

# Completed acquisition by Peninsula Business Services Group Limited of Croner Group Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6592/16**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 9 May 2016. Full text of the decision published on 10 June 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### SUMMARY

1. On 10 December 2015, Peninsula Business Services Group Limited (**Peninsula**) acquired Croner Group Limited (**Croner**) (the **Merger**). Peninsula and Croner are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of tax fee protection insurance, employment law (**EL**) and human resources (**HR**) consultancy services and health and safety (**HS**) consultancy services.
4. In tax fee protection insurance, accountancy practices have an important role as intermediaries and beneficiaries. Suppliers sell this insurance almost entirely to and through accountancies, with both the accountancy practice and its clients benefiting from it.

5. The Parties sell fixed fee EL and HR consultancy services together as part of a product intended to help businesses prevent and mitigate employee disputes. They sell fixed fee HS consultancy services separately.
6. The Parties and their main competitors supply tax fee protection insurance, EL and HR consultancy services and HS consultancy services to customers across the UK, and do not vary prices regionally.
7. The CMA has assessed the impact of the Merger in relation to:
  - (a) the supply of tax fee protection insurance to and through accountancy practices in the UK;
  - (b) the supply of fixed fee EL and HR consultancy services in the UK; and
  - (c) the supply of fixed fee HS consultancy services in the UK.
8. The CMA has considered a broad range of evidence in conducting its competitive assessment of the Merger, including: shares of supply, win/loss data, internal documents and third party views.
9. In tax fee protection insurance, the CMA found that, although the Parties are close competitors, they will face significant pressure from several competitors post-Merger. The CMA believes that these constraints are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal effects in the supply of tax fee protection insurance to and through accountancies in the UK.
10. In EL and HR consultancy services and in HS consultancy services, the CMA found that the Parties are differentiated competitors, and will face significant competitive pressure from both close competitors and a range of differentiated competitors post-Merger. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal effects in the supply of either fixed fee EL and HR consultancy services or fixed fee HS consultancy services in the UK.
11. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

12. Peninsula is an insurance intermediary and a supplier of business consultancy services.<sup>1</sup> The turnover of Peninsula in 2015 was approximately £116 million worldwide, and approximately £94 million in the UK, for the financial year ending 31 March 2016.
13. Croner is an insurance intermediary and a supplier of business consultancy services, salary benchmarking services and HR software.<sup>2</sup> The turnover of Croner was approximately £25 million in the UK for the financial year ending 31 December 2015.

### Transaction

14. On 10 December 2015, Peninsula acquired all the issued share capital of Croner.

### Jurisdiction

15. As a result of the Merger, the enterprises of Peninsula and Croner have ceased to be distinct.
16. The Parties overlap in the supply of tax fee protection insurance to and through accountancies, with a combined share of supply of [X] % (increment [X] %) of gross premiums.<sup>3</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
17. The Merger completed on 10 December 2015 and was first made public on 11 December 2015. The four month deadline for a decision under section 24 of the Act is 9 May 2016, following extension under section 25(1) of the Act.
18. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 14 March 2016 and the statutory 40 working day deadline for a decision is therefore 11 May 2016. However, as the four-month period under section 24 of the Act ends before this date, the deadline for the CMA to

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<sup>1</sup> Irwell Insurance Company Limited underwrites Peninsula's insurance policies. The ultimate owners of both Peninsula and Irwell Insurance Company Limited are the Done family.

<sup>2</sup> DAS underwrites Croner's insurance policies.

<sup>3</sup> See Table 1.

announce its decision whether to refer the Merger for a phase 2 investigation is the final day of this four-month period as extended, which is 9 May 2016.

20. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to Peninsula on 23 December 2015.<sup>4</sup> The Merger was considered at a Case Review Meeting.<sup>5</sup>

## Counterfactual

21. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>6</sup>
22. The Parties submitted that the Merger should be assessed against the pre-Merger conditions of competition but noted that, prior to the Merger, Croner had been a relatively weak competitor. Several third parties told the CMA that Croner has been a stronger competitor in the past than it is currently but also said that it may be a stronger competitor again in the future. The CMA has considered the extent of competition between the Parties within its competitive assessment.
23. On the basis of the available evidence, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

## Frame of reference

24. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more

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<sup>4</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>5</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

<sup>6</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

important than others. The CMA will take these factors into account in its competitive assessment.<sup>7</sup>

25. The Parties overlap in the supply of tax fee protection insurance, fixed fee EL and HR consultancy services and fixed fee HS consultancy services.

### ***Product scope***

#### *Tax fee protection insurance*

26. Tax fee protection insurance is a type of legal expenses insurance intended to protect customers from tax accountancy costs in the event of an investigation by Her Majesty's Revenue and Customs (**HMRC**). This insurance may either cover an accountancy practice, and thereby either some or all of its clients, or it may be sold to individual clients through an accountancy practice regulated by the FCA to act as an insurance intermediary. Tax fee protection insurance may also be sold through other intermediaries, such as brokers or industry bodies, or directly to clients without using an intermediary; however, the vast majority of the Parties' sales are directly to or through accountancy practices.<sup>8</sup>
27. The Parties submitted that the market should be defined as the supply of legal expenses insurance not segmented by customer type.

