Anticipated merger between Skipton Building Society and Scarborough Building Society

ME/3987/09

The OFT's decision on reference under section 33(1) given on 2 March 2009. Full text of decision published 19 March 2009.

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. **Skipton Building Society (Skipton)** is a mutual building society incorporated under the Building Societies Act 1986 and is part of the Skipton Building Society Group. It provides financial services to personal customers including mortgages, savings, financial planning, insurance and will-writing services. Skipton is also active in the commercial mortgages sector, and provides a range of intermediary services, including mortgage administration services. The Skipton Building Society Group is also active in mortgage process outsourcing (MPO) services through its subsidiary Homeloan Management Limited (HML). Skipton has a network of 85 branches and agents located in and around North Yorkshire.

2. **Scarborough Building Society (Scarborough)** is a building society incorporated under the Building Societies Act 1986. It provides mortgages, savings and insurance services to personal customers. Scarborough is also active in MPO services through its subsidiary Scarborough Mortgage Services Limited (SMS) and mortgage portfolio management through its subsidiary, North Yorkshire Mortgages Limited. Scarborough has nine branches, the majority of which are located in and around North Yorkshire. Scarborough's UK turnover in 2008 was £172.2 million.

TRANSACTION

3. Skipton proposes to merge with Scarborough through a statutory transfer of engagements. In particular, the FSA and the parties have agreed to expedite the transaction by structuring it as a directed transfer under section 42 B(3)(b) of the Building Societies Act 1986,[1] enabling it to proceed on the basis of board resolutions by the parties and without member votes. It is anticipated that the transfer of engagements will become effective on 30 March 2009.

4. The parties notified the transaction to the Office of Fair Trading (OFT) on 5 January 2009. The administrative deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) is 2 March 2009.

JURISDICTION

5. As a result of this transaction Skipton and Scarborough will cease to be distinct. The UK turnover of Scarborough exceeds £70 million, so the turnover test in section 23(1) (b) of the Enterprise Act 2002 (the Act) is satisfied. 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 overlap in the supply of a range of financial services to personal customers, in particular savings accounts, mortgages and insurance products in the UK. They also overlap in the supply of long-term investment products and financial planning, although Scarborough is only a distributor of these services. Finally, Skipton and Scarborough overlap in the supply of MPO services to UK financial institutions through their subsidiaries HML and SMS respectively.

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[1] Under Section 42B(3) the FSA has power to direct a building society to transfer all of its engagements to one or more other building societies where it considers it expedient to do so to protect the investments of shareholders or depositors.

Product scope

FINANCIAL PRODUCTS TO PERSONAL CUSTOMERS

7. In Lloyds/Abbey National[2] the CC concluded that the financial services sector may be broadly categorised as follows:

   i. financial products sold to personal customers
   ii. financial products sold to small and medium-sized enterprises (SMEs)
   iii. financial products sold to large firms, and
   iv. wholesale banking (for example, money market and foreign exchange dealing).

8. The CC also determined that financial products sold to personal customers include eight separate markets: namely personal current accounts (PCAs); deposit accounts and similar savings accounts; mortgages; other loans; credit cards; insurance (life and other); other long-term investments; and pensions. This same approach was adopted by the OFT in several recent decisions.[3]

9. The OFT has not received any evidence suggesting a departure from the above market definition. Therefore, separate frames of reference will be considered for the provision of mortgages, savings/deposit accounts and insurance services, to personal customers in the UK.

MORTGAGE PROCESS OUTSOURCING (MPO)

Background

10. As mentioned above, the parties overlap in the provision of MPO services to financial institutions. The provision of residential mortgages involves the following back office functions: processing applications for mortgages,

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[2] Competition Commission Lloyds TSB Group plc and Abbey National plc: a report on the proposed merger, July 2001, section 2, page 13 (*Lloyds/Abbey*).

[3] OFT decision on the anticipated merger between Co-operative Financial Services Limited and Britannia Building Society, 18 February 2009; OFT decision on the proposed acquisition by Nationwide Building Society of Derbyshire Building Society, 19 November 2008 (*Nationwide/Derbyshire*); OFT decision on the proposed acquisition by Nationwide Building Society of Cheshire Building Society, 19 November 2008 (*Nationwide/Cheshire*); OFT report to the Secretary of State on the anticipated acquisition by Lloyds TSB Group plc of HBOS plc, 31 October 2008 (*Lloyds/HBOS*); and OFT decision on the proposed acquisition by Nationwide Building Society of Portman Building Society, 21 November 2006.

dealing with the day-to-day administration, collection of mortgage payments and enforcement in the case of borrowers that fall into arrears. These services require extensive human resources (as some of the tasks cannot be automated and are therefore very time consuming), processes (that is, protocols for the people to follow) and IT systems. MPO services can either be provided in-house by the mortgage lender or by one or more third parties either separately, in combination with in-house supply or as a complete full service.

