Anticipated acquisition by Tullett Prebon plc of ICAP plc's voice and hybrid broking and information businesses

Decision on relevant merger situation and substantial lessening of competition

ME/6579/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 June 2016. Full text of the decision published on 7 July 2016.

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

Contents

SUMMARY

1. Tullett Prebon plc (**Tullett**) has agreed to acquire ICAP plc's (**ICAP**) global wholesale broking and information businesses.

2. As part of the transaction[1], Tullett will acquire ICAP Global Broking Holdings Limited (**IGBHL**) - the proposed new holding company of ICAP's global wholesale broking business comprising associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates[2] (together referred to as **IGBB**) (the **Merger**).

3. Tullett and IGBB are together referred to as the **Parties**. Tullett and ICAP are together referred to as the **Notifying Parties**.

4. The remainder of ICAP's businesses (**ICAP NewCo**)[3] will not transfer to Tullett. ICAP NewCo will receive[4] a 19.9% shareholding (the **Minority Stake**) in the new Tullett entity merged with IGBB (**TP**).[i] The proposed acquisition by ICAP NewCo of the Minority Stake has also been considered by the Competition and Markets Authority (**CMA**) as part of its assessment.

5. The CMA believes that the Parties will cease to be distinct as a result of the Merger. The turnover test is met. Therefore, the notified arrangements, if carried into effect, will result in the creation of a relevant merger situation under the Enterprise Act 2002 (**the Act**).

6. The CMA also considered whether it is, or may be the case, that the acquisition of the Minority Stake, if carried into effect, will result in the creation of a second relevant merger situation and whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**). The CMA considers that the facts relevant to the acquisition of the Minority Stake indicate that it may result in the creation of a second relevant merger situation, insofar as ICAP NewCo may acquire an ability to materially influence the policy of TP relevant to its behaviour in the marketplace.

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[1] Further details as to the structure of the transaction announced on 11 November 2015 are set out in the following ICAP RNS announcement: http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/IAP/12576897.html

[2] ICAP's interests in certain joint ventures and associates being transferred to Tullett are listed in Annex 1 to the Merger Notice submitted to the Competition and Markets Authority on 8 April 2016 (**the Merger Notice**).

[3] Prior to completion, ICAP will insert ICAP NewCo as a new listed holding company for the ICAP group which will become the direct holder of 100% of the issued share capital of ICAP plc and IGBHL (the latter transferring to Tullett on completion as explained in paragraph 2 above).

[4] On completion, TP will issue shares directly to ICAP NewCo's shareholders in consideration for the transfer of 64.5% of the shares of IGBHL to TP. Assuming certain conditions are satisfied, and subject to the exercise of an option, it is expected that TP will issue further new shares to ICAP NewCo in consideration for the transfer of the remaining 35.5% of IGBHL shares to TP. It has been assumed for the purposes of this decision that the option will be exercised.

However, the CMA did not find a realistic prospect of an SLC in relation to any overlap between ICAP NewCo and TP as a result of the Minority Stake. It has not been necessary, therefore, for the CMA to conclude whether a second relevant merger situation will be created.

Voice/hybrid broking

7. The Parties overlap in the supply of wholesale intermediary services, principally in the provision of voice/hybrid broking services to institutions trading financial and commodity instruments in over-the-counter (**OTC**) and exchange-based markets.

8. The CMA has assessed the impact of the Merger on the basis of a voice/hybrid broking frame of reference for each of the product categories where the Parties' voice/hybrid broking activities overlap. The CMA proceeded in its market testing and competitive assessment on the basis of a cautious, narrow frame of reference considering product categories within asset classes on a disaggregated basis. This granular assessment enabled the CMA to identify categories of products where the conditions of competition were broadly similar and, equally, to identify certain categories of products where the competitive conditions differed and, therefore, required a different competitive assessment.

9. The CMA considered the appropriate geographic frame of reference for voice/hybrid broking to be EMEA wide.

10. While the Merger would lead to high shares of supply in a number of product categories in voice/hybrid broking, the CMA does not consider that such shares are necessarily indicative of market power in this sector given the presence of other factors, in particular:

    (a) ability for other brokers to expand;

    (b) increasing out of market constraints exerted by electronic platforms and exchanges;

    (c) influence by large customers over the liquidity available to brokers; and

    (d) limited customer concerns and decreasing brokerage commissions pre-Merger.

11. The CMA found the degree to which constraints (a) to (d) apply differs within asset classes and product categories. However, 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 in all but one of the areas of overlap between the Parties' voice/hybrid broking activities.[5]

12. The CMA believes the constraints on the Parties in relation to the overlaps in voice/hybrid broking services in the Oil product category appear to be substantially weaker than for the other areas of overlap:

    (a) competition from other brokers is limited: Tullett recently acquired PVM Oil Associates Limited (**PVM**)[6], one of the largest Oil brokers, and, therefore, post-Merger three of the main Oil brokerages will be owned and controlled by TP;

    (b) out of market constraints exerted by electronic platforms and exchanges are weaker in Oil where products are complex or illiquid and there is less transparency than in other energy products;

    (c) large customers appeared to have less influence over liquidity; and

    (d) a number of customer complaints received by the CMA highlighted concerns regarding Oil and there was more limited evidence of commission rate negotiations.