#### *Tax fee protection insurance as part of legal expenses insurance*

28. The Parties submitted that, while Peninsula and Croner sell tax fee protection insurance as a stand-alone product, many legal expenses insurance policies also include tax fee cover. The Parties submitted that, for this reason, the market should be considered as all commercial legal expenses insurance which includes tax fee protection.
29. However, the evidence before the CMA does not support the inclusion of legal expenses insurance in the product scope:
  - (a) Suppliers of stand-alone tax fee protection insurance (other than the Parties) did not consider the tax fee protection available within a legal expenses insurance product to be an alternative to stand-alone tax fee protection insurance.

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<sup>7</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>8</sup> Where the CMA refers to sales through accountancies, this refers to sales to end customers by accountancy practices which are FCA-regulated insurance intermediaries.

- (b) Accountancy practices told the CMA that they only consider providers which supply stand-alone tax fee protection insurance to be alternative suppliers to the Parties.
  - (c) There are some differences in service between legal expenses insurance and tax fee protection insurance. For example, the Parties told the CMA that clients must make a legal expenses claim themselves, while accountancy practices can make a tax fee protection claim on behalf of the end customer. This is particularly important given that third parties told the CMA that end customers often have low levels of knowledge about their insurance cover.
  - (d) Third parties said that accountancy practices benefit from tax fee protection insurance which they supply to their clients (ie stand-alone tax fee protection), as such policies: (i) designate the accountant as the investigation handler; (ii) ensure that the accountant is paid; and (iii) help maintain good relations between the accountant and its client. The Parties and one third party said that accountancy practices whose customers are not covered by tax fee protection insurance may nevertheless have to work on a tax investigation, either to defend their work or to maintain client relations, and might have to write-off some or all of the cost of their time.
  - (e) One supplier of stand-alone tax fee protection insurance said that it sees accountancy practices as its clients, and said that this perspective is shared by its competitors. Several suppliers, including the Parties, said that they target services at accountancy practices, eg in offering marketing support and an accountancy advice line. This is in contrast to legal expenses insurance which is targeted at end customers.
30. For these reasons the CMA has not included the supply of legal expenses insurance which includes tax fee protection in the product frame of reference.

#### *Customer segmentation*

31. The CMA also considered whether to widen the product frame of reference to include the supply of tax fee protection insurance through all channels rather than to focus on the supply to and through accountancies.
32. Information from suppliers of tax fee protection insurance indicated that the vast majority of sales are to or through accountancy practices. The Parties said that a very small proportion of their sales are through insurance intermediaries, which then resell to or through accountancy practices, and Peninsula said that it makes a very small number of sales directly to end customers. The CMA also notes that accountancy practices benefit from tax

fee protection insurance, and suppliers target services at accountancy practices (see paragraph 29). Suppliers of tax fee protection insurance to and through accountancies said that they are not competitively constrained by tax fee protection insurance supplied directly to end customers.

33. For these reasons the CMA has not included the supply of tax fee protection insurance to end customers either directly or through other channels in the product scope. The CMA has, however, considered the constraint on the Parties from the supply of tax fee protection insurance either directly to end customers or through other channels in its competitive assessment.
34. The CMA also considered whether to segment the market into: (i) sales to and through regulated accountancy practices; and (ii) sales to non-regulated accountancy practices. Only regulated accountancy practices can resell insurance to individual clients. Non-regulated accountancy practices must purchase tax fee protection insurance for their practice, though they can then extend the cover to their clients.
35. Accountancy practices said that in both cases it is the accountancy practice which chooses the supplier and that resellers would generally choose a single supplier to offer their clients. Their responses indicated that in both cases accountancy practices are not restricted with regards to which clients they can supply with tax fee protection insurance.
36. On the basis of this evidence, the CMA has included the supply of tax fee protection insurance to regulated accountancy practices and the supply of tax fee protection insurance to non-regulated accountancy practices within the same product scope.

#### *Conclusion on tax fee protection insurance*

37. The CMA has therefore assessed the impact of the Merger on the supply of tax fee protection insurance to and through accountancy practices.

#### *Consultancy services*

38. EL and HR consultancy services and HS consultancy services help employers to understand their legal obligations as employers and to respond to associated challenges, such as employment tribunal claims and investigations by the Health and Safety Executive. The Parties' services include telephone advice lines, face-to-face consultancy, access to online information and representation at employment tribunals. The Parties back their consultancy services with optional insurance products designed to protect businesses from legal expenses related to employment tribunals and Health and Safety Executive enforcement actions.

39. The Parties did not make explicit submissions on the appropriate product scope for consultancy services; however, they referred in their submissions to EL and HR consultancy services, HS consultancy services and an overall market for consultancy services.

*EL and HR consultancy services and HS consultancy services*

40. The evidence before the CMA supports a product scope which combines both EL and HR consultancy services, but separates these from HS consultancy services:

- (a) Most third parties considered EL consultancy services and HR consultancy services to be two ways of fulfilling the same business need to prevent and resolve employee disputes.
- (b) No third party considered HS consultancy services to be substitutable with EL and HR consultancy services.
- (c) The Parties submitted that they supply EL and HR consultancy services together, and offer HS consultancy services separately. Over [X]% of Croner Consulting clients and [X]% of Peninsula Consulting clients buy the EL and HR consultancy service and not the HS consultancy service.<sup>9</sup>
- (d) Croner's strategy documents considered employment law and employment dispute resolution to be part of a HR consultancy services market.<sup>10</sup>
- (e) Although there is a significant overlap between the suppliers of EL and HR consultancy services and HS consultancy services, the CMA did not find evidence that supply-side substitution is possible between these services.

