
Anticipated acquisition by Dods Group plc of DeHavilland, political intelligence division of Emap Limited

ME/5229/11

The OFT's decision on reference under section 33(1) given on 21 June 2012. Full text of decision published 17 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. Dods Group PLC (**Dods**) is a provider of political intelligence, publishing, events and general communications services operating in both the United Kingdom (UK) and the European Union (EU). It provides political intelligence¹ services to companies and public organisations. Its revenues from political intelligence services in the UK were £[0-5] million² in 2010. Its total worldwide revenues in 2010 were £17.7 million.
2. DeHavilland (**DeHavilland**) is the political intelligence division of Emap Limited, which is ultimately wholly controlled by Top Right Group Limited.³ DeHavilland supplies political intelligence services via an online platform to companies and public organisations. It covers UK and EU policy and political developments. Its revenues from political intelligence services in 2010 were £[0-5] million.

TRANSACTION

3. The proposed transaction concerns the acquisition by Dods of DeHavilland.⁴ This business comprises the monitoring and tracking of political issues across the European Parliament, Westminster Houses of Parliament, Regional

¹ Political intelligence services are often called 'political monitoring' services. This decision uses both terms indistinctively.

² This includes £[0-5] million from supplying political intelligence to UK based customers related to UK policy and political developments and £[0-5] million related to EU policy and political developments.

³ Top Right Group Limited is a 50/50 joint venture between Guardian Media Group and Apax Europe VII Fund.

⁴ The purchaser is Dods Parliamentary Communications Limited which is controlled by Dods.

Assemblies, Government, the Civil Service and media and the provision of political and policy information to private companies and public sector organisations. The acquisition is proposed to be effected by the transfer of: tangible and intangible property, rights and assets (including, but not limited to, contracts, know-how, IT systems, customer records and goodwill). The contracts of employment of DeHavilland's employees will also be transferred to Dods pursuant to the Transfer of Undertakings (Protection of employment) Regulations 2006.

4. A satisfactory submission was received on 12 January 2012. The OFT's administrative deadline was 28 May 2012.

JURISDICTION

5. The OFT considers that Dods and DeHavilland (**the parties**) are enterprises within the meaning of section 129 of the Enterprise Act 2002 (**the Act**). As a result of this transaction, Dods and DeHavilland will cease to be distinct because they would be brought under common ownership or control within the definition in section 26(1) of the Act.
6. DeHavilland's turnover in the UK in 2010 was £[0-5] million. Accordingly, the turnover test in section 23(1)(b) of the Act is not met. The OFT considers that the share of supply test in section 23(1)(a) of the Act is met for the reasons set out below.
7. The parties overlap in the provision of political intelligence services in the UK. The OFT understands that there are no independent market research reports covering this sector or otherwise readily available data for this industry that make shares of supply easy to estimate or verify.
8. The parties submit that the share of supply test is not met. The parties submitted three estimates of share of supply of political intelligence services, each below 25 per cent. The first estimate was based on a total market size of £[20-40]m calculated by reference to the parties' estimate of revenues generated in the supply of political intelligence services to third parties by 250 consultancies listed in *Dods People*.⁵ On this basis, the parties estimated their combined share is [10-20] per cent.⁶ If self-supply of political intelligence

⁵ A Dods' product providing the contact details of political representatives and public affairs professionals across the UK and the European Union.

⁶ This estimate assumes that (i) [10-20] per cent of these consultancies have a turnover from political intelligence of around £[0-1] and (ii) an additional [10-20] per cent have a turnover from political intelligence of £[0-1] million⁶. These estimates exclude self-supply.

services is included, the parties estimate that the total market size is £55 million, and their combined share of supply is [10-20] per cent.⁷

9. The parties submitted a further share of supply estimate. This estimated that there are around 6,000 firms in the UK which require political intelligence services (whether purchased from third parties or self-supplied).⁸ Of these, the parties submitted that they service around [10-20] per cent.

Share of supply based on revenues

10. The OFT's investigation found that the combined share of supply of political intelligence services on a standalone basis (that is excluding self-supply and the supply of political intelligence as part of wider public affairs, communication and/or other consultancy services) in the UK exceeds 25 per cent. This is based on the OFT's analysis of revenues earned in the supply of political intelligence services on a standalone basis provided by the parties and some of their competitors.⁹
11. The parties' combined revenues from the supply of political intelligence services amounted to £[0-10] million¹⁰ in 2010. The OFT's investigation indicated that other suppliers earn significantly lower amounts.
12. In addition to the parties, third parties have named 55 firms which supply (to a greater or lesser extent) political intelligence services in the UK (although not necessarily on a standalone basis).¹¹ Evidence presented to the OFT indicate

⁷ The parties estimated the value of self-supply as £[20-40] million which was added to the **estimated** market size of £[20-40] million (see footnote 6 above), totalling £55 million. The value of self-supply was obtained considering the pool of prospective customers that require political intelligence, in the parties' view. This list includes:(i) 785 Trade Associations ([30-40] per cent of which, £[5-15] million, according to the parties actually self-supply political intelligence); (ii) 670 Interest Groups ([30-40] per cent of which, £[0-10] million, self-supply political intelligence); (iii) 353 Local Authorities ([40-50] per cent of which, £[0-10] million, self-supply political intelligence); and (iv) 503 corporations ([15-25] per cent of which, £[0-10] million, self-supply political intelligence).

⁸ For further on the preparation of this list, see paragraph 44 below.

⁹ As stated in the Merger Assessment Guidelines, 'the [UK Competition] Authorities may have regard to any reasonable description of a set of goods or services to determine whether the share of supply is met – the value, cost, price, quantity, capacity, number of workers employed or any other criterion may be used to determine whether the 25 per cent threshold is reached.' *Merger Assessment Guidelines - A joint publication of the Competition Commission and the Office of Fair Trading*, OFT1254, September 2010 (Merger Assessment Guidelines), Paragraph 3.3.5.

¹⁰ This is the aggregation of DeHavilland's £[0-5] million and Dods' £[0-5] million as stated in paragraphs 1 and 2 above.

¹¹ The OFT has aggregated the number of firms listed in the responses to the parties' survey and those identified during the OFT investigation. The huge majority of these firms supply political

that three of these suppliers generate revenues directly related to the supply of political intelligence services to third parties of £[300,000-800,000].¹² Other named suppliers have estimated that their own revenues from the provision of political intelligence services (either on a standalone or in combination with other consultancy services) are substantially lower.¹³ For the purpose of estimating the parties' share of supply, the OFT has taken the data submitted by the parties at face value and calculated that all the others named suppliers were of a size similar to that of the parties' fourth largest competitor by revenues (a very conservative assumption). Even under these assumptions, which are very favourable to the parties, the parties would account for over 25 per cent of the provision of political intelligence services to UK based customers. Furthermore, consequently, the OFT believes that the parties' estimated share of supply of political intelligence services on a standalone basis to UK based customers is substantially higher. As detailed in this decision, the responses from the OFT's market investigation indicate that the number of firms supplying political intelligence services on a standalone basis to UK based customers is substantially smaller than 55.

13. As a result, the OFT believes that the parties collectively supply more than 25 per cent of political intelligence services on a standalone basis to UK based customers. It therefore considers that the share of supply test in section 23(2)(b) of the Act is satisfied in relation to the supply of political monitoring services on a standalone basis to UK based customers (by revenues).
14. 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 for the purposes of section 23 of the Act.

intelligence services as part of other public affairs, communication or other consultancy services, therefore should be excluded from the calculation of the share of supply. This exclusion is consistent with the responses from most customers and consultancies to the OFT's investigation. However, given the difficulties in collecting granular data on the revenues from political intelligence services supplied on a standalone basis to third parties, the OFT has estimated, taking a cautious approach, the share of supply which would result from taking into account the supply of all political intelligence services to third parties.

¹² This amount has been redacted and replaced by a range of figures to protect the confidentiality of data submitted by the relevant companies.

¹³ Many of those public affairs, communication and consultancy firms do not account any revenues from the provision of political intelligence services as they represent a small (almost negligible) proportion of the wider consultancy service procured from them by the client.