11. The parties provide integrated MPO services (including IT, labour and processes) for the vast majority of their customers, though for a small number of customers, they only license their IT system (if, for example, the customer has decided to take the mortgage administration in-house).

MPO as part of Business Process Outsourcing (BPO)

12. The parties submitted that the supply of general BPO services is the appropriate frame of reference as there are numerous BPO suppliers that either have entered the residential mortgages niche or could readily do so. From a demand-side perspective, responses from customers indicated that industry experience is an important factor in appointing a BPO supplier for residential mortgages. A BPO supplier would have to fulfil specific requirements in order to be considered. Therefore, it appears unlikely that BPO service provision is an effective alternative (substitute) for mortgage process outsourcing itself.

13. On the supply-side, third parties stated that BPO suppliers would need: the appropriate mortgage administration systems, staff, and FSA approval to supply mortgage outsourcing services and that such process would be costly and time-consuming. However, one third party noted that IT companies that already produced and supplied mortgage processing systems to financial institutions should be able to provide (some) outsourcing services if the appropriate funding was available.

14. BPO services have previously been considered by both the European Commission (EC) and the OFT. In *HP/EDS,*[4] the EC considered the supply of IT services and examined the possibility of dividing IT services into six markets, including a market for BPO services but did not reach a conclusion

[4] Case COMP/M.5197, *HP/EDS* (dated 25 July 2008)

as to the scope of the market. In *IBM/PWC Consulting*,[5] the EC referred to a possible delineation of the IT services market according to the type of industry in which the customer was active but again did not reach a definitive conclusion as to the scope of the market. A similar approach was followed by the OFT in *Vertex/Marlborough Stirling,*[6] where the OFT considered whether the market for BPO services should be divided by industry segment (that is, financial services, utilities, retail and travel sectors). While the OFT did not conclude on the scope of the appropriate market definition, it stated that a narrower product scope delineated by industry segment (in that case, financial services) might be more appropriate. In particular, the OFT stated that there was no demand-side substitution between different types of BPO services and that there was likely to be little prospect of supply-side substitution because of the high cost of gaining entry into a particular industry segment and customers' general requirement that the BPO supplier have industry expertise.

15. The OFT's market investigation tends to support the approach previously applied in *Vertex/Marlborough Stirling.* The OFT has therefore examined this merger on the basis that the supply of MPO services is a distinct product market. However, it is not necessary for the OFT to conclude on this issue, as the proposed merger does not raise concerns, even when considered on the narrow basis of MPO services alone.

In-house supply as part of MPO

16. As mentioned above MPO services can be either provided in-house by the mortgage lender or by one or more third parties either separately, in combination or as a complete full service.

17. The parties submitted that in-house supply (full or partial) was a key form of competition to and constraint on the suppliers of MPO services and, therefore, that in-house supply should be considered to be part of the relevant market of MPO services for the purposes of this transaction. The OFT considers that the extent to which in-house supply can be considered as part of the MPO market depends on two factors. The first is a supply-side response: the extent to which it is profitable for 'self-suppliers' of MPO to divert some or all in-house MPO supply to the 'open MPO market'

[5] Case COMP/M.2946, *IBM/PWC Consulting* (dated 22 September 2002)
[6] OFT decision on the anticipated acquisition by Vertex Data Science Limited of Marlborough Stirling plc, 13 May 2005, *Vertex/Marlborough*.

in response to a small but significant and non-transitory increase in price in outsourced MPO supply.[7] The second is a demand-side response: the extent to which 'outsourcing' MPO customers find it profitable to switch from outsourcing to self-supply in response to such a price increase in outsourced MPO supply.

18. In respect of a supply-side response, the parties provided a number of examples where they had bid against, and lost contracts to, in-house supply. In respect of a demand-side response, the parties provided examples where mortgage lenders have brought their mortgage administration functions back in-house after having originally outsourced them.