41. For these reasons the CMA has considered two separate product frames of reference: EL and HR consultancy services and HS consultancy services.

*Variable fee suppliers of consultancy services*

42. The CMA considered whether the product scope for EL and HR consultancy services and the product scope for HS consultancy services should include suppliers which do not supply fixed fee products, such as most law firms and independent consultants.

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<sup>9</sup> Response to the CMA's Section 109 Notice dated 1 February 2016, Questions 11-38, p4.

<sup>10</sup> Response to the CMA's Section 109 Notice dated 1 February 2016, Questions 11-38, Annex 15.



43. Several suppliers of consultancy services said that they compete with law firms and independent consultants which provide EL, HR and HS advice, despite the fact that most of these suppliers do not charge fixed fees. However, third parties emphasised the variable fee pricing structure used by law firms as an important differentiating factor, and the Parties submitted that one reason for Peninsula's success in this market was its fixed fee structure.
44. On the basis of this evidence, and on a cautious basis, the CMA has not included variable fee suppliers in the product frames of reference for EL and HR consultancy services or HS consultancy services. The CMA has, however, considered the competitive constraint from variable fee suppliers in its competitive assessment.

#### *Conclusion on consultancy services*

45. The CMA has therefore assessed the impact of the Merger on the supply of fixed fee EL and HR consultancy services and the supply of fixed fee HS consultancy services. However, it was not necessary for the CMA to reach a conclusion on this product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

#### **Geographic scope**

46. The Parties submitted that the geographic scope for tax fee protection insurance, EL and HR consultancy services and HS consultancy services is the UK. The Parties submitted that they do not vary prices in different regions of the UK, and postcode data provided by the Parties shows that their customers are spread throughout the UK.
47. Suppliers of tax fee protection insurance said that they serve customers across the UK, and third parties named suppliers of EL and HR consultancy services and HS consultancy services from across the UK as alternatives to the Parties. Third parties said that it can be important for suppliers to have local salespeople in order to make face-to-face sales, but suppliers said that it is easy to recruit enough salespeople to cover the whole of the UK. The CMA has not found any evidence which suggests that the geographic frame of reference should be narrower or wider than the UK.
48. Therefore, the CMA considers that, based on the evidence before it, the geographic frame of reference for all product scopes is the UK.

## ***Conclusion on frame of reference***

49. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- The supply of tax fee protection insurance to and through accountancy practices in the UK.
  - The supply of fixed fee EL and HR consultancy services in the UK.
  - The supply of fixed fee HS consultancy services in the UK.

## **Competitive assessment**

50. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>11</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the three frames of reference set out in paragraph 49.

### ***Horizontal unilateral effects in the supply of tax fee protection insurance to and through accountancy practices in the UK***

#### *Nature of competition*

51. Customers of tax fee protection insurance told the CMA that the following factors were important to their choice of provider:
- (a) **Price** – Many customers and competitors said that price is important in this industry, and a key dimension of competition. While some competitors said that they tried to differentiate themselves to an extent by their service, all competitors recognised price as important. Some competitors said that Peninsula, in particular, was very focused on price and had recently aggressively cut its prices. For most customers price was either first or second in their ranking of important factors.
- (b) **Cover** – Many customers also said that the level of cover provided is a key consideration, both in terms of the maximum fee against which the customer would be protected and the likelihood of a particular expense

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<sup>11</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

being paid for by the policy. Most competitors noted that cover was broadly similar between suppliers, although a few noted that there were some small differences which could be important for some customers (eg different limits for specific expenses).

(c) **Service** – Customers said that service was important, although it was mentioned slightly less than price and cover. Competitors gave three examples of ways in which service quality can vary, which were:

(i) the provision of a tax advice line (although third parties noted that only small accountancy practices tend to rely on this);

(ii) the quality of the supplier's claims administration system; and

(iii) the level of marketing support provided.

(d) **Reputation** – A few customers said that suppliers' reputations were important to their choice.

52. The CMA notes that the price of tax fee protection insurance is often negotiated. For [redacted] small accountancy practices, Peninsula sells a Small Practice Scheme (SPS) product [redacted]. Peninsula said that approximately [redacted] of its tax fee protection insurance customers purchase its SPS product. [redacted], for all other Peninsula schemes (whether the accountancy practice is regulated or non-regulated) there are no list prices and each accountancy practice receives an individual quote, which may be subject to negotiation. Peninsula generates an automatic quote for each accountancy practice on the basis of the legal structure of the practice's clients, its previous claims and its fees. Sales staff have some discretion to discount from the automatic quote, though price reductions below this require approval from senior management, which occurs in approximately [redacted]% of sales. Other suppliers of tax fee protection insurance also said that they negotiate prices with customers.
53. The Parties said that very occasionally a larger accountancy practice may tender for its tax fee protection insurance. Third parties agreed that this was rare.
54. Contracts typically run for 12 months, but renewal rates are high across the market. The Parties submitted that Peninsula had a renewal rate of approximately [redacted]% in 2015, while Croner had a renewal rate of approximately [redacted]%. However, many renewals are renegotiated – eg in 2015, approximately [redacted]% of Croner's successful renewals were renegotiated. The CMA found mixed evidence on accountancy practices' appetite for switching when purchasing tax fee protection insurance as four of the 17 accountancy practices which responded to the CMA's market testing said that they had not

considered alternative suppliers for many years, but most said that they had considered multiple providers, and one said that it met annually with three suppliers to review the offers available.