FRAME OF REFERENCE

15. The OFT considers that market definition is a useful tool, but not an end in itself. Market definition provides a framework for assessing the competitive effects of the merger. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in any mechanistic way, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.¹⁴

Product scope

16. The OFT's approach is first to consider the narrowest plausible candidate market in which the parties overlap and then whether such a narrow candidate market may be widened primarily through demand-side substitution.¹⁵ In this case, the narrowest plausible candidate frame of reference is the provision of political intelligence services to customers on a standalone basis.
17. In general terms, political intelligence services involve the monitoring of political developments and the provision of this information to customers which wish to keep up to date with specific issues, sectors, and/ or public organisations. In other words, political intelligence services consist of scanning a number of sources of information, selecting relevant information and provision of the information to the customer. The extent to which the information is filtered, collated and personalised varies across providers according to firm capability and customer requirements.
18. The services supplied by political intelligence firms can and do differ. In relation to the scanning and capture of political intelligence, services can differ depending on the degree of automation or manual input used by each firm (or specified by the customer). In relation to the delivery of political intelligence to customers, the OFT has observed various services. DeHavilland offers a website that customers can log into to have access to a personalised selection of updates. Another common method of delivery is through regular, often daily, email update containing references to political and policy developments on particular areas of interest to clients. Certain firms offer more bespoke and personalised services including the provision of access to a named researcher who can undertake bespoke research requests. Other firms may be specialised

¹⁴ Merger Assessment Guidelines, paragraph 5.2.2.

¹⁵ Merger Assessment Guidelines, paragraphs 5.2.6 to 5.2.19.

in the provision of political intelligence in a specific area, for example, an economic sector (finance, healthcare or education) or a geographic area (the devolved political institutions such as the Welsh Assembly or Scottish Parliament).

19. The parties submit that political intelligence services form part of the wider supply of public affairs consultancy services (also known as political affairs or communications services). Public affairs cover a broad spectrum of services. These include public affairs strategy, lobbying, public relations, political research, event management, and campaign production material. The OFT considers the distinction between political intelligence services and wider public affairs consultancy services below.

Standalone political intelligence services form a separate candidate frame of reference to the supply of public affairs consultancy services

20. The parties provide political intelligence services as a standalone product. This is similar to other firms such as Randalls and Parliament Today which also provide political intelligence services as a standalone product. Several political affairs consultancies, however, provide political intelligence to their customers as part of a wider public affairs service. In addition, a few of these political affairs, communication or consultancy firms (for example, Cicero and Interel) also provide political intelligence services as a standalone product to some customers.
21. The OFT has considered whether **standalone** political intelligence services form a separate candidate frame of reference to political intelligence services supplied as a part of the provision of wider public affairs consultancy services.
22. The parties submitted that the relevant market comprises not only the provision of political intelligence services but also wider public affairs and other consultancy services. They submitted that:
 - 22.1. consultancies can and do offer standalone monitoring services (for example, in the last four AAPC registers,¹⁶ 24 public affairs consultancies report clients taking standalone political monitoring services from them)

¹⁶ Association of Professional Political Consultants. Further information at www.appc.org.uk

22.2. clients can and do choose consultancies for political intelligence services (both standalone and as part of a wider package) over services offered by the parties, and

22.3. clients value the provision of all of their political intelligence and public affairs needs within one-stop shop, as can be seen from the parties' survey.¹⁷

23. The OFT's investigation has not confirmed this. In particular:

23.1. based on third parties' comments, the OFT considers that a five per cent increase in the price of standalone political intelligence services would be unlikely to drive a sufficient proportion of customers to purchase considerably more expensive public affairs services in order to receive political intelligence at the original price. This is primarily because many of those customers which purchase political intelligence services on a standalone basis do not require the broader set of public affairs, communication or consultancy services, and

23.2. political intelligence services are clearly an input into the wider provision of public affairs, communication or consultancy services. The responses from those companies which supply standalone political monitoring services (and not necessarily public affairs, communication or consultancy services) and from those consultancy firms procuring such services as an input support the view that while political intelligence is a necessary input into the provision of public affairs, communication or consultancy services, both set of services have different purposes and characteristics. Therefore, it is reasonable to consider that the supply of political intelligence services on a standalone basis forms its own candidate product scope differentiated from public affairs, communications or consultancy services.

24. Moreover, the responses from most customers, public affairs and other consultancies to the OFT investigation do not support the statement that a large number of public affairs consultancies are supplying standalone political monitoring services. Consultancies who responded to the OFT stated that they supply political intelligence to a limited number of their clients upon request. This might happen with a maximum of five customers each. This compares with the size of the combined customer base of the parties (with around [300-

¹⁷ The parties offered to survey their customers and other consumers of political intelligence to analyse preferences across intelligence and other public affair services.

700] customers) and their two most direct competitors (with customer bases in the very low hundreds). These public affairs consultancies stated that they tend to supply political intelligence service not as a separate service but in addition to other services. Consistent with this, public affairs consultancy firms did not consider they actually competed with the parties in the supply of political intelligence services on a standalone basis (not least because they do not actively market those services). The evidence available to the OFT also shows that most end customers do not identify public affairs consultancies as alternative suppliers of political intelligence services or seek quotes or tenders from them.¹⁸

25. In addition, third party responses also indicated that public affairs consultancy services generate significantly higher profit margins than standalone political intelligence services. This is because the provider can add more value in relation to other services, such as strategic advice than providing political intelligence on a standalone basis (often described by third parties as a 'commoditised' service). This evidence further supports a separate candidate frame of reference comprising political intelligence services as a standalone product.¹⁹
26. Standalone political intelligence exhibits sufficient characteristics to be assessed in its own right as a distinct product market; indeed Dods told the OFT that each service is different from the demand-side perspective. In addition, the demand for political intelligence services is not necessarily linked to the demand for other consultancy, advisory, political affairs or communication services. However, the possible constraint that companies active in this wider frame of reference might impose on the parties will be considered where appropriate in the competitive assessment below.
27. Overall, the OFT believes that standalone political monitoring services (whether supplied by firms such as the parties or by public affairs consultancies) should be assessed as a discrete part of the wider public affairs sector.

¹⁸ See further figure 2 at page 16 below.

¹⁹ '[I]nformation about relative price levels and the extent to which prices of products within the candidate market are correlated with each other, as compared with the prices of products outside the candidate market;' Merger Assessment Guidelines, (paragraph 5.2.15 (a) second bullet point).

Self-supply

28. The OFT will generally only include self-supply as part of a relevant market if the ability of customers to choose this option affects the profitability of a five per cent price rise by the hypothetical monopolist.²⁰
29. The parties have argued that self-supply is straightforward and that customers can and do cease to buy their services and self-supply instead. They also argue that many prospective customers are not currently buying their services for the same reason. In support of this contention, the parties have provided various pieces of evidence, including that:
 - 29.1. free websites such as BBC Democracy Live, Parliament's own website and Directgov offer for free quite similar services to the parties and that they are user-friendly
 - 29.2. Dods offered free trials of its products to [] customers in 2010 and 2011, [] of whom chose not to buy Dods' political intelligence services at the end of the trial. Out of those 'lost' customers, over [40-50] per cent told Dods that they had decided to self-supply instead²¹
 - 29.3. both parties have provided lists of customers which, according to the parties, cancelled the contracts with them in favour of self-supply, and
 - 29.4. self-supply is financially viable for many customers.
30. The OFT accepts that the evidence supplied by the parties indicates that some customers do not outsource their political intelligence requirements. However, in and of itself, this does not provide probative evidence or information on how customers of political intelligence services (that is, those who procure those services externally) would react to a worsening of the parties' competitive offering post merger, either through a price rise or reduction in quality.
31. The parties' survey evidence provides an indication of how customers would react to a reduction in the parties' competitive offering post-merger. This evidence indicates that [70-90] per cent of the parties' clients would switch to an alternative external provider if Dods and DeHavilland were no longer

²⁰ See Merger Assessment Guidelines, Section 5.2.20, fourth bullet point.

