

Anticipated acquisition by EDR Landmark Group Limited of Argyll Environmental Limited

ME/4610/10

The OFT's decision on reference under section 33(1) given on 5 October 2010. Full text of decision published 17 November 2010.

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**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. **EDR Landmark Group Limited (EDR)** is a wholly owned subsidiary of Daily Mail and General Trust Plc ('DMGT'). It acts as an intermediary holding company and is the direct parent of Landmark Information Group Limited (Landmark).
2. Landmark licenses raw environmental data to third parties to allow them to compose their own environmental risk reports, and acts at both the wholesale and retail levels in selling its own branded composite data reports, comprising raw data and a professional risk assessment. It also acts as an insurance intermediary in selling contaminated land risk policies for residential property.
3. **Argyll Environmental Limited (Argyll)** is an English registered limited company, owned by its senior management. Argyll provides environmental risk assessments, data reports, and compliance audits to legal, financial and property professionals. It licenses raw environmental data from Landmark and others to produce environmental risk reports to which Argyll adds an individual risk assessment. Through its subsidiary Ensura Limited it also acts as an insurance intermediary selling environmental risk insurance. In the financial year ending 31 March 2009 Argyll had UK turnover of £1.097 million.

## **TRANSACTION**

4. Landmark proposes to acquire the whole of the issued share capital of Argyll, through its holding company EDR for [ ] plus an earn-out consideration not exceeding [ ].
5. The transaction was notified on 19 July 2010, and the extended administrative deadline for a decision was 22 September.

### **Rationale**

6. The parties submitted that the owners of Argyll were seeking to release their capital by selling the company. Argyll made a [ ] loss in 2008-2009, and has faced difficult financial conditions, and the owners/directors have decided that they no longer wish to invest any further amounts of their own money in the company.
7. Landmark also submitted that its rationale for the transaction was to generate efficiencies through the integration of Argyll's consultancy business, increase report development capability through the addition of the Argyll team, increase the parties' ability to provide high-end technical data to customers, strengthen Landmark's position in the insurance market, and enable the merged entity to develop new products.

## **JURISDICTION**

8. As a result of this transaction Landmark and Argyll will cease to be distinct. The parties overlap in the supply of environmental risk reports in the UK and the merger creates a combined share of [80-90] per cent (increment [less than one] per cent); therefore the share of supply test in section 23 of the Act is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **BACKGROUND**

9. The OFT last considered this market in 2003 in its inquiry into the proposed acquisition of Sitescope Limited by DMG Information Limited.<sup>1</sup> At

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<sup>1</sup> [www.oft.gov.uk/OFTwork/mergers/decisions/2003/dmg-information](http://www.oft.gov.uk/OFTwork/mergers/decisions/2003/dmg-information), EDR was previously known as DMG Information Limited.

the time of that inquiry the market for environmental risk reports was considered to be a nascent and growing market.<sup>2</sup> The Sitescope transaction was cleared largely because of potential entry by a product developed by the Environment Agency, and that, since environmental data was publicly available, there appeared to be no barriers to a new entrant setting up its own database of historical information and distributing a product either directly or indirectly to end users.

## **MARKET DEFINITION**

10. The parties overlap in the supply of environmental risk reports and the provision of insurance intermediary services for the selling of non-life environmental risk insurance.

### **Product scope**

#### **Insurance intermediary services**

11. Landmark and Argyll are both active in the market for the provision of insurance intermediary services in the UK, selling environmental risk insurance policies. The parties submitted that the relevant market was likely to be the UK market for the provision of insurance intermediary services for the selling of non-life insurance.
12. Non-life insurance incorporates all types of risk other than life insurance. In previous cases<sup>3</sup> the OFT has concluded that, while on the demand side, there was little substitutability between the different types of non-life insurance, such as household, travel or motor insurance, there may be an element of substitutability on the supply side, on the basis that insurance products require a common set of skills and resources in terms of risk assessment, administration and claims management.
13. While it may be appropriate in this case to consider the narrow market sector of environmental risk insurance, given the parties combined market share of such a sector would be less than one per cent the OFT has not

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<sup>2</sup> With the proposed introduction of the Home Information Pack and the new Law Society search form, it was thought that future demand for environmental data may well increase substantially and that this might lead to set up costs diminishing relative to the value of the market thus stimulating new entry.

