OFFICE OF FAIR TRADING

Anticipated acquisition by Experian plc of 192business Limited

ME/5310/11

The OFT's decision on reference under section 33 given on 24 February 2012. Full text of decision published 7 March 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. **Experian plc** (Experian) is a global information services company listed on the London Stock Exchange which (among other things) provides software and services to businesses that allows them to process payments, manage credit risk, minimise the incidence of fraud and verify the identity of individuals.

2. **192business Limited** (192business) provides software and services to businesses that allows them to verify and manage credit risk, minimise the incidence of fraud and identity of individuals. For the most recent financial year (ending on 31 March 2011) the UK turnover of 192business was around £[ ] million.

TRANSACTION

3. On 28 November 2011 the parties entered into a Share Purchase Agreement for Experian (via a wholly owned subsidiary, Experian Limited) to acquire the entire issued share capital of 192business. The agreed purchase price was £[ ] million (subject to adjustments).

JURISDICTION

4. As a result of the proposed transaction the enterprises Experian and 192business will cease to be distinct. The UK turnover of 192business is less than £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not satisfied. The parties overlap in the supply of online hosted identity verification and authentication (IDVA) services. The parties submitted that together they may supply more than 25 per cent of such services in the UK. Therefore, the OFT believes that it is or may be the case that the share of supply test in section 23 of the Act is met.

5. 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.

MARKET DEFINITION

6. The parties submitted that they overlap in the provision of online hosted identity and fraud (ID&F) solutions for business. The parties further submitted that the ID&F overlap comprises IDVA services and online hosted transaction fraud screening solutions. Transaction fraud screening can involve the re-authentication of someone's identity and online screening of transactions.

7. The ID&F solutions are provided via a supplier's software which is underpinned by the relevant data. Providers use both internally generated and externally acquired data sets and propriety algorithms to assess the risk of a particular transaction. Internally generated data include data previously submitted to the client and someone's transaction history. External data sets include credit reference agency (CRA) data, insolvency data, the postal directory, electoral roll data and a database of company directors. As such, both software design and access to the relevant data are important.

8. ID&F services are offered either business-to-business (B2B) or business-to-consumer (B2C). Broadly, firms licensed as CRAs[1] can offer both B2B and

[1] CRAs are licensed by the OFT under the provisions of the Consumer Credit Act (1974). There is no statutory maximum to the number of CRA licenses which can be awarded.

B2C services, whereas firms which rely on credit reference data as an input, such as 192business, focus on B2B services.

Product scope

9. The parties submitted that the product market is the provision of online ID&F services. The parties told the OFT that they do not consider it appropriate to segment ID&F activities but that even if the OFT were to segment ID&F activities no competition concerns would arise. Possible segmentations are by application type (as outlined in paragraph 6) or by the industry of the customer (for example, banking, telecommunications, gambling, retail or public sector).

10. In arguing for a single product definition, the parties submitted that functionally customers have the same basic set of requirements in relation to ID&F. For example, customers requiring IDVA services need to know whether the ID presented exists and that the customer is indeed the person they claim to be at the time of the transaction, and for fraud screening services, customers need to understand the risk that a particular transaction is fraudulent.

11. Nevertheless, the parties also submitted that there are three distinguishable features of the ID&F offer: (i) checking the identification of someone; (ii) checking that subsequent interactions with a registered person are indeed with the same person; and (iii) identifying the risk of a particular interaction leading to fraud.

12. Some customers told the OFT that they purchase identification verification solutions only, indicating that, for some customers at least, IDVA services are distinct from fraud screening services on the demand-side. Moreover, on the supply-side two competitors told the OFT that it competes with the merger parties on IDVA but it does not offer a transaction fraud service.

13. There is some evidence that the product market could be segmented further by customer-type, for example by customer industry sector. In part this reflects the different regulatory requirements placed on businesses in different industries. Given transaction fraud screening is not substitutable for identity verification, different regulatory requirements may exacerbate such segmentation across industries. For example, financial services firms are subject to stringent 'know your customer' and anti money laundering

regulations, whereas online gambling firms are required to meet a lower identity verification threshold.