²¹ DeHavilland operates similar trials, but its data records to a lesser extent the reasons for choosing not to continue with DeHavilland's services at the end of the trial.

available.²² In addition, [50-70] per cent of the parties' clients said that they would find self-supply 'quite difficult' or 'very difficult'.²³ In contrast, [0-20] per cent said that they would find it 'quite easy' or 'very easy'.²⁴ Around [0-20] per cent²⁵ stated that they would switch to self-supply. Overall, the balance of this evidence indicates that self-supply is not a sufficient constraint on the parties' activities.

32. The parties have not provided any evidence to show how they have reacted in the past to customers threatening to switch to self-supply.
33. The OFT's market investigation also confirms that self-supply does not form a sufficient constraint on the parties. The OFT consulted 160 customers (current and former) of political intelligence services (including 150 of the parties' customers and 10 of a competitor's customers). Over 15 per cent of those customers responded to the OFT's questions. While the OFT acknowledges that these are not survey responses and the respondents are not a representative sample of the parties' or that competitor's customers, their responses highlight the considerations which are relevant at the time of deciding to outsource or self-supply a firm's political intelligence requirements. These indicate that the main reason for outsourcing is the lack of internal resources and the excessive cost to hire them; the firms' perception that they will not be able to reach the same quality of or even access to the same information; and the need to reach large economies of scale –which are unlikely to be generated in self-supply. Consistent with these concerns, the OFT notes that only one of those respondents is currently self-supplying (as well as purchasing political intelligence services from Dods).
34. Therefore, the parties' survey evidence and the third party evidence supplied to the OFT indicate that it is unlikely that sufficient customers would switch in response to a five per cent price rise (or corresponding diminution in the parties' competitive offering) post-merger to self-supply of political intelligence

²² See Analysis of the parties' Political Intelligence market Survey Results submitted by RPC to the OFT on 1 May 2012. Page 16, Chart 9 titled 'Impact if Dods or DeHavilland closed down'.

²³ See Analysis of the parties' Political Intelligence market Survey Results submitted by RPC to the OFT on 1 May 2012. Page 10, Chart 4 titled 'Ease of difficulty of self supply'.

²⁴ See Analysis of the parties' Political Intelligence market Survey Results submitted by RPC to the OFT on 1 May 2012. Page 10, Chart 4 titled 'Ease of difficulty of self supply'.

²⁵ See Analysis of the parties' Political Intelligence market Survey Results submitted by RPC to the OFT on 1 May 2012. Page 16, Chart 9 titled 'Impact if Dods or DeHavilland closed down'.

Diversion ratios based on the parties ceasing operations are likely to be higher than the diversion ratios triggered by any price increase. This is because not operating corresponds in economic terms in supplying a service at an infinite price.

to make the price rise unprofitable. The OFT does not therefore consider self-supply as part of the same candidate frame of reference but has, in line with its established guidance, considered the extent to which self-supply would pose a constraint on the parties' ability to worsen its competitive offering post-merger in the its unilateral effects assessment below.

Conclusion on product scope

35. The available evidence has led the OFT to examine the merger on the basis of the supply of political intelligence services provided as a standalone service.

Geographic scope

36. The parties submit that the narrowest appropriate geographical market is the UK as a whole (whilst recognising that some customers look for a service that also covers EU institutions).
37. This OFT's investigation has confirmed these submission. The OFT has not been provided with any evidence from the parties or third parties to suggest that non-UK suppliers of political intelligence services compete with the parties' offering. Neither has the OFT seen any evidence to suggest that UK based providers supply political intelligence services to a significant degree to customers located outside the UK.
38. The OFT has not been presented with any evidence that the geographic scope should be narrower than the whole of the UK. It has not been necessary for the OFT to conclude on this basis since the evidence points to adverse effects on competition even when regional suppliers are included in the analysis.
39. The OFT has therefore assessed this transaction with regard to the provision of political intelligence services to customers located in the UK.

HORIZONTAL ISSUES

40. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the

merged firm profitably to raise prices²⁶ on its own and without needing to coordinate with its rivals.²⁷ This is the OFT's theory of harm in this case.

Shares of supply

41. As stated above,²⁸ the OFT understands that there are no market research reports covering this sector or otherwise readily available data for this industry that make market shares easy to estimate or verify.

The parties' estimates by revenues

42. The parties have estimated that their combined share of supply under any reasonable description and proxy is below [10-20] per cent. This is based on an estimated market size of £[20-40] million.²⁹

43. The OFT does not consider that the parties' estimated market size is robust. It notes that:

43.1. there are no independent third party market share estimates available

43.2. public affairs and consultancy firms which responded to the OFT investigation did not corroborate these estimates by the parties

43.3. many of those did not identify themselves as 'competitors' to the parties but customers procuring political intelligence services from them

43.4. consultancies which gather political intelligence internally often do not supply political intelligence services to third parties and when they do, they often do not supply it as a standalone product

43.5. those few public affairs consultancies who told the OFT that they do offer standalone political intelligence services were unable to state their revenues to the OFT because those revenues were so negligible, and

²⁶ The concept 'to raise prices' includes any corresponding diminution in quality. As stated in the Merger Assessment Guidelines, a merger may impact on 'price and non-price aspects of competition such as the quantity sold, service quality, product range, product quality and innovation.' See paragraph 4.2.3.

²⁷ Merger Assessment Guidelines, paragraph 5.4.1.

²⁸ See paragraph 7 above.

²⁹ See paragraph 8.

43.6. almost all the consultancies contacted by the OFT which supplied to the OFT an estimate of their turnover from political intelligence services indicated that such revenues were lower than £500,000 and, in most cases, less than £250,000, which are the revenue figures estimated by the parties as to their possible competitors.

The parties' estimate by proportion of customers

44. The parties also produced a list of 6,000 firms comprising actual customers (including the parties' customers) and other firms which consume political intelligence in some form based on the list of DeHavilland's prospective customers and on Dods' publication '*Who's who in political affairs*'. They carried out a survey of a sample of 300 firms out of the original list of 6,000 but including only firms which are not current clients of either party (these will be referred to in this decision as 'non-clients' and account to around [] firms). The parties submit that [70-90] per cent of the non-customers (around []) had undertaken themselves or purchased political intelligence services in the last two years, based on the results of their survey. By adding their own existing customers (around [300-700] combined), the parties' estimated that their combined share of supply is also below [five-25] per cent.³⁰
45. The OFT does not consider that the estimated share of supply based on proportion of customers is robust. This is because the OFT is concerned with the representativeness of the sample in the parties' survey of non-clients which has a direct impact on the results of this estimate.³¹ The OFT notes that the number of non-clients was derived using the proportion of customers which 'had undertaken or purchased political intelligence services in the last two years.' These include those non-clients which self-supply; and those which procure political intelligence services as part of a wider set of public affairs or consultancy services.
46. Furthermore, the OFT also notes that the data on customers is not weighed by accurate, or indeed any revenue information. This does not allow drawing an accurate picture of the competitive weight of each of those competitors. Competitors may have very different revenue share of supply even though they serve a similar number of customers. In particular the OFT found that revenue information received from some named competitors considerably differs from the parties' estimates.

³⁰ Analysis of the parties' Political Intelligence market Survey Results submitted by RPC to the OFT on 1 May 2012. Page 3, paragraph 1.19.

³¹ See paragraph 50 below.

47. In summary, given that the OFT could not verify the parties' estimated shares of supply and the lack of data on customers' expenditures in political intelligence across all the competitors in the market, the OFT can only place limited weight to the relevance of the estimated market shares. Thus, it has focused its assessment on the extent of closeness of substitution between the parties and whether the loss of rivalry and competition between them will give rise to unilateral effects.

Closeness of substitution

48. The parties acknowledge that they are close competitors. At the same time, they submit that post-merger there will be sufficient constraints to prevent the merged entity from raising prices or reducing quality or innovation beyond what would have been the case in the absence of the merger. The OFT considered several pieces of evidence for the purpose of assessing the level of closeness of competition between the parties. These include: (i) the parties' surveys results; (ii) third party comments; and (iii) DeHavilland's customer renewal data.