19. However, the OFT's market investigation has produced mixed responses on these issues. One third party customer noted that regulatory requirements and economies of scale made in-house supply of some or all of the required services very difficult for a relatively small company. It further submitted that it did not consider partial supply of MPO services as an effective substitute for the provision of the full-range of MPO services. In particular, it stated that the nature of MPO services required an integrated solution and that it only currently considers bids for a full service solution. This opinion was confirmed by four other customers who noted that sourcing the whole or part of the mortgage servicing functions in-house would not be as cost effective or efficient as outsourcing all functions to a single provider.

20. However, a number of other third parties expressed a different view, stating that a combination of both outsourcing and in-house supply of mortgage servicing is used and that some or all of the services provided by MPO companies can be taken in-house. Some smaller customers submitted that they had considered in-house supply and recognised some advantages, even if they had finally decided to outsource their mortgage administration.

21. Based on the evidence available, the OFT considers that while in-house supply (full or partial) may be an effective substitute (to external supply) for

[7] This will depend on the extent to which any such in-house supplier is inhibited from supplying its own MPO services to third parties in the open-market. However, the OFT did not receive any

some mortgage lenders in response to a small but significant and non-transitory increase in price—especially large customers (based on value of mortgage assets under management)—it may not be for other smaller financial institutions. In addition, the OFT's market investigation has indicated that in-house suppliers do not currently compete to provide their mortgage administration services to third parties and therefore are not in competition with MPO suppliers when bids are placed for the award of contracts.

22. Taking a conservative approach therefore, the OFT has considered the impact of the merger under a narrow frame of reference that excludes self-supply, but taking the potential for self-supply into consideration as a competitive constraint (see below). In any event, given that the merger does not cause competition concerns even on this narrow basis, it was not necessary for the OFT to conclude on whether self supply was part of the relevant product market or not.

Conclusion on product scope

23. For the purposes of this decision, the OFT has considered the impact of the proposed merger on the supply of MPO services excluding in-house supply. In any event, however, the OFT has not needed to conclude on the precise scope of the relevant market in this case since there is no realistic prospect of the merger giving rise to a substantial lessening of competition on any plausible candidate market.

Geographic scope

FINANCIAL PRODUCTS TO PERSONAL CUSTOMERS

24. The parties submitted that the relevant geographic frame of reference for the supply of financial products to personal customers is the UK. In particular, they argued that the same financial products are generally supplied throughout the UK and that national pricing policies are adopted, creating no differentiation between regions. In addition, the parties argued that decisions are made according to centrally determined criteria, and that customers selecting the types of financial products are mainly concerned

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evidence that in-house suppliers of MPO are in any sense 'capacity constrained'.

with the features of the product and pricing, and will pay limited or no regard to the proximity of a local branch.

25. The CC in *Lloyds/Abbey* concluded that the geographic market for all of the products was Great Britain, with Northern Ireland constituting a separate market.

26. In recent cases the OFT has considered financial services market overlaps with respect to a regional frame of reference. In particular, in *Lloyds/HBOS* the parties' combined position in Scotland was considerably stronger than across the UK as a whole, such that merger effect incentives could potentially arise on a regional (that is, sub-UK) basis. A similar approach was adopted in two recent OFT decisions,[8] where the parties' combined position in the North West of England and in the East Midlands, respectively, was stronger than across the UK as a whole. Therefore, the parties in those cases provided data of their market shares based on a regional basis.

27. Although the parties submitted that the relevant geographic market for the supply of retail banking services is national in scope, as had been done in previous mergers, Skipton provided data of local areas in which the parties overlap, based on one mile and one and a half mile radii around Skipton and Scarborough branches. In addition, as Skipton and Scarborough are mainly present in the North East of England, the parties provided data of their market shares based on a regional basis.

28. However, in this case, given that the anticipated transaction does not raise competition concerns at any of the national, regional or local levels, the OFT does not need to conclude on the precise geographic scope of each product market.

MPO

29. The parties submitted that the geographic frame of reference for MPO services to UK financial institutions was worldwide. In particular, the parties provided cases of UK financial institutions (Lloyds TSB, HSBC, Barclays, RBS and Kent Reliance) that have outsourced parts of their MPO services (the rest remaining in-house) to non-UK based suppliers, or have

[8] *Nationwide/Derbyshire* (see footnote 3) and *Nationwide/Cheshire* (see footnote 3)

outsourced their MPO services to in-house supplier(s) based overseas. However, the parties also submitted that the regulations regarding the selling and administration of mortgages vary from country to country and there are language barriers limiting the scope for UK suppliers to move into other European countries. In addition, the parties noted that there were costs associated with outsourcing to another country (such as, for example, India) compared with using a UK-based provider, including a need for international transfer of papers and international telecommunications. However, the savings from lower labour costs could outweigh these outsourcing costs.