14. The parties submitted that because of the differing regulatory requirements across industries customers' demand will differ between products with a degree of tailoring for their specific requirements and more generic 'off-the-shelf' products. The parties themselves are differentiated this way to some extent, with 192business focusing on gambling and retail business requirements and Experian focusing on financial services.

15. The parties overlap in the provision of transaction fraud services. According to the parties, 192business' transaction fraud services focus on light checking in real time, typically for cardholder not present transactions in the retail and gambling sectors whereas Experian uses a broader range of data sources for more extensive fraud screening.

16. The parties submitted that their combined market share is between around [0–10] and [0–10] per cent, with a total UK turnover of £[ ] in 2010-2011 (of which Experian had revenues of £[ ] and 192business had revenues of £[ ]). The parties estimate the UK transaction fraud screening solutions market to be between £90 million and £150 million with a broad range of potential alternate suppliers.

17. Third party enquiries were consistent with the information provided by the parties.

18. As the parties' estimated share of UK transaction fraud screening services is low, the OFT has not investigated this overlap further.

19. The parties also have very limited overlap in the provision of employee background checks/employee screening and consumer tracing services. The parties do not consider these services to be part of the ID&F services due to differences in the purpose and context of such services. They argue that due to differences in type of service the two merger parties provide, their respective product offerings are not substitutable and therefore no overlap arises.

20. In respect of employee background checks, 192business has only recently launched its service and therefore generates very limited income from it. Similarly, in respect of consumer tracing services, 192business generates only a small amount of income from it (of around £[ ]).

21. No third parties expressed concern to the OFT in respect of the parties' provision of these services.

22. As a consequence, the OFT has not investigated these overlaps further.

Conclusion on product market

23. The OFT has not found it necessary to conclude on the product market in this case since no competition concerns arise irrespective of whether the market is defined as all of ID&F, IDVA or segmented by customer industry. Instead, the OFT has examined this merger on the narrowest plausible product market which is online IDVA services. The OFT has not segmented its analysis by customer industry grouping.

Geographic Frame

24. The parties submitted that the relevant geographic frame is at least national and may be wider. Separately they argue that international firms are increasingly able to supply services in the UK which might imply a broader geographic scope.

25. The OFT believes there are two key reasons why the geographic market is unlikely to be broader than the UK:

- First, the data upon which the services rely will largely relate to individuals domiciled in the UK. The collection and supply of some of this data is a licensed activity in the UK– for example, credit reference data.

- Second, regulation which results in demand for IDVA services is essentially national. While there may be some harmonisation in regulatory approach on a pan-regional basis (for example, the EU), each country is likely to have a largely idiosyncratic approach to identity verification regulation. Moreover, the complex interface of different regulations at a national level presumes against a uniform approach to identity verification regulation on a pan-country or pan-regional basis.

26. Third party enquiries supported a geographic frame of the UK.

27. As the transaction does not give rise to competition concerns, the OFT does not have to conclude definitively on the appropriate geographic frame. Given the evidence available to it, the OFT has undertaken its substantive assessment based on a geographic scope of the UK.

HORIZONTAL ISSUES

Unilateral effects

28. The parties' market share estimates are provided in table 1. Although the share estimates are broad, the increment arising from the merger is small on any basis. The parties claim that there are a number of credible third party suppliers of IDVA services which will pose a significant competitive constraint on the parties post-merger.

Table 1: Estimated share of supply of IDVA services

Provider	Per cent
Experian	[15–30]
192business	[0–10]
Combined	**[15–35]**
Thomson Reuters Accelus	[10–30]
Equifax	[5–25]
Callcredit	[5–15]
Accuity	[5–15]
GB Group	[5–15]
NetIDMe	[5–10]
Intercede	[0–5]
Lexis Nexis	[0–5]
Tracesmart	[0–5]
Global Data Company	[0–5]
Intelligent ID	[0–5]

Source: The parties. Estimates based on public information and parties' assumptions.