### Shares of supply

55. The Parties submitted that Peninsula’s share of supply of tax fee protection insurance by commission income is [redacted]%, and that Croner’s is [redacted]%, with a combined share of supply of [redacted]%.  
 56. Based on evidence the CMA has gathered from the Parties and their competitors, the CMA estimates that the Parties have a combined share of supply of tax fee protection insurance to and through accountancy practices by gross written premium of over 50%, as shown in Table 1.

**Table 1: The supply of tax fee insurance protection to and through accountancies**

Supplier	£ million	%
	Fee protection gross revenue	% of all revenue
Peninsula Taxwise	[redacted]	[redacted]
Croner CCH	[redacted]	[redacted]
Combined	[redacted]	>50
Abbey Tax	[redacted]	[redacted]
PfP	[redacted]	[redacted]
Qdos	[redacted]	[redacted]
Copperfield	[redacted]	[redacted]
Others	[redacted]	[redacted]
Total	[redacted]	100

Source: Parties and competitors.

57. The CMA notes that its estimates are different from the Parties’ initial estimates for several reasons:
- (a) The Parties over-estimated the size of their competitors.
  - (b) The CMA has excluded a number of competitors listed by the Parties, as the evidence suggests they do not provide any tax fee protection insurance to or through accountancy practices.<sup>12</sup>
  - (c) The Parties used commission income rather than gross written premium.<sup>13</sup>

<sup>12</sup> The following companies, which were listed as competitors by the Parties, have not been included in the CMA’s market share estimates: HLI, RBS Mentor, Liberty, Accountancy Ins Services, BWS Fee Protection, BNB Tax Consultants.

<sup>13</sup> The CMA has used gross written premium as this is easier to measure across different providers. The CMA does not expect this to bias the results compared with using commissions.

## Won and lost customers

58. The Parties provided data on all customers Peninsula had won and lost between April 2015 and March 2016, as shown in Tables 2 and 3. These tables exclude customers where the origination/destination was unknown.<sup>14</sup>

**Table 2: Sources of Peninsula's new tax fee protection insurance customers**

	Share of number of customers						%
	No previous supplier	Croner	Abbey Tax	PFP	Qdos	Copperfield	
Including customers for which there was no previous supplier	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Excluding customers for which there was no previous supplier	-	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Source: Parties.

**Table 3: Destinations of Peninsula's lost tax fee protection insurance customers**

	Share of number of customers						%
	No new supplier	Croner	Abbey Tax	PFP	Qdos	Minasca*	
Including customers for which there was no new supplier	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Excluding customers for which there was no new supplier	-	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Source: Parties.

\*Minasca is a reseller of tax fee protection insurance.

59. The Parties also provided information on customers which Croner lost between January 2015 and December 2015, but said that it had no information on from which (if any) provider Croner's new customers had been won. The CMA notes that, unlike Peninsula's data, Croner's loss data does not record the number of customers for which there was no new supplier. Table 4 shows the destination of Croner's lost customers where known.<sup>15</sup>

<sup>14</sup> [REDACTED]% of Peninsula's new customers were won from an unknown source, and [REDACTED]% of Peninsula's lost customers went to an unknown destination.

<sup>15</sup> [REDACTED]% of the [REDACTED] customers Croner lost between January 2015 and December 2015 went to an unknown destination, so the destinations were only known for [REDACTED] customers. The Parties later cross-checked Croner's list of former customers against Peninsula's customer list, and identified several more customers won by Peninsula, raising its share of Croner's lost customers (excluding unknowns) to [REDACTED]%. However, as it has not been possible to check Croner's list of former customers against other supplier's customer lists, the CMA considers that this cross-checked data is less useful than Croner's raw data as it introduces a bias that exaggerates Peninsula's share of Croner's lost customers.

**Table 4: Destinations of Croner’s lost tax fee protection insurance customers**

	%		
	<i>Share of number of customers</i>		
	<i>Peninsula</i>	<i>Abbey Tax</i>	<i>PPF</i>
Destinations of lost customers	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties.

60. Table 2 indicates that Peninsula is winning customers from all three of the other large suppliers of tax fee protection insurance in roughly equal measure. However, Table 3 indicates that it is losing customers to four other providers, with Qdos also taking customers from Peninsula alongside the existing large providers. Table 4 suggests that Peninsula wins more customers from [REDACTED]. However, the CMA notes that this data is incomplete as, for example, [REDACTED]. The CMA discusses this evidence further below.

#### *Closeness of competition between the Parties*

61. The CMA has examined the closeness of competition between the Parties and considered within that assessment:
- (a) similarities and differences in the Parties’ products;
  - (b) information on customer switching behaviour; and
  - (c) third party views.

#### *Similarities and differences in the Parties’ products*

62. The Parties submitted that both Peninsula and Croner supply tax fee protection insurance to customers across the UK, and that their cover, level of indemnity and most of their support services are similar. However, the Parties submitted that Croner had a particular focus on quality.
63. Some third parties said that Croner has a strong reputation for quality, while Peninsula is a particularly strong competitor on price. However, the vast majority of third parties said that the Peninsula and Croner supply very similar products.