The parties' surveys results

49. As discussed above, the parties commissioned two surveys: a survey of the parties' customers, and a survey of the parties' prospective customers (non-clients). The OFT was given the opportunity to comment on the design of both surveys but not all its suggestions were incorporated, in particular with regard to the robustness and representativeness of surveying prospective clients.
50. Having reviewed the methodology of both surveys, the OFT holds no concerns surrounding the methodology of the client survey. However, the OFT places less weight on the results derived from the non-client survey. This is because the OFT cannot reasonably place confidence in the representativeness of the sample given the inherent difficulty in accurate identification of those firms which have a requirement for political intelligence services. This inevitably casts some doubt on the robustness of the results of the non-client survey and the extent to which the OFT can place reliance on its results.
51. A further issue with the parties' survey is the relatively high proportion of customer respondents which answered 'don't know' to some key questions including where they would switch to if their current suppliers was unavailable.

52. The parties submitted the OFT should read the client survey results as stating that those customers which responded 'don't know' are in fact unsure of where to go because of the [high] 'degree of choice'.³² This would substantially change the interpretation of the result of the survey. Contrary to the parties' view, the OFT considers that the exclusion of 'don't knows' is appropriate in this case because of the lack of information available about the preferences of those respondents. Consequently, the OFT has excluded those customers which did not identify an alternative supplier for political intelligence to switch to.
53. The OFT notes that, in this case, these 'don't know' responses from clients represent a very high proportion of the total number of responses: [45-65] per cent of Dods' clients and [30-50] per cent for DeHavilland's clients. Excluding these responses, the diversion from DeHavilland to Dods would be [75-95] per cent and from Dods to DeHavilland would be [60-80] per cent.³³
54. According to the survey Dods has only one other relevant competitor, with diversion ratio of circa [five-25] per cent (once excluding 'don't know' answers). DeHavilland does not seem to have any relevant competitor except for Dods.
55. The above diversion ratios suggest that the parties are close competitors, indeed each other's closest competitors. They also suggest that other suppliers exert a considerably weaker constraint upon the parties.

Third party comments

56. In addition to the survey results, the OFT collected several third party comments.³⁴ The majority of respondents to the OFT's investigation (close to 80 per cent) have stated that the parties are each other's closest competitor. The parties have acknowledged that the parties are close competitors but also affirm that there will remain sufficient constraints post-merger to prevent any

³² Response to the Issues Paper of 16 May 2012, paragraph 3.27.

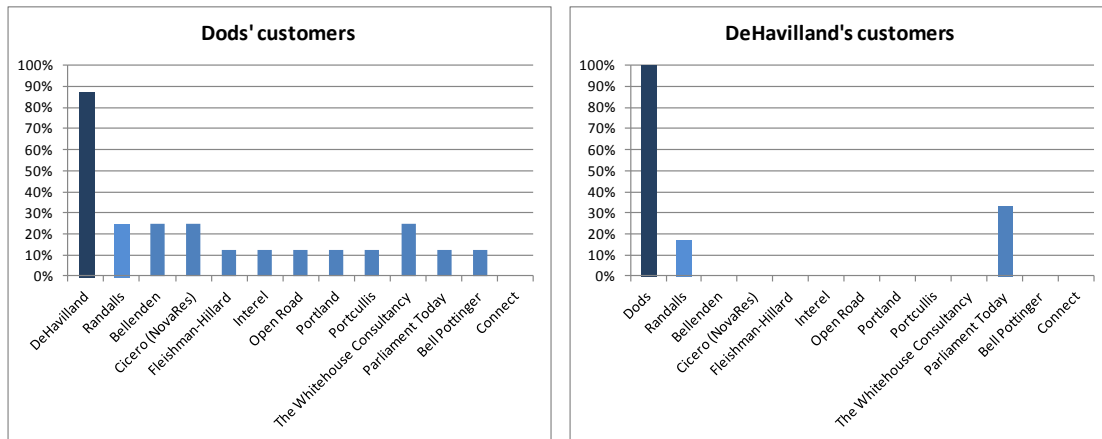
³³ If the 'don't know' responses were included, the parties' client survey shows that 48 per cent of DeHavilland's clients would switch to Dods in the event that DeHavilland were unavailable. At the same time, [25-35] per cent of Dods' clients would switch to DeHavilland if Dods were unavailable. Leaving aside the OFT's concerns about the robustness of the survey results if the 'don't know' responses are also included, the OFT notes that these diversion ratios are high and potentially raise competition concerns.

³⁴ See further paragraphs 43 and *ff.* above. Over 15 per cent of those customers responded.

increase in prices or reduction in quality or innovation resulting from the loss of rivalry between such close competitors.

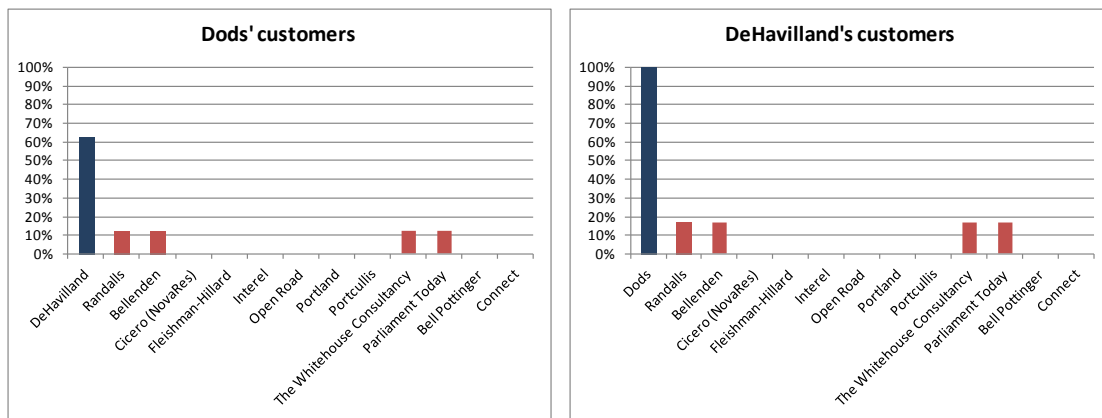
57. The results for Dods’ and DeHavilland customers are illustrated in Figure 1 and Figure 2. Results for other firms’ customers are illustrated in Figure 3.

Figure 1: Percentages of customers identifying firms as main competitors in the supply of political intelligence services.



Source: OFT analysis of responses from the parties’ customers to the OFT investigation.

Figure 2: Percentages of customers inviting firms to tender³⁵



Source: OFT analysis of responses from the parties’ customers to the OFT investigation.

³⁵ The word ‘tender’ in this context is used in a broader sense, that includes any kind of engagement between customers and suppliers to evaluate the quality of their product and their prices for the purpose of selecting the best value-for-money option.

Figure 3: Percentages of non-customers identifying firms as main competitors in the supply of political intelligence services

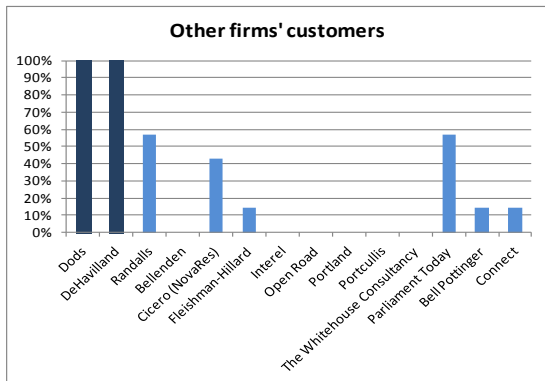
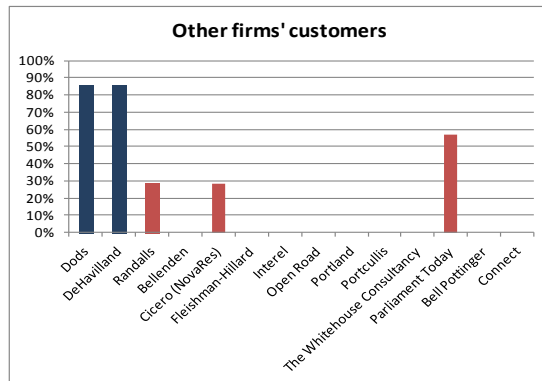


Figure 4: Percentages of non-customers inviting firms to tender



Source: OFT analysis of responses from the parties' customers to the OFT investigation.