29. Internal documents supplied to the OFT by the parties indicate that Equifax, Callcredit, GB Group are the parties' key competitors. One internal document relating to the transaction states that 'competition in the market is limited to four to five providers given the relatively high barriers to entry. The principal competitor to Experian and [192business] in the UK market

for electronic Identity Verification is GB Group, although Equifax and CallCredit also provide similar services.'

30. Some third parties claimed that the parties were part of a market with just five key providers: Equifax, Callcredit, GB Group and the parties themselves. In addition to these the OFT was able to establish with some other third parties (NetIDMe, Tracesmart and Transactis) that they also provide some IDVA services. No third parties included Thomson Reuters Accelus in the competitor set despite the parties claiming it is the second largest IDVA supplier in the UK.

31. Competitor estimates of the total size of the UK electronic IDVA market were consistent with the parties' estimate, albeit towards the lower end of their range. This implies that the combined market share of the merger parties is in the region of [15–35] per cent with an increment of around [0–10] per cent, and with at least four providers of electronic IDVA services available post-merger.

32. In terms of closeness of competition, the parties submitted that because of their respective product and customer focus, [ ]. In addition, internal documents provided by the parties claim that GB Group is the 192business' closest competitor. This is borne out by their respective industry focus and the fact both are resellers of credit data.[2]

33. The majority of customers out of the 10 who responded to the OFT's questionnaire did not consider the parties to be each others' closest competitor. Two customers of 192business cited GB Group as the main alternative provider of services. One customer procured services from both of the merger parties. For that customer, the OFT was told that the services acquired were functionally different and it is not clear to the OFT that either merger party could have supplied the entire range of services required by such customers.

34. The OFT did not find any evidence that suggested customers regularly switched between Experian and 192business. One 192business customer, however, said that Experian had been attempting to win business from it.

[2] The OFT understands that resellers of credit data do not typically have access to the raw underlying credit reference data but are able to blend output provided by CRAs into their own product offerings.

35. The OFT considers that CRAs – Experian, Equifax and Callcredit – more closely compete with each other in the provision of IDVA services than with 192business given their own data gathering ability and ability to service high-end customers. Moreover, the evidence submitted by third parties (including bid/tender data) also shows that GB Group competes against both parties as well as the other CRAs. The evidence available to the OFT in this case indicates that other IDVA providers such as NetIDMe, Tracesmart and Transactis offer only a weak competitive constraint on more established providers of IDVA services and are most likely to offer services to 'low-end' customers.

36. Historically, Experian has focused on the top-end of the market – bespoke solutions integrated into customers' IT systems – and 192business has focused on serving customers at the lower-end – customisable off-the-shelf products. As a consequence, the parties have derived the majority of their revenue from different sectors historically, as shown in table 2 (expressed in terms of ID&F revenue). [ ].

Table 2: Share of the parties' ID&F revenue FY2011 by customer sector

Sector	Experian (per cent)	192business (per cent)
Banks, financial services, public sector	[ ]	[ ]
Gambling and Retail	[ ]	[ ]
Other	[ ]	[ ]

Source: the parties

37. In general, the OFT found that price was an important factor to customers when selecting an IDVA supplier. However, quality and service factors were also considered important, particularly for customers in regulated sectors and for customers who require services to be integrated into their own IT systems. Based on the available evidence, the OFT considers that customers at the low-end of the market are more price sensitive than those at the high-end of the market. In any event, it is not immediately clear that customers are sufficiently price-inelastic such that the parties would have the ability and incentive to unilaterally raise prices or reduce quality.

Coordinated effects

38. Horizontal mergers can give rise to co-ordinated effects where they raise the probability of rivals coordinating to limit rivalry, for example by limiting innovation, dividing the market or maintaining prices above a competitive level.