<sup>3</sup> For example CGU International Insurance plc and Gresham Insurance Company Limited – 2005 – [www.of.gov.uk/OFTwork/mergers/decisions/2005/cgu](http://www.of.gov.uk/OFTwork/mergers/decisions/2005/cgu)

had to conclude on the relevant product frame since on any reasonable definition of the market the merger would not cause competition concerns, and therefore this market is not considered further.

### **Environmental risk reports**

14. Providers of environmental risk reports collect the relevant environmental data about a particular site from various original sources and add value by cleaning the data and setting it out in a single report.
15. Landmark provides a range of environmental, planning and mapping products for use in residential and commercial property evaluations and transactions. Most of Landmark's reports are computer generated with no intervention by environmental consultants for risk assessment.
16. For residential conveyancers and solicitors Landmark offers Envirosearch Residential and Homecheck to help homebuyers find out if the property they are interested in is built on contaminated land or is affected by environmental risks.<sup>4</sup> Landmark also offers a property specific residential flood report and a contaminated land only report. Whilst for commercial properties Landmark offers environmental risk screening services under the title Enviroscreen for solicitors and their clients, as well as surveyors, developers and investors. Products range from a basic 'Enviroscreen' certificate<sup>5</sup> through 'Sitecheck Data', a desk top data only<sup>6</sup> commercial environmental report, 'Sitecheck Access', a commercial environmental risk report with a risk assessment from sub contracted environmental consultants, Wilbourn Associates, to 'Sitecheck Review', a site analysis produced in conjunction with environmental consultants RPS.<sup>7</sup>
17. Argyll does not produce basic environmental reports. Rather, in all cases Argyll produces individually composed reports which are generated by environmental consultants. Its main focus is on the provision of environmental and flood risk information for large commercial property transactions, although it also provides residential reports, which vary in

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<sup>4</sup> Envirosearch Residential is priced at £41.70 plus VAT, Homecheck is price at £35.70 plus VAT.

<sup>5</sup> An Enviroscreen certificate will result in either a 'pass' or a note that 'further action is required', that is an opinion from sub contracted environmental consultants.

<sup>6</sup> By data only, we mean a report that has not been interpreted by an environmental consultant.

<sup>7</sup> Sitecheck data is priced from £96 plus VAT; Sitecheck Assess is priced from £149 plus VAT, while Sitecheck Review is produced in two variations and priced from £219 plus VAT.

terms of depth and sophistication depending on the client's requirements. Some of Argyll's residential reports will include reports from Landmark, such as the 'Envirosearch Residential Report' and Landmark's 'Plansearch' product range. Argyll's commercial environmental reports vary in price depending on the detail of the report required by the client. Its commercial risk reports range from 'Sitesolutions Brief', a rapid risk screening for commercial property sales, 'Sitesolutions Commercial', a rapid turnaround desk based risk management assessment to facilitate property sales, acquisitions or lettings – here Argyll carry out an analysis based on a dataset provided by Landmark - 'Sitesolutions Consult', which supplements the Sitesolutions Commercial report by reporting on the likely view of the Regulator, and 'Sitesolutions Inspect', which adds a physical inspection and report by Argyll's consultants of the site to the Sitesolutions Consult report.

18. In the previous DMG/Sitescope case<sup>8</sup> the OFT considered the relevant market to be the supply of residential and basic commercial environmental risk reports in the UK excluding the more detailed commercial reports provided by environmental consultants.
19. The parties submit that in this case the relevant market is likely to be the provision of environmental risk reports for Residential and Commercial Property transactions excluding Phase I and Phase II studies,<sup>9</sup> since there is no overlap in the provision of bespoke Phase I or Phase II environmental risk reports.
20. The parties also suggested that it is possible to further subdivide this market by reference to the supply of environmental risk information to the specific types of transaction, for example, residential or commercial property transactions. However, the parties submit that this sub division is neither relevant nor helpful as it ignores the fact that residential and commercial property risk reports are generated from the same data produced on the back of the same investment and are supplied to the same customer group albeit that there is a differential in terms of price and detail.