30. Third party responses indicated that customers would consider outsourcing MPO services to overseas providers provided that they had the relevant regulatory approval. However, none of the parties' customers identified any non-UK companies providing the full-range of MPO services to independent mortgage lenders in the UK.

31. The OFT considers that the geographic scope for the supply of MPO services is at least UK-wide. Taking a cautious approach, the OFT has considered the impact of the merger on the basis of a UK market. It is not necessary, however, for the purposes of this decision for the OFT to conclude on the scope of the relevant geographic market since this does not impact on the OFT's analysis.

HORIZONTAL ISSUES

FINANCIAL PRODUCTS TO PERSONAL CUSTOMERS

National level

32. The anticipated transaction will result in an increment of less than one per cent to Skipton's national share of mortgages,[9] savings and insurance products. In all these products, the parties estimate that the merged entity will have a share of one per cent or less.

33. In light of the very low combined market shares and very small increments, and in the absence of any third party concerns, the OFT does not believe

[9] The parties also submitted that the merged entity does not have a combined share of greater than five per cent in any segment of mortgage products.

that the merger raises any competition concerns at the national level for the supply of these financial products to personal customers.

Local and regional aspects

34. The OFT examined the data submitted by the parties on local overlaps and concluded that there are no locations in which there is a reduction in the number of fascia – on either a one mile or one and a half mile radius - to four (or less) and no area where there will be fewer than eight competitors.

35. In addition, the OFT concluded that the transaction does not raise concerns on a regional basis (North East of England), given the small increments and the merged entity's relatively low market share post-merger in each of the overlapping products and services. In particular, the parties submitted that their combined shares post-merger of any of mortgages, savings or insurance does not exceed 15 per cent. Therefore, the OFT ruled out competition concerns at the regional level given the parties' low combined shares, the lack of third party concern and the existence of a number of alternative suppliers.

MPO

Market shares

36. On the basis of a narrow market for the supply of full-range third-party MPO services in the UK (that is, a market excluding in-house supply) HML is the largest MPO supplier with an estimated market share of approximately [65-75] per cent.[10] SMS is a significantly smaller supplier with an estimated [0-10] per cent market share. Vertex has a market share of [15-25] per cent, Crown has [0-10] per cent and TLS has [0-10] per cent.

37. The parties submitted that the current economic situation and the decline of the UK residential housing market had and was likely to continue to drastically affect the provision of mortgages and consequently the supply of MPO services. In particular, the parties noted that the current changes have transformed the competitive environment for MPO suppliers as many

[10] Market shares are calculated based on the parties' turnovers for the supply of full-range third-party MPO services.

smaller mortgage lenders had ceased writing new mortgages. MPO providers are now seeking to win business from larger mortgage lenders where they are likely to face increased competition from a wider range of competitors and in-house supply.

38. In particular, the parties argued that as a result of the economic downturn in-house providers would have greater capacity available for use as external supply. Taken together, the parties argued that these changes have made the market place more competitive, thereby further reducing the possibility of any reduction in competition arising from the merger in relation to MPO services. While the OFT does not rule out that these changes could indeed have such an impact on the market, the OFT did not consider it necessary to take account of these changes in its competitive assessment given that the merger does not raise competition concerns against pre-merger conditions.

39. The parties submitted bidding data, which provided information on MPO projects for which HML and SMS had been approached by mortgage lenders in the last three years. The OFT understands that retendering of contracts is common and takes place approximately every three to five years. However, the parties submitted that the process by which customers select a MPO supplier is informal and therefore the parties are rarely aware of which other suppliers have been approached by a customer.

40. The bidding data showed that HML was successful in [ ] out of [ ] cases where it was approached and a contract was awarded. SMS was successful in [ ] out of [ ] cases where it was approached and a contract was awarded. In addition the bidding data showed that HML bid in [ ] out of the [ ] contracts in which SMS was approached and SMS bid in [ ] out of the [ ] contracts where HML was approached. This evidence suggests that the degree of competition between HML and SMS is relatively limited (they only bid against each other in [ ] out of [ ] contracts), and further that HML's market share may significantly overstate its competitive strength (HML won only [ ] out of [ ] contracts – [30-40] per cent compared to a market share of [65-75] per cent). The data also shows that SMS's 'success rate' ([ ] out of [ ] contracts or [10-20] per cent) is higher than its market share ([0-10] per cent), but only slightly higher.

