenues are from smaller Directly Authorised mortgage brokers. Their different customer groups, in part, reflect the differences in the functionality of their software. In addition, there have only been two times when both merging parties have been short-listed in recent tenders.

73. No evidence was presented to the OFT suggesting that the merger gives rise to any competition concerns in any particular customer segment.

74. No customers raised any concerns about this transaction. The majority of the competitors were not concerned either. The concerns raised by two competitors were not borne out in light of the evidence the OFT has gathered in this investigation.

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

DECISION

76. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.