58. Figure 1, Figure 2, Figure 3 and Figure 4 summarise the third party responses (from the parties' customers and a competitor's customers) received by the OFT. These are not survey responses and the respondents are not a representative sample of the parties' or that competitor's customers. Nevertheless they provide useful indicators.

59. Figure 1 illustrates the responses of Dods' and Dehavilland's final customers to the question 'Who are the main competitors for the supply of political intelligence services (that is excluding other political communication and lobbying services)?' Almost all customers identified both parties as the main competitors in the supply of political intelligence. Whilst Dods' customers were also able to identify other suppliers of political intelligence, DeHavilland's customers only identified Dods, Randalls and Parliament Today.

60. Figure 2 illustrates the final customers' responses to the question 'What companies did you invite for a tender regarding to political intelligence services in the last three years?' All DeHavilland's customers considered Dods and over 60 per cent of Dods' customers considered DeHavilland as potential suppliers in the last three years. The comparison of the responses in Figure 2 with those in Figure 1 shows that many final customers (especially Dods' customers) which identified other firms as competitors in the supply of political intelligence services did not invited them to tender (or into contractual negotiations) in the

last three years.³⁶

61. Figure 3 illustrates the responses of those firms that turned out not to be customers of the parties. Figure 3 is analogous to Figure 1 (responses to the question 'Who are the main competitors for the supply of political intelligence services (that is excluding other political communication and lobbying services)?'). Figure 4 is analogous to Figure 2 (responses to 'What companies did you invite for a tender regarding to political intelligence services in the last three years?'). The result is consistent with that from Figure 1 and Figure 2 in showing that the parties are each other's closest competitors and other firms do not exert a strong constraint. Assessing Figures 3 and 4, the OFT notes that the proportion of customers which invited the parties to tender or enter into contract negotiations is considerably larger. It also notes the limited number of other firms which are identified as possible competitors and even smaller number of firms actually invited to tender or contract negotiations. This is particularly significant since, Figures 3 and 4 are the responses from customers of firms, other than the parties.
62. The OFT contacted those third parties identified as actual direct competitors of the parties in the supply of standalone political intelligence services to UK-based customers. Based on the responses from these suppliers to the OFT's questions, the OFT cannot conclude that they represent any significant constraint on the parties. It notes two relevant factors: their small revenues, compared to those of the parties and the fact that some of these competitors have been operating for decades and their share of supply is still substantially lower than that of the parties.

DeHavilland's customer contracts coming up for renewal in 2010-11

63. The parties supplied a table showing the numbers of DeHavilland's customers that came up for renewal in 2010-11 for whom DeHavilland was able to identify the competing supplier ([] customers out of []). The results show that Dods was by far the main alternative to DeHavilland. [40-60] per cent (or [40-60] per cent of those customers, if excluding customers switching to self-

³⁶ The only exceptions are a few customers of DeHavilland, which while not identifying Bellenden and/or The Whitehouse Consultancy as competitors to the parties, had actually invited them to tender (or intocontractual negotiations) in the last three years. These are likely to be the responses of customers which have purchased political intelligence services from DeHavilland and other public affairs services from Bellenden or The Whitehouse Consultancy in the last three years.

supply) invited Dods to tender or enter into contract negotiations.³⁷ The nearest competitor to De Havilland following Dods is []. [], however, was the alternative supplier in only [0-five] per cent of those tenders or contract negotiations.

64. The OFT considers that this evidence further supports the conclusion that the parties are by far each other's closest competitors in the supply of standalone political intelligence services and that all the other suppliers impose only a weak constraint upon DeHavilland.

Strength of competitive constraint exerted by competing suppliers

65. Dods has submitted to the OFT that the parties will be constrained post merger by: (i) other standalone political intelligence services; (ii) political consultancies and public affairs companies which also supply political intelligence services; and (iii) the threat of self-supply. This section deals with (i) and (ii). The level of constraint from self-supplied services is addressed below (see paragraphs 71-83).
66. The parties' internal documents do not support the parties' contention. They show that Dods did not expect to face sufficient competitive constraint post-merger to prevent price rises or a diminution in the parties offering. Specifically, in the minutes of the Board of Dods of 27 January 2011, it is stated that the merger would enable 'yields to be maintained and increased rather than driven down by competition'. Dods replied to the OFT that this was a 'casual comment' made before any approach or decision to approach DeHavilland had been made and from which the OFT should not infer any conclusions. The OFT considers that an increase in yields would not be possible if there were sufficient constraints operating post-merger to prevent price increases or other diminution in the parties' competitive offering, such as a reduction in service levels or quality.
67. The information set out above in relation to the parties' survey and the OFT's market investigation indicates that the parties' competitors do not pose a sufficient counterweight to the loss of rivalry expected to result from this merger. The revenues of each of the competitors are small in comparison to the parties and the level of diversion from the parties to such competitors (on an individual or aggregate level) is not indicative of a strong post-merger constraint. The OFT also notes that a number of these competitors have been

³⁷ Dods won the contract in [] cases, and 'Dods and another provider' won the contract in [] cases, therefore totalling [] cases out of []. There were [] instances of customers switching to self-supply.

operating for a number of years, often decades, and their share of supply has remained substantially lower than the parties. Furthermore, the responses from these competitors did not indicate that they would be willing to substantially change their current strategies such as to counter the parties' likely strengthened ability to raise prices taking advantage of loss of rivalry resulting from this merger.

68. Furthermore, the OFT notes that it has not been presented with any significant evidence to show that the alleged constraint from other companies (or even the threat to switch to self-supply) have led the parties to adjust their commercial or pricing strategies accordingly.
69. The OFT has also considered whether public affairs consultancies would provide a sufficient constraint to outweigh the loss of close competition between the parties. The evidence before the OFT does not support this. In fact, the parties' own survey and the OFT's market investigation did not indicate that private companies and public sector organisations see public affairs consultancies as genuine alternatives to the parties (see paragraphs 24 *ff.* above). Moreover, public affairs consultancies themselves indicated that they procure political intelligence services as an 'input' into their own public affairs services and they would not therefore switch to self-supply. Further, they do not have the incentive to compete with the parties given the economies of scale required and the low levels of profitability that they predict they would achieve from the provision of standalone political intelligence services. On the basis of the evidence as a whole, the OFT therefore considers that public affairs consultancies offer no more than a weak constraint on the parties.
70. It is also important to note that the majority of customers which responded to the OFT's investigation are concerned about this transaction. The main concern relates to the lack of alternative viable suppliers remaining after the merger; these responses are entirely consistent with the OFT's above analysis on the level of constraint posed by both other standalone political intelligence service providers and public affairs consultancies.

Self-supply

71. In the section on frame of reference,³⁸ the OFT concluded that self-supply is not part of the same candidate frame of reference as the provision of political intelligence services to third parties, however, that it would assess whether

³⁸ See paragraphs 28 *ff.*

self-supply acts a competitive constraint sufficient to counter any harm occasioned by the proposed transaction.