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<sup>8</sup> See foot note 1 above.

<sup>9</sup> Phase I reports are desktop reports prepared individually by an environmental consultant and involving a physical visit to the site in question while a Phase II report is the product of a site visit and more intensive investigation which also involves the taking and analysis of samples from the site.

They argue that supply-side substitution is high, since Landmark and Argyll, for example, are able to run the different types of reports interchangeably.

21. The parties' view of the relevant market is supported by their main competitor, GroundSure, which has argued that there is a continuum in terms of price, complexity and customers for residential and commercial reports and that these reports are therefore in the same market. However it should be noted that the boundaries of a relevant product market are generally determined by reference to demand side substitution alone although there are circumstances where we may aggregate several narrow relevant markets into one broader one.<sup>10</sup>
22. Although it may be appropriate to divide the market into supply of environmental risk information for specific types of transaction, namely residential and commercial property transactions, it has not been necessary for the OFT to conclude on the relevant product scope, since on any candidate market considered by the OFT, the transaction does not raise competition concerns.

### **Geographic Scope**

23. The parties submitted that as all types of environmental risk reports can be supplied from anywhere in the UK the most suitable scope of the relevant market is therefore the UK.
24. The OFT has not received any third party comments or evidence that suggests that this is not the case. Therefore the relevant geographic scope of the market is considered to be UK wide.

## **COMPETITIVE ASSESSMENT**

25. The parties overlap in the supply of environmental risk reports for residential and commercial property transactions in the UK.

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<sup>10</sup> The OFT may do so when: (a) production assets can be used by firms to supply a range of different products which are not demand side substitutes, and the firms have the ability and incentive quickly (generally within year) to shift capacity between these different products depending on demand for each; and (b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product. In this case aggregating the supply of these products and analysing them as one market does not affect the decision on the competitive effect of the merger.

## Horizontal Issues

26. The parties submitted that their combined market shares in the market for environmental risk reports for residential and commercial property, excluding Phase I and Phase II reports, were [80-90] per cent by volume (increment [less than one] per cent). The parties also provided market shares for the separate residential and commercial environmental risk reports sectors. Here the parties' combined market shares would be [80-90] per cent and [70-80]<sup>11</sup> per cent respectively with increments of [less than one] per cent and under [zero-10] per cent respectively.
27. The parties identified a number of potential sources of environmental risk reports. For example, they contended that at a basic level a solicitor could self search and obtain the necessary information from a variety of original sources. The parties also submitted that there are approximately 700 environmental consultants active in the market for environmental risk reports.<sup>12</sup> It is submitted that these consultants are more likely to produce reports for larger commercial sites carrying out Phase I and Phase II reports. However, the parties submit that some environmental consultants, including Waterman,<sup>13</sup> Renaissance,<sup>14</sup> RPS Group<sup>15</sup> and Wilbourn<sup>16</sup> are increasingly producing desktop reports using original data from the same third party sources as used by Landmark, Argyll and GroundSure.
28. The parties identified GroundSure<sup>17</sup> as a leading provider for environmental searches for both residential and commercial property in the UK. Founded in 2001, it has, since 2006, its own historical mapping and geo-environmental data service. GroundSure is able to supply both basic reports generated without the input from an environmental consultant and more sophisticated reports generated by in-house environmental consultants, and also provides Phase I, Phase II and Phase III (Remediation advice) services to its clients. Since 2007 GroundSure has been owned by Emap Ltd. The parties estimated GroundSure's market share of the wider market at around [5-15] per cent, GroundSure itself has suggested that it has a higher

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<sup>11</sup> Although one third party estimated the parties' combined market share to be around 87 per cent, increment 12 per cent.

<sup>12</sup> The parties referred to [www.endsdirectory.com/](http://www.endsdirectory.com/) for details of these firms.