#### *Customer switching behaviour*

64. Among those customers which were won from a competitor and where that previous supplier is known, [REDACTED]% of Peninsula’s new customers previously used Croner as a supplier of tax fee protection insurance (see Table 2), while [REDACTED]% of Peninsula’s lost customers were won by Croner (see Table 3).

Croner's data indicates that, among its lost customers for which the subsequent supplier is known, [X] % were won by Peninsula. However the CMA notes that the base number for the Croner calculation is low (see footnote 15) and the calculation is based on data which the CMA knows to be skewed from other evidence received. For these reasons, the CMA has placed more weight on the Peninsula win/loss data and less weight on the Croner win/loss data.

65. The CMA considers that the data on won and lost customers indicates that the Parties are close competitors, and that the constraint between the Parties is asymmetric, with Peninsula imposing a stronger constraint on Croner than Croner imposes on Peninsula.
66. Some third parties said that Croner's market position had weakened in the last two years, but they also said that it retains a strong reputation and is a promising target for investment. The Parties submitted that Croner had recently been stagnant in terms of its market position and had suffered over the last few years from being a non-core part of a much larger corporate group. The CMA believes these comments suggest that the recent data on won and lost customers might underestimate Croner's underlying competitive strength.

*Other third party comments*

67. Of the 17 customers who responded to the CMA's market testing, eight said that the Parties offer very similar products; six said that they had not heard of both Parties; and three did not list both Parties as competitors. The CMA also contacted some customers of the Parties who had recently switched their supplier. Nine responses were received from such customers, five of which had considered both Parties when they switched.
68. All suppliers of tax fee protection insurance which responded to the CMA said that Peninsula and Croner are close competitors.
69. The CMA was also contacted by several third parties who were not competitors or current customers of the Parties but who had views on the Merger. All these parties considered Croner and Peninsula to compete closely.

*Conclusion on closeness of competition*

70. On the basis of this evidence, the CMA believes that the Parties are close competitors.

### *Competitive constraints*

71. The Parties said that the following firms are all significant competitors in tax fee protection insurance to and through accountancy practices: Abbey Tax, PFP, Qdos, Copperfield, Temple Legal Protection, Arag, and BWS Fee Protection. The CMA has set out below the evidence gathered on each of these competitors, and a few others.

#### *Abbey Tax*

72. The Parties submitted that Abbey Tax was the largest pre-Merger competitor to both Peninsula and Croner. The Parties said that it is expanding since its acquisition by the US insurer Markel in 2014 and that it has recruited new staff including an ex-sales director from Peninsula. The Parties submitted that Abbey Tax's cover, level of indemnity and most of their support services are similar to those of the Parties.
73. In Peninsula's win/loss data, [X]% of Peninsula's new customers previously used Abbey Tax (see Table 2), while [X]% of Peninsula's lost customers were won by Abbey Tax (see Table 3). [X]% of Croner's lost customers were won by Abbey Tax (see Table 4). The CMA believes that the data on won and lost customers indicates that Abbey Tax competes closely with both Peninsula and Croner.
74. Eight of the 17 accountancy practices who responded to the CMA's market testing named Abbey Tax as a suitable alternative provider. Three of the nine accountancy practices who had recently switched provider had considered Abbey Tax.
75. Almost all suppliers of tax fee protection insurance said that Abbey Tax is a close competitor of the Parties, and some of these suppliers confirmed that it has acquired additional sales capabilities since its acquisition by Markel.
76. Two other third parties also said that Abbey Tax is a competitor of the Parties, although one of these said that it has not been so active in recent years.
77. On the basis of this evidence, the CMA believes Abbey Tax to be a close competitor of the Parties.

#### *PFP*

78. The Parties submitted that PFP is the next largest competitor to the Parties after Abbey Tax. The Parties also submitted that PFP is an aggressive competitor, which has expanded significantly since 2009. The Parties noted that PFP now has even more resources with which to compete since its



acquisition by the New Zealand insurer CBL in 2015. The Parties submitted that PFP's cover, level of indemnity and most of their support services are similar to those of the Parties.

79. In Peninsula's win/loss data, [X]% of Peninsula's new customers previously used PFP (see Table 2), while [X]% of Peninsula's lost customers were won by PFP (see Table 3). This data suggests that [X]. [X]% of Croner's lost customers were won by PFP (see Table 4). The CMA believes that the data on won and lost customers indicates that PFP competes closely with the Parties.
80. Three of the 17 customers who responded to the CMA market testing named PFP as a suitable alternative provider. Three of the nine accountancy practices who had recently switched provider had considered PFP.
81. Almost all suppliers of tax fee protection said that PFP is a close competitor of the Parties, although one of these described it as a minor competitor.
82. On the basis of this evidence, the CMA believes PFP to be a close competitor of the Parties.

