Anticipated acquisition by Argenta Private Capital Limited of the Business and certain assets of Anton Private Capital Limited and the entire issued share capital of Anton General Partner Limited and SLP (Management) Limited

The OFT's decision on reference under section 33 (1) given on 23 December 2004

Please note that square brackets indicate information excised, or exact figures replaced by a range, at the parties' request.

PARTIES

1. **Argenta Private Capital Limited** (Argenta) is wholly owned by Argenta Holdings plc. It is the third largest registered members' agent at Lloyd's of London insurance market (Lloyd's). Argenta Holdings plc operates a managing agent, which is responsible for managing syndicate 2121 at Lloyd's. Argenta's UK turnover for the financial year to 31 December 2003 was approximately £ [ ].

2. **Anton Private Capital Limited** (Anton) is the smallest registered members' agent at Lloyd's. It is a wholly owned subsidiary of Anton Holdings Limited, which wholly owns **Anton General Partner Limited** (AGP) and **SLP (Management) Limited** (SLPM), both of which are involved in the management and administration of various Scottish Limited Partnerships (SLPs), which are members at Lloyd's. AGP and SLPM are also part of the transaction. Anton and SLPM's UK turnover for the financial year to 31 December 2003 was approximately £ [ ] and £150,000 respectively. AGP did not generate any turnover during this period.

TRANSACTION

3. Argenta proposes to acquire the business and certain assets of Anton and the entire issued share capital in AGP and SLPM. The proposed aggregate consideration payable is approximately £ [ ].

4. The parties notified the transaction on 15 November 2004 and the statutory deadline for consideration is 29 December 2004.

JURISDICTION

5. As a result of this transaction, Argenta, Anton, AGP and SLPM will cease to be distinct. Argenta and Anton overlap in the supply of members' agency services to Lloyd's members and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met as the parties' combined share of the supply of members' agency services to Lloyd's members would exceed 25 per cent as a result of the merger. 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.

RELEVANT MARKET

6. In respect of managing agency services, there is no overlap in the parties' activities. While Argenta operates a managing agent, Anton, AGP and SLPM do not. In the light of this, competition in relation to managing agency services is not considered further in this decision.

7. There is no overlap between the merging parties in the provision of management services to SLPs. This is not considered further in this decision.

8. Argenta and Anton overlap in the supply of members' agency services to Lloyd's members. Neither AGP nor SLPM provide members' agency services.

Lloyd's insurance market

9. Lloyd's is a leading insurance market providing specialist insurance to policyholders worldwide. It is made up of members, who accept insurance business for their own profit and loss on a several liability basis. Historically, all members have been private individuals underwriting with unlimited liability. After a period of substantial losses at the beginning of the 1990s, Lloyd's introduced in 1994 corporate members with limited liability. Consequently, the number of individual members has steadily declined from 14,744 in 1995 to 2,048 in 2004. This trend is expected to continue since from 2003 no new individual members can be admitted to Lloyd's. Some private individuals can participate at Lloyd's through limited liability companies (Namecos) or limited partnerships (SLPs) to benefit from limited liability. The total value of business that a member can underwrite in a given year - its underwriting capacity - is dependent on the value of a member's deposit of capital as security, known as Funds at Lloyd's.

10. Insurance business at Lloyd's is conducted through syndicates, each of which is run by a managing agent on their behalf. Syndicates set premiums, accept risks

and pay claims. There are currently 66 syndicates, which are formed annually for one year only. They are financed by members through the provision of underwriting capacity.

11. Members receive advice in relation to their underwriting activity from members' agents, such as Argenta and Anton. The advice includes syndicate analysis, syndicate participation, monitoring of syndicate performance and other administrative services. Due to the decline in the number of individual members, the number of members' agents has also decreased significantly from 37 in 1995 to four in 2004.

12. Lloyd's is regulated by the Financial Services Authority (the FSA) under the Financial Services and Markets Act 2000. The FSA delegates a substantial part of its regulatory activity to the Council of Lloyd's, which is the Lloyd's governing body as established and empowered by the Lloyd's Act 1982. Members' agents are authorised by the FSA and regulated by Lloyd's. They are required to publish a standard New Members Statement and adhere to both FSA rules and Lloyd's byelaws. The agreement between a members' agent and a member, the Members' Agent's Agreement (MAA), is prescribed in the form of and including the terms of the agreement set out by the Lloyd's Agency Agreements Byelaw (No. 8 of 1988). Lloyd's also monitors the fees that members' agents charge their customers, which are contained in the MAA.