<sup>13</sup> [www.watermangroup.com](http://www.watermangroup.com)

<sup>14</sup> [www.renreg.co.uk/](http://www.renreg.co.uk/)

<sup>15</sup> [www.rpsgroup.com/](http://www.rpsgroup.com/)

<sup>16</sup> [www.environmental-surveyors.com/](http://www.environmental-surveyors.com/)

<sup>17</sup> [www.groundsure.com/](http://www.groundsure.com/)

market share than that estimated by the parties. It is Landmark's view that GroundSure will continue to provide a strong competitive constraint on the merging parties pricing behaviour. Third parties also recognised GroundSure as the second largest competitor in the commercial market.

### **Residential environmental risk reports**

29. The parties submitted that there are about 11,000 potential customers for residential environmental risk reports, which include high volume conveyancing solicitors, high street solicitors and licensed conveyancers. Landmark stated that there was a high awareness of environmental risks in this market and estimates that in England and Wales over 80 per cent of all residential transactions will have an environmental risk report commissioned.<sup>18</sup>
30. No third party concerns were raised with regard to the market for residential reports. The increment to Landmark's market share is [less than one] per cent, and therefore, even if treating this as a distinct sector of the market; the merger will not result in a substantial lessening of competition.

### **Commercial environmental risk reports**

31. The parties submit that the commercial property market is generally less diverse and is dominated by approximately 3,000 commercial property lawyers, who are specialist divisions of larger law firms. In the market for commercial property the penetration rate for environmental risk reports is much lower than for residential deals at 36 per cent.
32. The parties explained that the distribution of environmental searches by all providers is either via resellers or direct to solicitors, with an estimated 90 per cent plus environmental searches actually sourced via a third party reseller.<sup>19</sup> The parties have submitted that Argyll's products are currently only distributed by three resellers compared to a network of over 200

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<sup>18</sup> The high level of penetration has been due to the Law Society's Warning Card advising solicitors to consider environmental risk on behalf of their clients in the conveyancing process. In Scotland, only three per cent of transactions have a report. This is due to the Scottish Law Society currently not adopting a settled policy on the need for such reports, although the parties submit that it is currently reviewing its policy with regard to environmental risk.

<sup>19</sup> For example MDA Searchflow [www.searchflow.co.uk/prelogin/about/index.asp](http://www.searchflow.co.uk/prelogin/about/index.asp) and TM Group [www.tmggroup.co.uk](http://www.tmggroup.co.uk)



resellers which distribute Landmark products. The parties envisage that post merger both companies' distribution agents will carry all products and suggest that this would increase customer service and choice throughout the UK. This also suggests, as suggested by some customers, that the parties pre merger were targeting different customers as Argyll were going direct to the lawyers whereas Landmark were using resellers to their customers.

33. The parties submit that whilst both Landmark and Argyll serve several common customer groups there is a pronounced difference in the customer profile of Argyll and Landmark. Whereas Landmark provides computer generated reports nationally for the mass residential and commercial property segments of the market. Argyll's principal customers are large City law firms dealing in complex commercial property deals. This leads the parties to suggest that Landmark and Argyll are not each other's closest competitors. It is submitted that Argyll, with its in-house team of environmental consultants has concentrated on the high-end of the market,<sup>20</sup> typically a client, for example a city law firm, finance provider, or other blue chip client who value the ability to be able to contact the consultant who wrote or offered an opinion within the report to remain contactable once it is issued. In the parties view, this means that Argyll's closest competitor is GroundSure, which has, in their view, played to this high-end of the market.
34. Third parties agreed that Landmark and Argyll targeted different customer groups and offered different products. Landmark, however, considered that it was still able to compete, to a lesser degree, in the high-end commercial market through subcontracting some of the consultancy work out to Wilbourn Associates and RPS, in those cases where a computer generated report is flagged as requiring 'Further Assessment'. The parties provided details of the suppliers of environmental risk reports to the top 30 law firms, which showed that only two used both Landmark and Argyll reports whereas a large proportion used Argyll and GroundSure and only six use Landmark, but with none of these six using Landmark exclusively.
35. The parties submit that this segment of the market was almost exclusively serviced by GroundSure until the entry in 2004 by Argyll. Landmark

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<sup>20</sup> High-end reports are those which are individually written by qualified consultants offering bespoke data produced for a particular site.

submits that its market share for this high-end segment has not been greater than [10-20] per cent over the last five years. This, they argue, points to Argyll as GroundSure's main competitor. The parties estimate that GroundSure's market share in this segment has decreased from around [60-70] per cent in 2005 to [30-40] per cent in 2010, while Argyll's share increased from around [10-20] per cent in 2005 to [30-40] per cent in 2010.