#### *Qdos*

83. The Parties submitted that Qdos is a fast expanding competitor which re-entered the market in 2014 after selling its tax fee protection insurance business to Peninsula in 2006. The Parties submitted that Qdos' cover, level of indemnity and most of their support services are similar to those of the Parties.
84. In Peninsula's win/loss data, none of Peninsula's new customers were identified as previously using Qdos (see Table 2), which is consistent with Qdos currently having few customers; however [X]% of Peninsula's lost customers were won by Qdos (see Table 3). This data suggests that [X]. The CMA considers that the data on won and lost customers indicates that Qdos is winning customers well in excess of its existing market share and is a close competitor to the Parties.
85. One customer who responded to the CMA's market testing named Qdos as a suitable alternative provider, and one of the nine customers which had recently switched provider had considered Qdos.
86. Almost all suppliers of tax fee protection insurance to and through accountancy practices said that Qdos is a competitor to the Parties. Although some third parties said that Qdos is not as strong a competitor as Abbey Tax

and PFP, several said they expected even greater competition between Qdos and the Parties in the future.

87. The Parties submitted that, despite its relatively recent entrance, Qdos had already acquired all the necessary staff and capabilities in order to compete aggressively with the Parties. The Parties said that Qdos had first-hand knowledge of the sector from its previous activity in the sector, it had all the relevant management expertise, and it already had specific tax expertise in part due to its legal expenses product which included this cover and in part from recently gaining new staff from Peninsula and others.
88. Qdos [✂].
89. Qdos [✂].
90. The CMA believes that, because of its former position in the market and the initial success it has had since re-entering the market, Qdos is well placed to compete with the Parties, and with Abbey Tax and PFP. The CMA believes that [✂] and that Qdos will impose a strong competitive constraint on the Parties.
91. On the basis of this evidence, the CMA believes that Qdos will constrain the Parties post-merger and be a close competitor.

*Copperfield, Temple Legal Protection and Arag*

92. The Parties submitted that Copperfield, Temple Legal Protection and Arag are all providers of tax fee protection insurance.
93. The data on Peninsula's won and lost customers shows that it won a small number of customers from Copperfield between April 2015 and March 2016, but there were no known examples of Copperfield winning customers from Peninsula. There were no examples of Peninsula or Croner winning customers from, or losing customers to, Temple Legal Protection or Arag.
94. No customer who responded to the CMA's market testing named Copperfield, Temple Legal Protection or Arag as an alternative supplier of tax fee protection insurance. One customer who had recently switched provider said that it had switched from Copperfield to Peninsula. Almost all suppliers of tax fee protection insurance were aware of Copperfield, and many were aware of Temple Legal Protection and Arag, but they considered the competitive pressure from these three providers to be very weak. Several third parties noted Copperfield's lack of an active sales team.

95. The CMA believes that, while Copperfield, Temple Legal Protection and Arag supply tax fee protection insurance to and through accountancies, they are not close competitors of the Parties, although they may provide some limited constraint in the future.

*Others*

96. The Parties submitted that BWS Fee Protection, HLI, RBS Mentor, Liberty, Accountancy Insurance Services and BNB Tax Consultants are all providers of tax fee protection services. However, the CMA found no evidence that these or any other firm provided a competitive constraint on the Parties.

*The supply of tax fee protection insurance to end customers*

97. The Parties submitted that they are also constrained by tax fee protection insurance supplied directly to end customers, rather than through accountancy practices.
98. Three accountancy practices told the CMA that one or more of their clients had chosen not to take the Parties' product due to already being covered by a product which had been sold directly to them, although one accountancy practice said that the quality of their clients' cover would be lower as a result.
99. However, suppliers of tax fee protection insurance to and through accountancy practices said that they are not in practice affected by competition from suppliers of tax fee protection insurance directly to end customers.
100. On a cautious basis, the CMA has assessed the Merger on the basis that suppliers of tax fee protection insurance to end customers do not exert a material competitive constraint on the Parties.

*Conclusion on competitive constraints*

101. The supply of tax fee protection insurance to and through accountancy practices in the UK is characterised by a low level of differentiation between the five strongest competitors: the Parties, Abbey Tax, PFP and Qdos. The CMA believes that the Parties are close competitors of each other but that the other three providers are also close competitors of the Parties.

*Conclusion on horizontal unilateral effects in the supply of tax fee protection insurance in the UK*

102. The CMA believes that, because there will be three strong competitors remaining after the Merger, these firms will impose sufficiently strong constraints on the Parties to prevent an SLC. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of tax fee protection insurance to and through accountancy practices in the UK.

***Horizontal unilateral effects in the supply of fixed fee EL and HR consultancy services in the UK***

103. The Parties submitted that prices for EL and HR consultancy services are fixed, depending on the size of the business and the level of service required, though some negotiation takes place, and a small number of awards are made by tender. Third parties said that contracts typically last for between three and ten years.
104. Third parties said that this is a differentiated market in which, for example, providers' brands differ significantly. Customers identified quality of service, price and, to a lesser extent, industry expertise as important factors in their choice of EL and HR consultancy service provider. The CMA notes that where products are differentiated, horizontal unilateral effects are more likely where merger firms' products compete closely.<sup>16</sup>
105. Given the typical length of contracts, the CMA focused its market testing on customers who had recently started to purchase or stopped purchasing the Parties' services, and on other suppliers of fixed fee EL and HR consultancy services.

*Shares of supply*

106. The Parties submitted that their combined share of supply of fixed fee EL and HR consultancy services is approximately [X]%. The CMA treated this estimate with caution, as it believes that the Parties may not have fully accounted for some suppliers' lack of a fixed fee structure. However, the CMA found through other evidence that the market is fragmented, and the CMA believes that the Parties' combined share of supply is likely to be well below the level which would normally indicate prima facie concerns.<sup>17</sup>

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<sup>16</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.6.