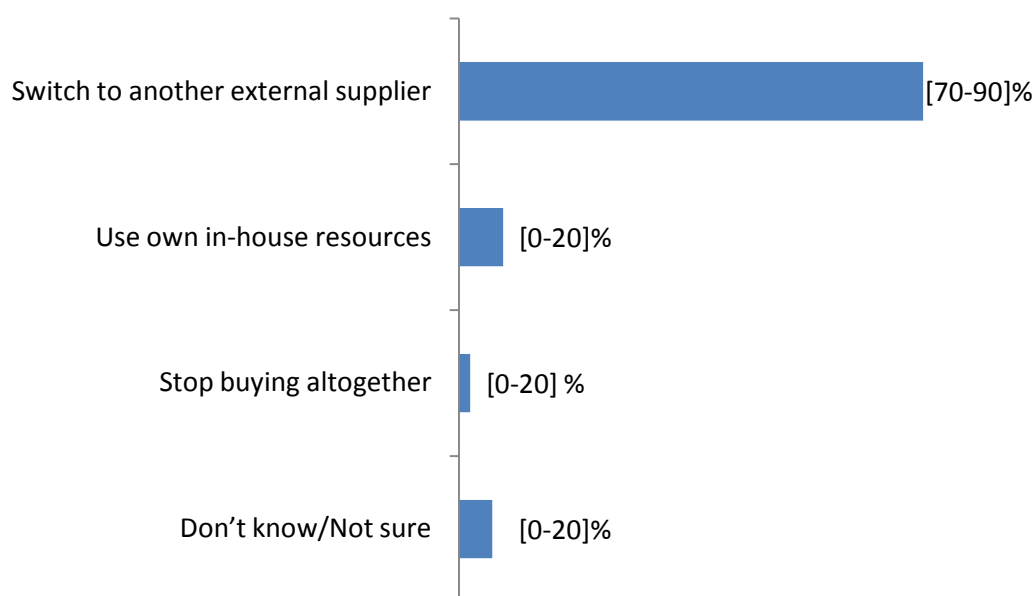
72. The parties submit that they are currently serving only a small fraction of the total set of firms which arguably require political intelligence services. Most of these firms must, in the parties' view, be self-supplying and this constraint means that the parties' apparently high shares of supply do not translate into market power.
73. The OFT notes that a competitor supported the parties' arguments and told the OFT that barriers to entry are so low and self-supply is so easy that even a company with a 100 per cent 'market share' would not be able to raise prices.
74. Against this background, the parties submitted that they are currently serving around [300-700] customers. However, according to the parties, there is a pool of prospective clients customers which might include:
 - around 162,000 registered charities
 - just over 160 trade unions
 - over 6,500 trade associations
 - more than 1,000 quangos, NGOs, local and central Government bodies, and
 - over 4.5 million UK companies, of which over 2,000 are large corporations with more than 250 employees.
75. The parties contend that all of the above organisations require some form of political intelligence service. In order to persuade these organisations to procure services from external providers, such as the parties, rather than self-supply, the parties would need to offer a competitive proposition. The parties went on to contend that even if the OFT excluded these potential customers from its assessment, it should include all the organisations and entities currently procuring (either in-house or from the parties or other suppliers) political intelligence services in the UK. This would leave the parties with a small share of the market.
76. The OFT considers that the parties' interpretation of the evidence above does not take into account the proportion of those non-clients which are not interested in a thorough monitoring of the political developments in their field of

activity and would therefore not be willing to purchase political intelligence services.

77. In addition, the parties' survey evidence found that [50-70] per cent of their customers would find self-supply 'quite difficult' or 'very difficult' (paragraph 31 above). Furthermore, slightly less than half (30-50 per cent) of the non-clients set reported that they would find self-supply 'quite difficult' or 'very difficult'. These figures are in and of themselves indicators of the limits of self-supply. However, taken together they also imply that customers which have already decided to outsource to a third party the procurement of its political intelligence needs are a third more likely to find self-supply difficult. It is therefore reasonable to assume that even if self-supply is an option for some customers or for firms which may at present be non-clients, for many customers directly affected by the merger self-supply will not ameliorate any substantial lessening of competition arising from this transaction.
78. In paragraph 50 above, the OFT has stated its reservations and concerns about the robustness and effectiveness of the non-client survey presented by the parties to the OFT. However, even if the OFT would take the results of the survey at face value, the OFT does not believe that the survey evidence shows that self-supply acts as a strong competitive constraint on the parties.
79. As a preliminary point, the OFT notes that in this market prices and services are negotiated with each customer separately. In a market in which the service supplied has a significant degree of personalisation and in which every customer negotiates the price for these services singularly, self supply poses a more limited constraint to the suppliers than in markets characterised by standardised contracts and where the price is the same for all consumers. This is because suppliers can price-discriminate between different customers, by offering to the customers who can switch to self-supply better conditions than the customers who cannot.
80. Further, the OFT considers that the strength of the constraints exerted by self-supply depends on the proportion of customers that would be willing to switch to self-supply. In this respect, the OFT refers to the customer survey results illustrated in Figure 5 below: if the parties were not available, only [0-20] per cent of their customers would switch to self-supply. This is likely to be an overestimate of the proportion of customers that would switch to self-supply following a price increase, as the unavailability of the parties corresponds to an infinite price rise. However, even assuming that [0-20] per cent of the parties' customers would switch to self-supply following a five per cent price increase,

considering the parties' [40-60] per cent gross margins (in 2010), the critical loss would still be higher than [0-20] per cent.³⁹ The OFT therefore concludes that, even using the upper bound diversion to self-supply, the parties would find it profitable to increase prices by five per cent post merger.

Figure 5: Parties' customers switch if Dods or DeHavilland closed down.



Source: The parties' customers survey.

81. Customer responses to the OFT investigation, as mentioned above, confirm that self-supply would be considerably more expensive than outsourcing. Some customers also commented that they would not be able to reach the same quality as the services supplied.
82. With regards to supporting evidence on the constraint that self-supply imposes on the parties, the parties stated that their commercial behaviour is already affected by such competitive pressure. They submitted that being aware of the risk of a client switching to self-supply, their commercial offers already embed that threat into the terms. However, they parties did not supply any documentary evidence in which such threats have been internally discussed, considered or affected change in terms or conditions in any specific instance.

³⁹ The critical loss (CL) corresponding to a five per cent increase in price is the percentage of customers that need to divert away following the price increase to make the price increase unprofitable. $CL = (\% \text{ price increase}) / (\text{variable profit margin} + \% \text{ price increase}) = (5\%) / ([50-60] \% + 5\%) = [0-10] \%$.

83. In light of the above, the OFT currently believes that the available evidence indicates that the possibility of self-supply does not competitively constrain them.

Conclusion on unilateral effects

84. In light of the evidence before the OFT, it considers that the parties are close competitors, indeed each other's closest competitors. The merging parties are the only two suppliers considered by many customers when purchasing standalone political intelligence services. The parties' own survey shows the diversion ratio from DeHavilland to Dods is over [75-95] per cent and from Dods to DeHavilland it is over [60-80] per cent. Furthermore, other competitors are considerably smaller than the parties in terms of revenues, scale and scope. The competitive constraint other companies supplying political intelligence services on a standalone basis impose on the parties is therefore much weaker than the constraint that each of them confers on the other at present.

85. In addition, based on the evidence before the OFT, self-supply or the threat to switch to self-supply is also insufficient to offset these significant competition concerns.

86. As a result, the OFT currently believes that the transaction gives rise to the realistic prospect of a substantial lessening of competition.

ENTRY AND EXPANSION

87. Entry or expansion may potentially prevent or mitigate competition concerns arising through the theories of harm outlined above. The incentive of the parties to (for example) raise prices is diminished if such action would lead to entry or expansion by rivals.⁴⁰

88. In assessing whether entry or expansion might prevent competition concerns from arising, the OFT will consider if such entry or expansion would be: (i) timely; (ii) likely; and (iii) sufficient.⁴¹

89. The parties argue that barriers to entry and expansion are extremely low. They submit that the relevant information is freely available online and very little capital is required for a new supplier to start competing. In support of this view, the parties have given the examples of two new entrants in the last five

⁴⁰ See Merger Assessment Guidelines, Section 5.8.

⁴¹ See Merger Assessment Guidelines, Section 5.8.3.

years: NovaRes (launched by Cicero, a well-established public affairs consultancy) and SW1A (launched by two former employees of Dods).

90. The OFT agrees that the provision of political intelligence services is not a capital intensive activity, and that a new entrant could start trading relatively quickly. Therefore the OFT has examined whether the likelihood of entry or expansion will be of the scale required to deter or defeat any attempt by the parties to exploit any substantial lessening of competition resulting from the merger.
91. The assessment has considered entry or expansion by:
 - 91.1. firms already active in neighbouring markets such as public affairs, political communications or other consultancies which already use (some of them by self-supplying) political monitoring services, and
 - 91.2. news/data agencies (such as Bloomberg, The Economist Group and LexisNexis).