39. Mergers may give rise to coordinated effects in markets which have a history of coordination, where the market conditions enable firms to reach and monitor coordination, and where co-ordination is both internally and externally sustainable.[3]

40. The parties submitted that coordinated effects were unlikely to occur as a consequence of the merger because:

    - there is no history of collusive behaviour in the provision of IDVA services

    - competitors would not have the ability to reach or monitor the terms of coordination

    - tendering is informal and the terms and frequency are driven by the customer

    - prices are negotiated during the tendering process and are not transparent

    - quality, service and reliability matter to customers and vary by provider, and

    - agreements are negotiated bilaterally between providers and customers and the terms are confidential.

41. No third parties were concerned that the transaction would give rise to coordinated effects.

42. In this case, the OFT does not consider that suppliers of IDVA services experience homogenous costs and transparency of conduct and pricing. Moreover, the evidence in this case shows that the merger parties have

[3] OFT and Competition Commission, *Merger Assessment Guidelines*, OFT1254, September 2010, section 5.5.

been focusing on different segments of IDVA provision and that the transaction itself is unlikely to affect the incentives of the parties to engage in coordinated conduct.

43. Therefore, the OFT considers that the transaction is unlikely to materially affect the probability that coordinated effects occur in the market for the provision of online IDVA services.

Barriers to entry and expansion

44. The parties claim that there are few barriers to entry and expansion into the online IDVA segment and that there has been a history of recent entry. The parties assert that the key requirements for successful entry are: data supply; suitable software engine for data storage and processing; the necessary computing hardware; and, sales and marketing personnel. The largest one-off capital requirement for new entry is investment in a software engine, which the parties estimate as requiring between £100,000 and £300,000 spend. Data costs are variable and the parties claim sales and marketing costs will be in the region of 3.5-7.0 per cent of budgeted revenues.

45. The parties also point to a number of firms which they consider well placed to enter given the data they hold on their own customers in addition to that typically acquired by providers of ID&F services, such as credit reference and electoral roll data.

46. This view was not fully supported by competitors who suggested that barriers to entry and expansion could be significant. One said that a basic solution could be built for around £300,000 but that investment of millions of pounds would be required to be able to supply larger clients which require infrastructure resilience, security and customisation. Another said that it takes years to build the breadth and depth of data sources to offer a full range of robust ID&F products. This view was supported by a further competitor, who told the OFT that it took five years for it to build the requisite datasets before it began offering IDVA services. Robustness of data and credibility was cited by competitors as a key service requirement. One third party highlighted to the OFT the importance of developing algorithms to match data from different sources and apply logic to the data to generate a risk score. Only one competitor stated that there were no material barriers to entry.

47. The importance of data availability was corroborated by one customer which explicitly stated it moved from its former provider to 192business due to lack of County Court Judgement (CCJ) data.[4]

48. Third party enquiries also suggested that new entrants in recent years had either been resellers, or had entered the market via the UK Government's ID Assurance programme which operates under a federated structure and is thus somewhat different to the services provided by the parties.

49. Moreover, internal documents provided by the parties stated that barriers to entry in the market were 'significant'.

50. The parties submitted that it was feasible that entry could come from online firms such as Google and Paypal since these have the capacity to hold considerable data on individuals. The OFT did not find any evidence to show entry from such firms was likely or would be timely. Indeed, an internal strategy document provided to the OFT by the parties analysed the capabilities of Paypal and Google and determined that they lacked analytic capabilities which IDVA providers typically require. In addition, any such firm would have to acquire additional data which they do not possess to be able to offer a viable IDVA service, or to federate with other data collectors.

51. As the OFT does not find competition concerns in relation to the proposed merger it does not find it necessary to conclude on the extent of barriers to entry or expansion in the provision of online IDVA services.

Countervailing buyer power

52. Little evidence was provided to the OFT that buyer power was sufficiently strong in the electronic IDVA market to counteract any putative anti-competitive unilateral effects arising as a consequence of the merger.

53. Third party enquiries implied that customers with the ability to pay upfront or to acquire significant volume of business were better able to negotiate on per unit fees. However, pricing for IDVA services does not appear to be transparent and is generally the subject of a negotiation process.

[4] CCJs are judgements handed down by County Courts in England and Wales. Data on monetary judgements are recorded on the Register of County Court Judgements.