41. Based on this data, it therefore appears that the parties either face more significant competition in the bidding process from other third-party MPO suppliers or they lose contracts to in-house suppliers. On the one hand, the data provides a more recent and therefore more accurate picture of competition than the market share data (calculated as turnover for 2008 based on 'legacy' contracts, many of which have been in place for five years). On the other hand, however, the lack of information regarding other bidders/contracts somewhat limits the value of this information. For this reason, taking a cautious approach, the OFT cannot place too much weight on the value of the bidding study.

42. In any event, regardless of whether the market share data or bidding data provides a more accurate picture of the extent of competition between the parties, for the reasons described further below for the reasons described further below, the OFT does not consider that the proposed merger raises competition concerns.

Remaining MPO competitors

43. The parties have submitted that there are a number of alternative MPO suppliers that are able to supply similar services. In particular, an internal report prepared for HML by Eurocatalyst (January 2007) lists a number of alternative providers that are regarded by HML as effective competitors (for example, [ ]). The same report also lists [ ] as anticipated third-party providers (see further below). Furthermore, an SMS internal document (dated May 2008) revealed that it considered [ ] to be third-party mortgage administrators operating in competition against SMS in the current MPO market.

44. The views received from the majority of third parties tended to support the parties' argument that there are a number of alternative MPO suppliers. [ ] noted that they were active in the MPO services provision and were competing with the parties and other suppliers, such as [ ]. A number of competitors noted that Crown and Vertex were similar to SMS in terms of credibility as an alternative to HML. One customer submitted that Crown was a more credible alternative to HML than SMS.

45. Other than Vertex and Crown, customers identified four further competitors, although the extent of the competitive constraint that they impose on the parties is not as clear. In particular:

- WMS, which, according to the OFT's market investigation, currently only administers mortgages originating from the Britannia Group, has been mentioned as a competitor by some customers, offering similar services to the parties, in particular SMS. Based on the evidence submitted to the OFT, WMS has previously bid against the parties for contracts with a number of mortgage lenders. The extent of the constraint imposed by WMS is unclear, however, given that the OFT is not aware of any instances where WMS has been the successful bidder

- Capstone was also identified as a competitor to the parties, though, according to the OFT's market investigation, it only currently services mortgage assets originated within the Lehman Brothers Group and has not won any third party contracts (it is unclear whether Capstone actually bid for third party contracts). The extent of the constraint imposed by Capstone is unclear, however, given Lehman Brothers is in administration

- one customer noted that EDS, which, according to the OFT's market investigation, solely manages Abbey's mortgage assets, was a potential MPO services provider, although some smaller customers stated that EDS would not offer its services to smaller customers at competitive rates. EDS confirmed that it regarded itself as in competition against the parties for the provision of third party MPO services. However, according to the evidence submitted, EDS has not bid for any other third-party contracts for MPO services, and

- Newcastle Strategic Solutions Limited (NSSL), a subsidiary of Newcastle Building Society, noted that it was a competitor to the parties but that it currently had no active contracts in MPO services in the UK. No customers mentioned NSSL as an alternative MPO supplier.

46. Based on the evidence submitted, the OFT concluded that there are at least two effective and active alternative MPO suppliers (Vertex and Crown) that offer similar services to the parties and that have successfully bid for and won third-party MPO contracts. TLS is another MPO supplier that has successfully bid for third party contracts, though it is smaller than SMS, Vertex and Crown and no customers mentioned it as alternative supplier. In addition to these, WMS (which has bid against the parties) and EDS appear

to be providing similar services to the parties, and although they do not currently have third-party MPO contracts, appear to constitute a viable alternative for mortgage lenders. The extent of any constraint imposed by Capstone and NSSL may be minimal, however.

Switching costs

47. Based on third party responses, switching costs do not appear to be significant enough to affect the competitive process in the particular market. In particular, a number of customers submitted that there were costs and risks associated with switching MPO suppliers, but that the threat of switching acted as a competitive constraint when renegotiating contracts with the MPO suppliers. Third parties stated that the retendering of contracts is common (taking place approximately every three to five years) and accordingly, the threat of switching does act as a competitive constraint, even if switching does not occur in practice that frequently.