Product market

13. The parties argue that the relevant market is the provision of advice in relation to members' underwriting. This includes not only advice provided by members' agents but also advice provided by other companies which perform some of the functions of members' agents, such as Lloyd's Members' Agency Services (LMAS), which currently only provides services to members in relation to their exit from Lloyd's, as well as FSA-registered advisors to Lloyd's[1] and other Lloyd's analysts.[2] The parties also assert that as members can choose other investment opportunities either within Lloyd's (e.g. by investing in Lloyd's listed vehicles) or outside (e.g. by investing in other insurance companies), this also acts as a constraint on members' agents.

14. The practical effect of the provisions of the Lloyd's Act 1982, Lloyd's Agency Agreements Byelaw (No 8 of 1998) and Lloyd's Membership Byelaw (No 17 of 1993) is that every member is required to be represented by a members' agent.

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[1] E.g. Newton Follis.

[2] E.g. AM Best, ALM, Moody's and Standard & Poor's.

Although corporate members can apply for dispensation from this requirement, [3] in practice only large corporate members have obtained this. [4] In addition, all third parties agree that certain advice can only be provided by members' agents (e.g. the handling of certain client funds). On the whole, members do not appear to consider investing in a Lloyd's listed vehicle as a substitute for Lloyd's membership, which offers some particular features: greater flexibility in the extent of market participation (as buying and selling capacity has a lesser impact on capital gains tax payable) and personal decision-making regarding syndicate participation.

15. The above evidence suggests that for the purposes of this decision, the appropriate frame of reference is the supply of members’ agency services to Lloyd’s members.

16. In so far as the members’ agents’ costs could be passed on by members, it seems appropriate to also consider the impact of the merger on downstream insurance activities, either on the provision of finance to Lloyd’s syndicates, or, wider still, on insurance or reinsurance underwriting in Lloyd’s.

Geographic market

17. Members’ agents only operate in the Lloyd’s insurance market in London. Therefore, the geographic frame of reference is Lloyd’s in London.

HORIZONTAL ISSUES

Non-coordinated effects

18. The parties provided share data for members’ agency services based on capacity and client numbers.[5] The merger will reduce the number of members’ agents from four to three players of similar size. The parties will become the second largest members’ agent by capacity (their combined share of supply would amount to [25-35] per cent with an increment of [10-20] per cent) and the largest members’ agent by client numbers (their share of supply would be [25-35] per cent with an increment of [10-20] per cent). The remaining members’ agents will be Hampden Agencies Ltd (Hampden) and CBS Private Capital Limited (CBS) with respective shares of [35-45] per cent and [25-35] per cent by capacity and [30-40] per cent and [25-35] per cent by client numbers.

[3] In order to obtain dispensation, corporate members need to demonstrate sufficient capability and understanding of underwriting at Lloyd’s, and confirm that they will carry out adequate syndicate financial review and due diligence. They also need to show adequate resources and expertise for doing so.
[4] For instance, of 122 remaining corporate members, 104 have applied and been granted such dispensation.

19. Competition between members' agents appears to include both price and quality of advice considerations, although members confirmed that they value quality of advice and their personal relationship with their agent as more important than price.

20. As to price competition, it is expected that post-merger the parties would be constrained by the following factors.

• First, as stated above, Lloyd's monitors the fees that members' agents charge their customers and may be in a position to constrain attempts to charge excessive or unreasonable fees. Under clause 14.1 of the standard MAA no variation of the MAA is permitted without the written consent of Lloyd's Council; any variation would include a variation in fees. In making its decision on granting approval, Lloyd's accepts representations from members. The basis and reasonableness of any fee increase would be one of the factors taken into account by Lloyd's in considering the continued suitability of a members' agent. In any event, as a matter of fact, there is evidence to show that Argenta has not instituted any unilateral fee increases for the last six years and the Association of Lloyd's Members stated that the fees charged by members' agents have not been the source of contention or complaint.