36. The parties also point to three smaller competitors<sup>21</sup> in the market, with market shares of under [zero-10] per cent for high-end commercial reports. The fact that only GroundSure and Landmark have their own data sets is considered by third parties to limit the growth of other players in the market. However, Landmark argues that despite having to license data all three competitors have grown their market shares from [less than one per cent] in 2005 to around [zero-10] per cent in 2010 suggesting that growth is possibly in this niche end of the market and that GroundSure and these smaller competitors will continue to impose a competitive constraint on the parties post merger.
37. Landmark, on the other hand, the parties submit, does not have the same degree of visibility in the high-end market since, in the view of the parties; it is handicapped by the absence of any in-house consultancy team, which requires it to retain external consultants on a case by case basis, and renders it unable to participate in follow up action, such as Phase I or Phase II reports. Landmark submits that it has been able to expand at the lower end<sup>22</sup> of the market generating its sales of computer-generated reports – not reviewed by a consultant – by producing large numbers of reports for both residential and low-end commercial site acquisitions. Landmark submits that in the production of these less sophisticated computer-generated reports it faces competition from GroundSure rather than Argyll.
38. Whilst the characteristics for high, consultant-generated, and low end, less sophisticated computer-generated reports are different, the parties and some competitors believe they are in the same market as both types of reports serve the same purpose and source their data from the same underlying data. They suggest that the choice of which type of report to

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<sup>21</sup> Renaissance, Waterman and Wilbourn

<sup>22</sup> Low-end reports are those which are predominantly computer generated with the level of human intervention in interpreting the data is more limited.

purchase is typically dependent on the size and risk of the transaction and dependent on the type of customer.

39. The OFT received no evidence that, absent the merger, either party intended to imminently enter into the supply of the types of report produced by the other party. In other words, there was nothing in Landmark's internal documents to indicate that it intended to begin supplying consultant-generated environmental risk reports. Equally, there was no evidence received that Argyll intended to begin supplying less sophisticated computer-generated environmental risk reports.

#### Third party views

40. The OFT's market testing would seem to agree with the parties' argument that they are targeting different customer groups and that their products are viewed as differentiated. Third parties confirmed that whilst Landmark targeted customers purchasing the mass volume low-end segment of the market, Argyll's customers require more sophisticated reports produced by a consultant. GroundSure, on the other hand, was considered to be active in both segments.
41. A large number of customers and one competitor, [ ], commented that the parties target different audiences and cannot really be considered close competitors. A number of these customers commented on the high quality and reputation of Argyll in comparison to Landmark and in some instances GroundSure. They consider Landmark focuses on residential and mass produced reports where as Argyll is a niche player and focuses on high value, high risk commercial transactions offering a more sophisticated report.

#### **Conclusion on closeness of competition**

42. Overall, based on the third party views available, the OFT considers that the parties were not particularly close competitors pre-merger given the degree of differentiation between their product offerings: Landmark produces computer-generated environmental risk reports whilst Argyll produces more sophisticated consultant-generated reports. Both types of reports target different customers.

### **Conclusion on Unilateral Effects**

43. In conclusion, the increment to Landmark's market share is low, the parties are not particularly close competitors and there was a lack of customer concerns about the merger. On the basis of these points, the OFT believes that the merger will not result in a substantial lessening of competition.

### **Coordinated Effects**

44. The OFT has received no evidence or third party complaints that there is pre-existing coordination in the UK environmental risk report market nor has the OFT received any evidence to suggest that Argyll is a maverick. Whilst the merger increases the number of overlaps shared by Landmark and GroundSure, the OFT notes that Landmark and GroundSure have distinct datasets.

### **Conclusion on necessary conditions for coordination**

45. On the basis of the above the OFT takes the view that the transaction does not give rise to competition concerns in terms of coordinated effects as it does not meet all of the necessary criteria.