Firms already active in neighbouring markets such as public affairs, political communications or other consultancies

92. As stated above, the majority of the public affairs, political communications or consultancy firms which contributed to the OFT's investigation, told the OFT that they did not envisage entering into the supply of political intelligence services on a standalone basis in the foreseeable future. They argued that the focus and expertise of their core business and political intelligence services are different, the financial margins are not attractive relative to the margins obtained in supplying the wider communication and/or consultancy services, and would (in some case) require the hiring of additional staff which does not make it financially attractive.
93. The OFT notes that a subset of these public affairs or consultancy firms do supply political intelligence services (in conjunction with other communication or consultancy services) to some clients. In this subset, only one firm told the OFT that it was considering to expand these services but plans were not yet sufficiently advanced. The OFT cannot conclude, based on this information, that such expansion (if ever happens) will be timely and sufficient as required by the OFT to dismiss its competition concerns resulting from this merger.
94. An additional reason put to the OFT by consultancy firms is that they would be unwilling to procure political intelligence services from firms against which they

are competing for the provision of wider consultancy or communication services. Therefore, some of these consultancies might consider that it would not be sensible to expand into an area of business to find out soon after that their prospective clients share similar concerns.

95. The OFT also notes that entry on a scale sufficient to provide a competitive constraint on the parties has been quite rare. For example, the vast majority of customers responding to the OFT's investigation and the parties' survey have not heard of either Cicero/NovaRes or SW1A, so the OFT has concerns that new entry may not be sufficient to constrain the parties.
96. In addition, the parties have not submitted any documentary evidence indicating that even the threat of entry or expansion by any of these public affairs or consultancy firms have had any impact on their commercial actions.
97. In light of the above, the OFT cannot conclude that the entry or expansion by any public affairs or consultancy firms would be likely, timely or sufficient to remove the OFT's competition concerns resulting from this merger.⁴²

News/data agencies (such as [], [] and [])

98. The parties submit that these news agencies offer products and/or services similar to those supplied by the parties could easily enter the market.
99. The parties submitted that [] operates a successful political intelligence service [] in the US. It enables clients to monitor political developments and events. In the parties' views, through utilization of [] multimedia capabilities (TV, news service and print magazine), [] is similar to BBC Democracy Live, allowing [] to provide a vast range of options for clients.
100. According also to the parties, [] also operates a successful monitoring service called [], in [] through its products [].
101. On [], the parties submitted that [] offers a one-stop shop for political intelligence needs and access to information from both []. It also provides, according to the parties, other relevant product or services such as its [].
102. The contention put to the OFT by the parties is that these firms are well placed to enter and in particular one of them has already taken active steps to do so by contacting senior employees of one of the parties.

⁴² Merger Assessment Guidelines, section 5.8.

103. For the OFT to be able to rely on the prospect of entry or expansion to remove competition concerns that would otherwise arise, it must have compelling evidence stating that such entry or expansion is likely, timely, and sufficient. The OFT has not seen such evidence in this case.
104. Customers have told the OFT that it would take time to build a reputation and build a sufficient customer base to compete efficiently. This might take several years. A new entrant would need to employ a number of knowledgeable staff to cover the large amount of information released daily and to provide customers with only the most relevant parts. These difficulties would be faced particularly by an entirely new entrant, but also by an established public affairs consultancy which would wish to expand into standalone political intelligence services.
105. The OFT notes that no established business information company (for example, [], [] or []) has entered the market in the UK in the past. Looking forward, the OFT found no evidence to suggest that there could be entry in a likely, timely and sufficient by an established business information company.

COUNTERVAILING BUYER POWER

106. Customers may be able to use their negotiating strength to limit the ability of a merged firm to raise prices. Such countervailing buyer power may make competition concerns less likely to arise.⁴³
107. The OFT does not believe that buyer power is a relevant factor in this merger. The expenditure by individual customers is relatively small (typically up to £[]) compared to the overall revenues of the parties and as a result and in the absence of any other apparent additional factors, no individual customer appears to have a particularly strong negotiating position.
108. Furthermore, contracts for the supply of standalone political intelligence services are often negotiated with each client bilaterally. Therefore, even if a few customers hypothetically enjoyed some degree of market power, this would be unlikely to protect the weaker customers, as the merger may afford the parties the ability to price discriminate and simply award more favourable conditions (for example, lower price) to the stronger buyers and less favourable conditions (for example, higher price) to the weaker buyers.

⁴³ Merger Assessment Guidelines, Section 5.9.

109. Therefore, the OFT does not currently consider that there is sufficient evidence to suggest that buyer power is sufficient to mitigate any competitive harm arising from the merger.

EFFICIENCIES AND RELEVANT CUSTOMER BENEFITS

110. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to a substantial lessening of competition, or efficiencies can be taken into account in the form of relevant customer benefits.

111. In the parties' view, the OFT should consider the pro-competitive impact of this merger. The parties suggest that the customers response to the parties' survey in which [70-90] per cent of them stated that they rate as a very important or quite important factor in their choice of supplier the ability to meet all of their advisory, lobbying and political intelligence needs under one roof (one-stop shop) clearly indicate the relevant customer benefits brought by this merger. This, in conjunction with the combination of both parties' expertise which will increase quality and innovation not only in the service the merged entity will be able to offer to its customers but across the marketplace, enhancing competitive rivalry overall.

112. The parties have not provided sufficient evidence to substantiate the assertions set out in paragraph 111. As such to assess the scope and weight of these representations, the OFT requires substantiated quantitative and qualitative evidence which have not been supplied.

THIRD PARTY COMMENTS

113. The OFT has received complaints (both unsolicited and in response to OFT questions) about the proposed merger from a number of interested parties. There have also been significant complaints and concerns about the merger from customers contacted by the OFT. Their concern is that after the merger they would face a significant loss of choice and that prices will go up as a result. This concern has been incorporated in the OFT's analysis, above.

ASSESSMENT

114. The transaction concerns the acquisition by Dods of DeHavilland. The parties overlap in the provision of political intelligence services in the UK.
115. The parties submit that neither jurisdictional test is met. The OFT agrees that the turnover test is not met. For the purpose of estimating the parties' share of supply, the OFT has taken the data submitted by the parties at face value. This is an estimate very favourable to the parties. However, even under these assumptions the OFT investigation shows that it may be the case that the parties would account for over 25 per cent of the provision of political intelligence services on a standalone basis to UK based customers. It therefore considers that the share of supply test in section 23(2)(b) of the Act is satisfied in relation to the supply of political intelligence services on a standalone basis to UK based customers (by revenues).
116. With regard to the relevant frame of reference, the parties submitted that the OFT should include the supply of political intelligence services to third parties as part of a wider bundle of public affairs, communication or communication consultancy services. They also argued that the OFT should also include in the relevant frame of reference, the in-house provision of political intelligence services (also referred to as self-supply). The evidence before the OFT did not support these contentions. Standalone political intelligence exhibits sufficient characteristics to be assessed on its own right as a distinct product scope. Public affairs and communication consultancy firms did not agree that they would switch to supplying political intelligence services on a standalone basis to any significant degree which could prevent the parties from profiting from a price increase following this merger. The OFT has not seen sufficiently compelling suggesting that self-supply is or would be a constraint on the parties. As a result, the OFT has assessed this merger on the basis of a product scope of political intelligence provided as a standalone service to customers located in the UK. This candidate frame of reference does not include self-supply.
117. The OFT understands that there are no market research reports covering this sector or otherwise readily available data for this industry that make market shares easy to estimate or verify. Based on the evidence before, the OFT, it believes that the parties' share estimates may not be accurate or even indicative. As a result, the OFT can only place limited weight to the relevance of the estimated market shares and has focused its assessment on the extent

of closeness of substitution between the parties and whether the loss of rivalry and competition between them will give rise to unilateral effects.