In-house suppliers

48. Finally, even if in-house MPO suppliers are not considered as part of the relevant product market, the OFT considers that it would be unrealistic to ignore constraints placed on third-party MPO suppliers from such providers. As mentioned above (paragraph 17), the parties have provided a number of examples where they had bid against and lost contracts to in-house suppliers, and where mortgage lenders had taken mortgage administration services in-house after originally outsourcing them. Based on this evidence and on third party responses, the OFT considers that in-house supply is a competitive constraint on MPO suppliers, particularly for large customers.

Conclusion

49. Post-merger, HML will remain the market leader in the supply of MPO services. The increment in HML's share of supply will be relatively modest at less than [0-10] per cent. The bidding study (whose data has some limitations and therefore cannot be fully relied upon to the exclusion of the market share data) indicates that SMS is not a strong constraint on HML in bidding for MPO contracts, and that HML's competitive strength may be significantly less than its market share suggests. In addition, the evidence before the OFT indicates that there are at least two effective competitors for MPO services that would remain post-merger and two other alternative

MPO suppliers, who offer similar services but to date have been unsuccessful in winning third party contracts (in spite, in the case of WMS, of actively bidding against the parties). Furthermore, in-house supply is a competitive constraint on MPO suppliers, in particular for large customers. On this basis, the OFT considers that the merger does not give rise to competition concerns.

Barriers to entry and expansion

50. Given that no competition concerns arise from the merger regarding the supply of financial product to personal customers or MPO services, it is not necessary to conclude on the issue of barriers to entry.

THIRD PARTY VIEWS

51. The OFT received comments and views about the merger from a number of third parties, including competitors and customers of the merging parties.

52. No third parties, including customers and competitors, raised any concerns regarding the supply of financial products to personal customers in the UK.

53. Regarding the supply of MPO services, no competitors raised any concerns about the merger. The majority of MPO customers had no concerns about the merger. However, one customer raised concerns noting that the merging parties were close competitors. Several customers noted that competition in the market was already limited pre-merger and that there were few viable alternatives to HML. All of these concerns have been dealt with above.

ASSESSMENT

54. Skipton and Scarborough overlap in the supply of a range of financial services to personal customers, in particular mortgages, savings and insurance products in the UK. They also overlap in the supply of long-term investment products and financial planning, although Scarborough is only a distributor of these services. Finally, the parties overlap in the supply of MPO services to UK financial Institutions through their subsidiaries HML and SMS respectively.

55. In the market of financial products to personal customers in the UK, the OFT examined all these financial products on a national, regional and local basis.

56. Based on the evidence available to it, the OFT considers that no competition concerns will arise on any of these frames of reference. At the national and regional (North East of England) levels, the parties have a small combined share of supply in relation to each of the product segments with minimal or small increments in all segments. At a local level, the OFT concluded that there are no locations in which there was a reduction of fascia to four (or less) and there was no area where there would be fewer than eight competitors.

57. In the market of the supply of MPO services to third parties, the parties' combined market share is approximately [70-80] per cent with an increment of [0-10] per cent. The bidding study (whose data has some limitations and therefore cannot be fully relied upon to the exclusion of the market share data) indicates that SMS is not a strong constraint on HML in bidding for MPO contracts, and that HML's competitive strength may be significantly less than its market share suggests. Nevertheless, there are at least two effective competitors for MPO services (Vertex and Crown) that would remain post-merger. In addition to these, WMS, which has bid against the parties, and EDS appear to be providing similar services to the parties, and although they do not currently have third-party MPO contracts, appear to constitute a viable alternative for mortgage lenders. Capstone, given its links to Lehman Brothers, which is currently under administration and NSSL with no active contracts in the UK, may impose a minimal constraint to the parties. Furthermore, in-house supply is to a certain extent a significant competitive constraint on MPO suppliers, in particular for large customers. Finally, third parties, including customers and competitors, were largely unconcerned about the impact of the merger on competition.

58. Consequently, having considered all the evidence it has received the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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

END NOTES

1. Subsequently to the decision, WMS clarified to the OFT that WMS was not only administering mortgages originating within the Britannia Group, but also mortgages originated by other mortgage lenders and bought by the Britannia Group.

2. Subsequently to the decision, EDS informed the OFT that it no longer managed Abbey's mortgage assets. In addition, EDS clarified that it did not currently have third party contracts in the UK.

3. Subsequently to the decision, Capstone informed the OFT that historically Capstone has acted as a captive servicer for mortgage assets originated within the Lehman Brothers Group. Capstone has advised that this position may change in the future. In addition, Capstone clarified that it also acts as master servicer for loans that were acquired by the Lehman Brothers Group and are administered by external third party servicers.