### **Barriers to Entry**

46. The parties submit that the relevant market is subject to low barriers to entry, since new entrants can easily obtain the raw data from a range of third party providers to compose competing environmental reports. In addition, the parties considered that there are no significant barriers in terms of regulation, investment or intellectual property rights, and in terms of distribution channels resellers handle one or more parties' products and few exclusive arrangements exist.

47. In order to set up as a new entrant in this market a company would need to have access to raw data sets, have an ability to aggregate the relevant data and have access to a network to promote the resulting service. The parties suggest that the data is available from a series of Government agencies and the Environmental Protection Act 1990 required local

authorities to make information on land contamination available free of charge.<sup>23</sup>

48. Third parties, however, suggested that whilst the barriers to entry for a consultant may be relatively low, overall barriers to entry are substantial. Since, currently, Landmark and GroundSure are the only owners of historical land use databases, and that pre-merger Landmark had some exclusive contracts with resellers, which made promoting your product and getting it to market difficult.
49. The parties, however, submitted that Data Holdings Group Limited has recently led a project to construct a database of historical land maps and historical land use which will provide an additional source of the historical data currently held by Landmark and GroundSure. It is also worth noting that GroundSure, which previously licensed data from Landmark, launched its own historical mapping and geo-environmental data service in 2006, which has enabled it to grow substantially.
50. The parties have pointed to six organisations that have entered the environmental risk report market in the last five years, since the last case in this market. These include the American Insurance Group (AIG), the Environment Agency, Waterman Environmental Consultants, Renaissance Regeneration, Wilbourn Associates and the Coal Authority; the Coal Authority entering in 2010 with a combined mining and environmental risk report in conjunction with GroundSure. AIG and the Environment Agency have since exited the market, although the Environment Agency does still provide flood risk reports. In the wider market for all UK environmental risk reports the parties estimate that Waterman, and Renaissance had a market share of less than one per cent, by volume, in 2009. Although in the high-end commercial environmental risk report market the parties' estimate is that for Renaissance, Waterman and Wibourn the market shares have grown from less than [zero-five] per cent each in 2005 to around [zero-10] per cent, [zero-10] per cent, and [zero-10] per cent respectively.

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<sup>23</sup> The relevant section of the Environmental Protection Act 1990, section 143, was repealed — 1.4.2000 for England, 14.7.2000 for Scotland and 15.9.2001 for Wales. The parties have stated that section 78R of the Environmental Protection Act 1990 requires local authorities to maintain a register of remediation notices and appeals against those notices. This register may be inspected free of charge.

## **Buyer Power**

51. The parties argue that post merger their ability to raise prices will be constrained by the aggressive buying practices of a number of major legal buyers. The parties point to a legal joint buying group called CostController, which has over 1,000 solicitors as members which was set up by a network of legal advisors called Connect2Law. The parties explain that this network has the purpose of driving down the cost of procuring environmental searches. They also submit that major law firms that purchase large quantities of environmental searches are also in a position to exert downward pressure on costs. Retail prices for environmental reports have not changed since 2003<sup>i</sup> despite Argyll's entry in 2004 and subsequent entry by the smaller firms. Therefore this suggests that Argyll's presence in the market has not driven down Landmarks prices despite gaining market share. The parties also argue that the removal of Sitescope in 2003 by the acquisition by Landmark did not result in an increase in Landmark retail prices.
52. The parties have estimated that over 90 per cent of all environmental searches are sourced via a third party reseller, and while there are currently over 200 active resellers in the market over 70 per cent of all environmental searches are sold by six key players,<sup>24</sup> the parties consider that these top six have a great deal of influence in the market place. [ ] commented on the buyer power of the resellers, suggesting that if the merger goes through, the first thing the resellers would do would be to demand that Argyll reports are sold at Landmark prices and it was expected they will be successful. Equally the resellers the OFT spoke to were confident that they had buyer power due to the large number of reports they purchase.

## **VERTICAL ISSUES**

53. The parties submit that the merger will result in very few if any vertical integration issues. They argue that as Landmark is already the sole provider of raw environmental data for Argyll's SiteSolutions reports the merger is a logical step towards sealing an already close working relationship.