<sup>17</sup> [Merger Assessment Guidelines](#), paragraph 5.3.5.

*Closeness of competition*

107. The Parties submitted that, although they are competitors in fixed fee EL and HR consultancy services, they are not close competitors due to their different service models which, in particular, focus on different sized clients. The Parties submitted that [redacted]% of Peninsula’s EL and HR consultancy services clients have [redacted] or fewer employees, while Croner does not target businesses with [redacted] or fewer employees. Table 5 provides a breakdown of the size of the Parties’ consultancy services clients (both EL and HR and HS) in December 2015.

**Table 5: Size of Parties’ consultancy services clients**

Client size by employees	%	
	Peninsula	Croner
1-29	[redacted]	[redacted]
30-50	[redacted]	[redacted]
51-299	[redacted]	[redacted]
300-499	[redacted]	[redacted]
500+	[redacted]	[redacted]

Source: Parties.

108. The Parties submitted that the difference in the profile of their clients by size reflects fundamental differences in their business models and strategies. The Parties submitted that Croner has consistently focused on the corporate sector, with a [redacted] service delivery model designed with this sector in mind. For example, Croner allocates a local consultant to each client, which allows for a consistently high level of service [redacted]. The Parties submitted that Peninsula, on the other hand, has developed a commoditised service which is attractive to small customers.

109. In order to provide evidence for the CMA’s investigation, the Parties contacted customers that they had won and lost in October 2015.<sup>18</sup> This exercise did not find any EL and HR consultancy services customers which had been won by Peninsula from Croner, or by Croner from Peninsula, and it showed that the Parties lose customers to a wide range of competitors, independent consultants and solicitors. The CMA believes that this data indicates that the Parties are not close competitors in EL and HR consultancy services.

110. The Parties’ internal documents also indicated that they are not close competitors in EL and HR consultancy services. For example, a Peninsula marketing document dated January 2016 compares Peninsula’s services with

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<sup>18</sup> Peninsula won a total of [redacted] EL and HR consultancy clients in October 2015, of which [redacted]% were contacted, Peninsula lost a total of [redacted] EL and HR consultancy clients in October 2015, of which [redacted]% were contacted, Croner won a total of [redacted] EL and HR consultancy clients in October 2015, of which [redacted]% were contacted, and Croner lost a total of [redacted] EL and HR consultancy clients in October 2015, of which [redacted]% were contacted.

those of six other suppliers, none of which are Croner;<sup>19</sup> and a Croner sales plan dated June 2015 lists Peninsula as a competitor for ‘small’ clients with between [X] and [X] employees, but not for ‘medium’ ([X] to [X] employees) or ‘corporate’ (more than [X] employees) clients.<sup>20</sup>

111. Almost all third parties said that Peninsula and Croner are competitors for EL and HR consultancy services, and some said that they are close competitors, but many noted that they target clients of different sizes and have very different ways of operating in this sector.

112. Overall, on the basis of this evidence, the CMA believes that the Parties are competitors for fixed fee EL and HR consultancy services but that they are differentiated and not close competitors.

### *Competitive constraints*

113. The Parties submitted that they compete with a large number of EL and HR consultancy services providers. The Parties emphasised that Peninsula and Croner face somewhat different competitors as they operate in different segments of the market. The Parties also said that they compete with law firms and independent HR consultants, as customers can use them on an ad hoc basis rather than subscribing to the Parties’ fixed fee monthly service.

114. The Parties’ internal documents identified many other suppliers of EL and HR consultancy services as competitors. For example, a Peninsula marketing document dated January 2016 compared Peninsula’s services to those of Citation, Moorepay, Ellis Whittham, ELAS, RBS Mentor and Avensure.<sup>21</sup> A Croner strategy document dated April 2010 identified a wide variety of differentiated competitors, including Citation, Abbey, ACAS, Northgate, AdviserPlus, RBS Mentor and Eversheds (a law firm). The Parties’ exercise to contact customers won and lost in October 2015 (as described in paragraph 109 above) showed that they lost customers to a wide variety of suppliers of EL and HR consultancy services, including law firms and HR consultancies.

115. Many third parties said that the closest competitors to Peninsula and Croner are Citation and Ellis Whittham. Several third parties identified Moorepay and ELAS as other relatively large suppliers of fixed fee EL and HR consultancy services which compete with the Parties. Many third parties said that there are a large number of other competitors which supply EL and HR consultancy services, but that they are smaller (such as Avensure, a recent entrant),

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<sup>19</sup> Response to the CMA’s request for further information of 15 April 2016, Annex 4.

<sup>20</sup> Response to the CMA’s request for further information of 5 April 2016, Annex 3.

<sup>21</sup> Response to the CMA’s request for further information of 15 April 2016, Annex 4.

differentiated from the Parties (such as AdviserPlus, which several third parties said focuses on large corporate clients), or otherwise do not compete actively for customers across the whole market (such as RBS Mentor, which focuses on RBS banking clients).

116. Some third parties mentioned law firms as alternatives to the Parties, although one said that they are less expert on HR matters; and some third parties said that independent HR consultants are competitors to the Parties, although one said that some such consultants do not specialise in employee dispute resolution.
117. Overall, on the basis of this evidence, the CMA believes that there are a significant number of competitors which will constrain the Parties' ability to raise prices or lower the quality of their services post-Merger. In particular, the CMA notes that there are a range of providers competing closely with the Parties to supply fixed fee EL and HR consultancy services, and there is also a differentiated fringe of competitors and out-of-market constraints which provide further alternatives.