• Second, Hampden and CBS are currently the largest players, have a good reputation and members could switch to any of them in case of fee increases charged by the merged entity.

21. As to quality of service, the evidence indicates that Hampden and CBS currently provide a high quality of service. It is expected that the merger would make Argenta a more effective competitor to Hampden and CBS as economies of scale achieved in research could improve the quality of the merged entity's analysis. In addition, Argenta's increased capacity would enable it to negotiate more effectively with syndicates on behalf of its clients. Most third parties agree with this.

22. In the event that Lloyd's were to agree to a fee increase by the parties post-merger, it does not appear to be the case that the higher prices would be passed on downstream to the provision of finance to Lloyd's syndicates and further down to insurance buyers. This is because in terms of total capacity in Lloyd's, the proportion of capacity advised by members' agents is only 22 per cent, while almost 80 per cent of Lloyd's total underwriting capacity is accounted for by large

[5] In this context, the share of capacity data refers to the proportion of Lloyd's underwriting capacity that is advised on by a particular members' agent.

corporate members that have obtained dispensation from requiring a members' agent.

Coordinated effects

23. A small number of customers suggested that the merger would increase the likelihood of collusion between the three remaining members' agents. However, evidence suggests that coordination between members' agents would not arise given the extent of fee negotiation between members' agents and their clients, and the threat of regulation by Lloyd's, in particular regarding pricing.

Barriers to entry and expansion

24. As stated above, members' agents must be authorised by the FSA and approved by Lloyd's.[6] Third parties suggest that entry could be made more difficult given the economies of scale and declining customer base. Entry would seem to be easier for firms already participating in Lloyd's in a different capacity, such as LMAS or Newton Follis. However, the OFT did not receive any evidence to indicate that new entry would be sufficiently timely and likely to constrain the merged entity.

25. Overall, the evidence suggests that new entry cannot be expected to act as an effective and timely competitive constraint on the parties post-merger.

26. Barriers to expansion appear to be low as members' agents could easily increase capacity to take on more clients. However, in practice, such expansion may be made more difficult by the fact that clients exhibit some degree of price insensitivity.

Buyer power

27. Large customers seem to have the ability to negotiate fees with their members' agents. However, the transaction may reduce this ability to negotiate fees to some extent.

[6] FSA authorisation requires that a members' agent is registered in the UK and has adequate resources and a corporate structure that allows FSA supervision. Furthermore, every applicant should be 'fit and proper' to be authorised. Lloyd's authorisation requirements are still more stringent. Applicants need to show sufficient competence, quality of support resources (such as IT and credit control systems), the ability to manage their business, reputation of good standing, and adequate capital and financial resources (a minimum regulatory capital requirement of £400,000).

VERTICAL ISSUES

28. Argenta Holdings plc operates a managing agent, which is responsible for managing syndicate 2121 at Lloyd's. Anton does not manage any syndicates. Given that syndicate 2121 accounts for less than 1 per cent of Lloyd's total underwriting capacity[7], no vertical issues are created by the merger.

THIRD PARTIES

29. The majority of third parties were unconcerned. The FSA and Lloyd's did not raise any competition concerns. A small number of customers believe that the merger would reduce their choice and increase the likelihood of collusion between the three remaining agents. These concerns have been addressed above.

ASSESSMENT

30. The parties overlap in the supply of members' agency services to Lloyd's members. The transaction brings together the third largest and the smallest Lloyd's members' agents and reduces the number of agents from four to three.

31. The weight of the evidence in the OFT's investigation indicates that, on balance, the merger is not expected to raise competition concerns. Post-merger, the parties will continue to be constrained by Lloyd's regulation which tightly controls the Lloyd's market. The majority of customers were unconcerned, with many commenting that the merger would enhance competition, as it would enable Argenta to compete more effectively with the two other much larger members' agents in Lloyds by reducing costs and improving the quality of its services.

32. Consequently, the OFT does not believe that it is or may be the case that the creation of this merger situation may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services.

DECISION

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

[7] Lloyd's (2004), Corporate Participation at Lloyd's, A Guide for New Entrants, p. 48