54. Landmark has stated that it will continue to license raw environmental data including historical land use data to all existing and new entrants who wish to seek a license for it, subject to normal commercial terms. However third parties are concerned that a degree of foreclosure may occur following the merger.
55. [ ]
56. However, the OFT notes that all competitors who responded were concerned about the possible vertical effects arising from this merger. The nature of their concerns being that Argyll would now have access to Landmark's data set, which it previously had to license, which would mean Argyll, would be able to offer their reports at lower prices giving them an unfair advantage. Although these concerns appear to focus on removing double marginalisation,<sup>25</sup> which in itself would not be anticompetitive, and no competitors have suggested that Landmark will stop supplying the data to third parties after the merger, the OFT considers that the merger increases the incentive and ability for Landmark to foreclose their competitors.
57. In this case it is clear that Landmark has considerable power in the upstream market of data supply and in the downstream market for the supply of environmental risk reports, which suggests that it may have the ability to foreclose. However, it is unclear that they have any subsequent increased incentive to foreclose for example, data supply, post merger. The parties provided the margins for the sale of data and the sale of all of Landmark and Argyll's products. Because of the balance of margins between the supply of products upstream and downstream, it does not appear that the parties have the incentive to foreclose data supply to downstream competitors. Nevertheless, were Landmark to foreclose downstream competitors, those competitors could switch to purchasing data from GroundSure or potentially in the future from Data Holdings Group.

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<sup>24</sup> Searchflow, PSG, TM Property, STL, Onesearch Direct and Jordans.

<sup>25</sup> By removal of double marginalisation, we mean that the merged firm may remove any pre-existing double mark-ups. These arise when, pre-merger, firms supplying the input and producing the final product set their prices independently and both charge a mark-up, resulting in prices to customers for the final product being higher than would suit the joint interests of both firms. A vertical merger may enable, and provide incentives for, the merged firm to internalise this double mark-up resulting in a decrease in the price of the final product.

58. Overall, the OFT has concluded that any anti-competitive foreclosure effects of the merger would appear to be limited.

### **THIRD PARTY VIEWS**

59. Where relevant, third party comments have been incorporated above. No customer complaints were received as they considered the parties targeted different ends of the commercial environmental risk report market, with a limited amount of overlap. Competitors, on the other hand, were in general concerned about the proposed merger, seeing the transaction as a reduction in choice of provider for customers.

### **ASSESSMENT**

60. The parties overlap in the provision of residential and commercial property environmental risk reports.
61. If the relevant market is taken to be the supply of all types of environmental risk report, excluding Phase I and Phase II reports where there is currently no overlap, the parties combined share of the market will be [80-90] per cent by volume (increment [less than one per cent]). If the market is split into environmental risk reports for residential and commercial properties the parties' shares of these markets would be [80-90] per cent and [70-80]<sup>26</sup> per cent respectively with increments of [less than one per cent] and under [zero-10] per cent respectively.
62. Customers have largely suggested that the parties' products are differentiated in the commercial property environmental risk report sector, and that, they are not such close competitors, with Landmark generally offering computer generated reports nationally for the mass residential and commercial property segments of the market, and Argyll supplying reports backed by in-house consultants to large City law firms dealing in complex commercial property deals.
63. Although third party competitors have pointed to concerns arising from Landmark's ownership of essential raw data, which it licenses to competitors, GroundSure has also developed a data set, which it also licenses out and considers itself a competitor to both parties across the

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<sup>26</sup> One third party estimated the parties' combined market share to be around 87 per cent, increment 12 per cent.



market. The parties have also identified a third company, Data Holdings Group Limited, which has recently led a project to construct a database of historical land maps and historical land use which will provide an additional source of the historical data currently held by Landmark and GroundSure.

64. Third party comments were split. With customers largely unconcerned, and competitors, in general, concerned about the merger as a result of the potential foreclose from the raw data held by Landmark that may occur following the merger and the reduction in choice of supplier for customers.
65. Resellers and other third parties have suggested that the buyer power of the resellers is significant, and the parties consider that the large buyer groups representing solicitors also have a high degree of buyer power.
66. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

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

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<sup>i</sup> The parties have stated that it is not entirely correct to say retail prices have not changed since 2003, it is suggested that this sentence read 'retail prices have not increased in real terms.'