*Conclusion on horizontal unilateral effects in the supply of fixed fee EL and HR consultancy services in the UK*

118. The CMA believes that, although the Parties are competitors in the supply of fixed fee EL and HR consultancy services, they are not close competitors and there are many strong competitors which will remain post-Merger, some of which compete closely with the Parties. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of fixed fee EL and HR consultancy services in the UK.

***Horizontal unilateral effects in the supply of fixed fee HS consultancy services in the UK***

119. As for EL and HR consultancy services, the CMA focused its market testing for fixed fee HS consultancy services on customers who had either recently started to purchase or recently stopped purchasing the Parties' services, and on other suppliers of these services. However, for this product, few customers responded. The majority of those who did respond had not used a previous supplier of HS consultancy services or had decided that they no longer needed these services. However, third parties confirmed that HS consultancy services are supplied much like EL and HR consultancy services, with similar providers.

### *Shares of supply*

120. The Parties submitted that their combined share of supply of fixed fee HS consultancy services is approximately [REDACTED]%. The CMA treated this estimate with caution, as it believes that the Parties may not have fully accounted for some suppliers' lack of a fixed fee structure. However, the CMA found through other evidence that the market is fragmented, and the CMA believes that the Parties' combined share of supply is likely to be well below the level which would normally indicate prima facie concerns.<sup>22</sup>

### *Closeness of competition*

121. The Parties submitted that, as for EL and HR consultancy services, Peninsula and Croner compete but are differentiated by their focus on clients of different size (see Table 5). The Parties also noted some differences in their HS consultancy products, such as Croner's more bespoke service model.

122. The Parties' exercise to contact customers that they had won and lost in October 2015 included their HS consultancy services customers (see paragraph 109).<sup>23</sup> This exercise did not find any HS consultancy customers which had been won by Peninsula from Croner, or by Croner from Peninsula, and it showed that the Parties lose customers to a wide range of competitors, including independent consultants and law firms.

123. The CMA found that the Parties' internal strategy documents focused on their EL and HR consultancy business, [REDACTED].

124. Almost all third parties said that Peninsula and Croner are competitors, although again many noted that they target clients of different sizes. One third party said that larger clients are likely to have more specialist requirements, and that Peninsula does not tend to service these clients.

125. On the basis of this evidence, the CMA believes that the Parties are competitors, but that they are differentiated by several factors, such as their service approach and their specialities. For these reasons, they are not close competitors.

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<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.3.5.

<sup>23</sup> Peninsula won a total of 144 HS consultancy clients in October 2015, of which [REDACTED]% were contacted, Peninsula lost a total of [REDACTED] HS consultancy clients in October 2015, of which [REDACTED]% were contacted, Croner won a total of [REDACTED] HS consultancy clients in October 2015, of which [REDACTED] were contacted, and Croner lost a total of [REDACTED] HS consultancy clients in October 2015, of which [REDACTED] were contacted.



### *Competitive constraints*

126. The Parties submitted that they compete with a large number of different HS consultancy services providers. As in EL and HR consultancy services, the Parties emphasised that Peninsula and Croner face somewhat different competitors as they operate in different segments of the market. The Parties submitted that they are also constrained by independent HS practitioners and law firms, which clients can use on an ad hoc basis, rather than using the Parties' fixed fee monthly products. The Parties' exercise to contact customers won and lost in October 2015 (as described in paragraph 109 above) showed that the Parties lost customers to a wide variety of competitors, including HS consultancies and law firms.
127. Many third parties said that, as in EL and HR consultancy services, the closest competitors to Peninsula and Croner are Citation and Ellis Whittham. However, third parties also identified Alcumus, Moorepay and Bureau Veritas as strong suppliers of HS consultancy services. Third parties said that there is a long list of smaller competitors, such as H&S Direct and Avensure, and that independent HS practitioners could also be an alternative to the Parties.
128. Overall, on the basis of this evidence, the CMA believes that there are a significant number of competitors which will constrain the Parties' ability to raise prices or lower the quality of their services post-Merger. In particular, the CMA notes that there are a range of providers competing closely with the Parties to supply fixed fee HS consultancy services, and there is also a differentiated fringe of competitors and out-of-market constraints which provide further alternatives.

### *Conclusion on horizontal unilateral effects in the supply of fixed fee HS consultancy services in the UK*

129. The CMA believes that, although the Parties are competitors in the supply of fixed fee HS consultancy services, they are not close competitors and there are many strong competitors which will remain post-Merger, some of which compete closely with the Parties. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of fixed fee HS consultancy services in the UK.

### ***Barriers to entry and expansion***

130. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.

131. The CMA has not had to conclude on barriers to entry or expansion in this case as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

132. The CMA contacted customers and competitors of the Parties. A few customers raised concerns regarding the Merger's impact on the supply of tax fee protection insurance in the UK, and some third parties contacted the CMA to raise concerns about the Merger with respect to the Parties' overlaps in tax fee protection insurance, EL and HR consultancy services and HS consultancy services.

133. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Decision**

134. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.

135. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**9 May 2016**