54. In addition, some customers noted that switching supplier can incur potentially significant costs depending on the extent to which the service is integrated into their own IT systems. Other things being equal, the level of tailoring will therefore tend to increase switching costs and reduce countervailing buyer power. The specific regulatory burdens on customers may also constrain the choice of potential suppliers. Conversely, customers requiring off-the-shelf products with little or no tailoring may face lower switching costs.

55. As the OFT does not find competition concerns in relation to the transaction, it has not found it necessary to conclude on whether countervailing buyer power would be sufficient to prevent a substantial lessening of competition arising in the provision of online IDVA services.

VERTICAL ISSUES

56. The merger has a vertical dimension as Experian is one of three authorised consumer CRAs in the UK[5] and is therefore a potential data supplier to 192business. 192business currently obtains credit reference data from Equifax, although this supply arrangement will switch to Experian post-merger. [ ]. The parties claim that the merger will result in significant efficiencies due to the elimination of fees for such credit reference data (that is, the elimination of 'double mark-up'). The parties' efficiency claim is not assessed in this case as no competition concerns arise.

57. Non-horizontal mergers are usually benign but can raise competition concerns where upstream suppliers are able to partially or fully foreclose downstream competitors. For competition concerns to arise, merging parties need the ability and incentive to harm rivals.[6]

58. The parties claim that the merger will not give rise to vertical effects as:

- there is no ability to foreclose inputs due to alternative potential suppliers (Equifax and Callcredit)

[5] There are a number of other commercial CRAs.
[6] OFT and Competition Commission, *Merger Assessment Guidelines*, OFT1254, September 2010, section 5.6.

- there is no ability to foreclose customers due to alternative customers, low barriers to entry and a growing downstream market, and

- there is no change in Experian's incentive in the supply of CRA data [ ].[7]

59. No third parties were concerned about the vertical effects of the merger directly, although one competitor was concerned about the potential cost advantages the target would have post-merger given it would no longer have to independently acquire credit reference data from a CRA.

60. As the acquisition will not affect the incentive of Experian to compete against other CRAs in the provision of CRA data to operators downstream, and given the fact there will be two other CRA data providers remaining in the market post-merger, the OFT does not believe that vertical effects are likely to occur as a consequence of the merger.

61. The OFT does not believe there is a realistic prospect of anti-competitive vertical effects arising as a consequence of the transaction. To the extent the merged entity can pass on the benefit of efficiencies to consumers, the transaction may have pro-competitive effects.

CONGLOMERATE EFFECTS

62. One third party expressed concerns that conglomerate effects would arise as a result of the merger. Specifically, it was concerned that Experian would leverage its strength with some customers to sell the 192business' products at a lower price given the double mark-up could be eliminated as a result of the merger (discussed above).

63. Conglomerate mergers only give rise to competition concerns where merging parties have the ability and incentive to disadvantage rivals in at least one of their product markets. Anti-competitive conglomerate effects typically occur where customers have demand for more than one of the products produced by the merging parties (usually in instances where the products are complements, 'one-stop shopping' is common, and where the costs to rivals of providing product variety and one-stop-shopping at a scale to compete are prohibitively high[8]).

[7] [ ].
[8] OFT and Competition Commission, *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.6.13.

64. The parties state that they have neither the ability nor the incentive to harm rivals in this way post-merger. In particular, the parties state that:

- consumer preferences are heterogeneous and one-stop shopping is rare[9]

- regulatory and commercial considerations of customers, which are a key driver the closeness of competition between products, are complex and it is unclear whether different IDVA products are substitutes or complements, and

- in any event, there is competition from both 'broad' and 'narrow' providers of IDVA services for the range of services provided by the parties.

65. OFT customer questioning did not reveal a 'must-have' product offered by either of the parties (relative to their competitors' products). Further, the OFT did not receive much evidence showing that the products offered by the parties were complementary, or indeed that there is significant demand for more than one product from either of the parties. In addition, there are alternative providers of similar products at all levels of the market.