118. In light of the evidence before the OFT, it considers that the parties are close competitors, indeed each other's closest competitors. The merging parties are the only two suppliers considered by many customers when purchasing standalone political intelligence services. The parties' own survey shows the diversion ratio from DeHavilland to Dods is over [75-95] per cent and from Dods to DeHavilland it is over [60-80] per cent. Furthermore, other competitors are considerably smaller than the parties in terms of revenues, scale and scope. The competitive constraint other companies supplying political intelligence services on a standalone basis impose on the parties is therefore much weaker than the constraint that each of them confers on the other at present. Third parties, especially customers, are concerned about the merger.
119. Based on the evidence presented to and gathered by the OFT, it could not dismiss its competition concerns on the grounds that entry or expansion by either a public affairs, consultancy or communications firm or a totally new entrant would be likely, timely and sufficiently. In brief, the responses from the OFT market investigation did not confirm the parties' statements on this point.
120. For the reasons outlined above, the OFT believes 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 UK.

EXCEPTIONS TO THE DUTY TO REFER

121. The OFT's duty to refer under section 33(1) of the Act is subject to certain discretionary exceptions, including the markets of insufficient importance or 'de minimis' exception under section 33(2)(a), and the undertakings in lieu exception under section 73(2).
122. The OFT has found that its duty to refer in this case may be met in the wholesale supply of political intelligence services on a standalone basis to UK based customers. The OFT believes that the annual market concerned in the UK is less than £10 million. In line with the guidance that the de minimis exception will not be applied if the market size is above £10 million, the OFT has therefore considered whether it should apply the 'de minimis' exception to its duty to refer.

Availability of undertakings in lieu

123. As set out in the OFT's Exceptions Guidance,⁴⁴ the OFT's general policy is not to apply the 'de minimis' exception where it is 'in principle' open to the parties to offer a clear-cut undertaking in lieu of reference. This is because the recurring benefits of avoiding consumer harm by means of undertakings in lieu in a given case, and all future like cases, outweigh the one-off costs of a reference.

124. Cases that the OFT considers are in principle suitable for resolution by undertakings in lieu are typically those where the part of the transaction that raises concerns can be divested to an independent third party purchaser.⁴⁵ In this case a clearly effective structural remedy does not appear possible because the SLC concerns the core of the business of the merging parties. Therefore, any divestment would be tantamount to prohibiting the merger altogether.⁴⁶

125. Based on the above, the OFT considers that there is no clear-cut and proportionate divestiture package in principle available. The OFT has therefore proceeded to examine whether to exercise its 'de minimis' exception in this case.

Application of the markets of insufficient importance exception to this case

126. When determining whether it should apply its 'de minimis' discretion, the OFT assesses the expected customer harm from the merger, in particular whether the expected merger impact is expected materially to outweigh the public costs of a reference to the Competition Commission. The main factors that the OFT considers in determining the expected customer harm are the following:⁴⁷

- the size of the market
- the strength of the OFT's concern (that is, its view of the likelihood that the substantial lessening of competition will occur)
- the magnitude of competition lost by the merger
- the durability of the merger's impact, and

⁴⁴ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.21.

⁴⁵ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.24.

⁴⁶ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 2.25.

⁴⁷ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 2.18-2.27.

- any wide implications, including the merger's potential replicability and rationale.

127. Each of the above factors is assessed below.

Market size

128. The OFT has estimated this market, taking a cautious approach, to be worth up to £[3-8]million. Hence the value of the market, in principle, is not less than the £3 million benchmark for which a reference to the Competition Commission would generally not be justified.⁴⁸

129. The parties, (albeit stressing that the relevant market is substantially larger than the one estimated by the OFT⁴⁹) have submitted that if the starting overall market is as narrow as indicated by the OFT, the affected market may be as small as £[0-5] million. They submit that:

129.1. the proportion of the relevant market that might experience any consumer detriment should exclude the [20-40] per cent of existing customers who said, in response to the parties' survey, that it would be 'very easy', 'quite easy' or 'neither easy, nor difficult' to self-supply in the event that Dods/DeHavilland were no longer in business

129.2. the OFT should also exclude from the affected market the public affairs consultancies which are sophisticated purchasers and highly likely to enter swiftly in response to any reduction in competitive offer post-merger

129.3. given that , in the parties' view, most consultancies could easily self-supply, the OFT should also exclude the revenues currently from consultancies procuring political monitoring services from the parties, and

129.4. the OFT should also take into account that the combined turnover by the parties has reduced from £[] million in 2009 to £[] million in 2010 and the OFT should consider the market 'dynamically' rather than statically.

⁴⁸ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 2.15.

⁴⁹ See the parties' representations in paragraph 8 above.

130. The OFT does not consider the market size should be reduced for the following reasons:

130.1. the OFT notes that only [0-20] per cent of those customers in the parties' survey responded that they would actually start self-supplying. The majority responded that they would switch to another supplier

130.2. as noted above, the OFT has not been presented with any evidence by the parties that the public affairs consultancies would be less affected by any SLC than other types of customer. On self-supply or entry, aside from firms who were already providing some form of standalone service and one other firm, the majority of public affairs consultancies who responded to the OFT's investigation considered that the lack of profitability together with the convenience and service provided by the parties would limit their ability and incentive to enter into competition with the parties even in response to a price rise. As such, the SLC identified above applies equally to public affairs consultancies, and

130.3. moreover, the OFT has not been provided with any evidence that any alleged purchasing power has had any impact on the parties' commercial actions.

131. In light of the above, the OFT believes that it is reasonable to apply its estimate that the size of the market is significantly above £[more than 3,000,000] and could be as high as £[less than 8,000,000].

Strength of the OFT concerns

132. The evidence suggests that the parties are by far, the largest suppliers in the market. The OFT has found that the parties are also close competitors, indeed each other's closest competitor, the estimated diversion ratios between them are high. Internal documents suggest that this acquisition could aid Dods to maintain and increase its yields rather have them reduced by competition. In addition, the OFT has received concerns from a considerable proportion of customers. As a result, the strength of the OFT's concerns are such as to suggest that it should be highly cautious in exercising the 'de minimis' exception in this case.

Magnitude of competition lost

133. The parties submit that 'the magnitude of competition that might be lost by the merger is negligible.'⁵⁰ They contend that the countervailing constraints they have identified⁵¹ would directly constrain any attempted price increase in the market.⁵² Dods also points to the alleged low barriers to entry and expansion and other countervailing competitive constraints.⁵³
134. The transaction will result in a merged entity with a very high market share. In addition, it will remove the significant rivalry between the two largest and most pro-active commercial operators in the market. A merger between such close competitors with no apparent direct or indirect constraints would be expected to lead to price increases. The loss of such rivalry is expected to lead to a substantial deterioration of the competitive conditions in this market. The situation is further aggravated by the fact that, as detailed in the substantive assessment above none of the constraints suggested by the parties appear to impose any significant constraint on the parties.
135. These factors point against the exercise of the 'de minimis' discretion.

Durability

136. The evidence available to the OFT indicates that entry or expansion would not be likely or timely in the face of a price rise or sufficient to offset the magnitude of competition lost as a result of the merger. On balance the OFT considers the duration of harm arising from the transaction weighs against the exercise of the 'de minimis' discretion.

Replicability

137. Generally, the potentially 'replicable' quality of particular 'de minimis' decisions means that the exercise of the OFT's discretion in one case could cumulatively lead to aggregate customer harm, because consistency of treatment may require that this discretion is also applied in future cases in the same sector.⁵⁴ In this case, the OFT notes []. In a market where the level of competition might be extremely limited, the impact of [] might raise serious competition

⁵⁰Response to Issues Paper, 16 May 2012, paragraph 8.18.

⁵¹ See paragraphs 65 to 86 above.

⁵² Response to Issues Paper, 16 May 2012, paragraph 8.14.

⁵³ Response to Issues Paper, 16 May 2012, paragraph 8.14.

⁵⁴ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 2.42.

concerns. However, given the OFT's findings on the other factors on the 'de minimis' above, the OFT does not need to conclude on this issue.

Conclusion on the 'de minimis' exception

138. The OFT considers that the majority (if not all) of the factors point against of the exercise of its 'de minimis' discretion. The OFT therefore considers it is not appropriate to exercise its 'de minimis' discretion in this case.

DECISION

139. This merger will therefore be referred to the Competition Commission pursuant to section 33(1) of the Act.