66. The OFT considers that the transaction is unlikely to give rise to conglomerate effects.

THIRD PARTY VIEWS

67. Customers are unconcerned about the merger.

68. Competitors, however, were generally concerned. Some were concerned about the vertical issues involved in the merger, which have been discussed above.

69. One competitor expressed concerns about unilateral effects arising from the merger which have also been discussed in this decision.

[9] The parties note that one of the potential benefits to customers of the merger is one-stop-shopping. This was also cited as a perceived benefit of the concentration by one customer contacted by the OFT. Based on its understanding of how customers currently purchase IDVA services, the OFT considers that one-stop shopping is only likely to occur for a small number of customers in specific industry sectors – for example, financial services. Even so, it is not clear that this would hold for all customers within a sector and is likely to be driven by customer-specific requirements.

70. Another competitor argued that the merger would result in just two UK-based providers (Experian and GB Group) able to provide identity verification of both UK residents and residents abroad. However, no other third parties raised similar concerns. The parties told the OFT that [ ]. The parties also pointed to a number of international IDVA suppliers in other territories which could feasibly supply UK-based customers. On balance, the OFT does not consider the evidence available to it indicates there is a realistic prospect of unilateral effects arising in relation to the provision of both UK and International IDVA services to UK-based customers.

ASSESSMENT

71. The parties overlap in the provision of online hosted identity and fraud solutions for business. ID&F services can be segmented into IDVA services and online hosted transaction fraud screening solutions.

72. The OFT's examination of this case found that on the demand-side, IDVA and transaction fraud screening services are not generally substitutable. Moreover, on the supply-side, some suppliers offer one but not the other service. Although it has not concluded on product market definition in this case, the OFT has analysed the proposed merger on the narrow basis of the provision of online IDVA services. The OFT did not find it necessary to segment online IDVA services by customer type.

73. The merger was examined by the OFT on the basis of the provision of IDVA services in the whole of the UK.

74. The parties submitted that they supply around [15–35] per cent of online IDVA services in the UK with an increment of around [0–10] per cent. Some third parties agreed with this estimate.

75. Customers generally did not consider the merger parties to be close competitors. Experian tends to focus on high-end customer requirements which involve a degree of tailoring the product to its customers' needs, whereas 192business has focused on offering low-end, off-the-shelf products. [ ]. To some extent, this reflects the differing regulatory requirements on these customers and how well the parties' different products are able to meet the regulatory standards.

76. In addition to the creation of unilateral effects, the OFT investigated whether the merger offers a realistic prospect of a substantial lessening of competition as a result of coordinated effects. The OFT concluded that it did not. The products and services are not especially homogenous and there is little transparency over pricing and other marketplace behaviour. Further, the OFT is not aware of any previous collusion or co-ordination in the industry. Therefore, the OFT considers that suppliers would not be able to reach or monitor terms on which to coordinate.

77. Almost all customers are unconcerned about the merger.[10] However, some competitors expressed concerns.

78. One competitor raised concerns about vertical effects arising as a result of the merger. Specifically, they were concerned that either they would not longer receive the relevant CRA data from Experian in order to compete in the downstream activity of the provision of online IDVA services, or that 192business would receive a competitive advantage as a result of the merger since its double margin in purchasing the CRA data would be eliminated by the merger.

79. The OFT found that the merger would not result in a realistic prospect of vertical issues arising. [ ]. These data would still be available post merger (as now) from Equifax and CallCredit. Further, the OFT's investigation has found that 192business' offerings are not attractive to all customer types and therefore it becoming vertically integrated into Experian will not alter this.

80. Finally, the OFT investigated the issue of conglomerate effects in reaction to one third party concern. In this respect the OFT found that adverse conglomerate effects were not realistic in this case. This is because neither party offers a 'must have' product relative to their competitors and customers do not one-stop shop (but rather acquire a range of products and services from different suppliers).

81. 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.

[10] One customer was concerned that Experian may stop serving smaller customers as a consequence of the merger.

DECISION

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