13. Accordingly, the CMA believes the conditions of competition in relation to the supply of voice/hybrid broking in the Oil product category differ from those conditions prevalent for the other overlaps in voice/hybrid broking and, based on the evidence gathered during the course of its investigation, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the supply of Oil voice/hybrid broking services.

14. The CMA is, therefore, considering whether to accept undertakings under section 73 of the Act. ICAP and Tullett have until **14 June 2016** to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

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[5] The CMA does not believe there is a realistic prospect of an SLC in: Fixed Income Securities (Government Bonds, Repurchase Agreements, Corporate Bonds, Credit Derivatives)*;* Treasury (Spot FX, Forward, FX Cash Deposits)*;* and Equities (Cash Equities, Equity Derivatives)*;* Interest Rate Derivatives (Interest Rate Swaps, Interest Rate Options, Inflation Swaps); and Energy/Commodities*:* Power*;* Gas*;* Iron Ore; Emissions*;* Coal*;* and Metals.

[6] Tullett acquired PVM, a previously independent voice broker of financial and physical Oil instruments, in November 2014.

Data sales

15. ICAP and Tullett each have data sales businesses linked to their main voice/hybrid broking activity. ICAP's data business associated with its voice/hybrid broking activity will transfer to Tullett as part of its acquisition of IGBB. The data business associated with ICAP's electronic platforms will remain with ICAP NewCo.

16. On a cautious basis, the CMA assessed the impact of the Merger by reference to the provision of proprietary trading data generated by brokers to (i) wholesale and (ii) retail customers. It considered in its competitive assessment the extent to which concerns may be more acute for specific asset classes and product categories.

17. The CMA did not reach a conclusion on the product frame of reference given that, on the narrowest plausible candidate market, the CMA did not believe there was a realistic prospect of an SLC. While the CMA did not need to conclude on the geographic frame of reference for such data markets, it considered the relevant market to be at least EMEA, given the significance of time zones to trading activity. The CMA received a more mixed response to its market testing regarding data sales and has considered the complaints received carefully. Having regard in particular to the constraint exerted by other brokers, data available from other sources and regulatory reforms that will affect the availability of data, the CMA believes, on balance, that the Merger does not give rise to a realistic prospect of an SLC in the provision of proprietary trading data generated by brokers to (i) wholesale and (ii) retail customers.

Electronic platforms and risk mitigation (related to the Minority Stake)

18. Both Tullett and ICAP have electronic platforms and also offer risk mitigation services. While the ownership of these services will not change as a result of the Merger,[7] they have been considered as part of the CMA's assessment of

[7] Certain electronic platforms will change ownership as a result of the acquisition of IGBB by Tullett. These include (i) Fusion (ICAP's e-commerce portal for trading venues which acts as a front-end service to distribute broker-assisted matching sessions in products with more episodic liquidity) (ii) Scrapbook (an e-solution for corporate bonds launched in 2015) and (iii) ICAP's 40.23% interest in i-Swap Limited. Given the limited overlaps the CMA identified between IGBB and Tullett in electronic platforms, these are not considered further in the Decision.

the overlaps between ICAP NewCo and TP as a result of ICAP NewCo's acquisition of the Minority Stake.

19. The CMA found the overlaps for electronic platforms to be very limited, such that they did not give rise to competition concerns. In relation to the risk mitigation overlaps, having considered the facts relevant to the competitive assessment of the Minority Stake, the CMA believes the acquisition of the Minority Stake would not result in a realistic prospect of an SLC. The CMA does not believe ICAP NewCo would have sufficient ability or incentive as a result of its Minority Stake to influence TP's policy regarding the competitiveness of its risk mitigation services or that ICAP NewCo would have sufficient incentive to reduce the competitiveness of its own risk mitigation service. The CMA did not need to conclude on the relevant frames of reference for electronic platforms or for risk mitigation services as, on the narrowest plausible candidate markets, the CMA does not believe the acquisition of the Minority Stake gives rise to a realistic prospect of an SLC.

ASSESSMENT

Parties

20. Tullett provides wholesale intermediation/broking services to buyers and sellers in OTC and exchange-traded markets through voice/hybrid broking and electronic platforms. It also has a data sales business which collects, collates and distributes real-time and historic financial information generated through its broking activities. Tullett offers a risk mitigation service which allows customers to identify, remove, neutralise and reconcile risks within their portfolios.

21. Tullett's turnover in the UK in the year ending 31 December 2014 was £344.9m. For the EEA its turnover was around [✄] and worldwide around £703.5m. In November 2014 Tullett acquired PVM Oil Associates Limited, a previously independent specialist voice broker of financial and physical Oil products. PVM is one of the largest voice brokers trading Oil products with revenues in 2015 of approximately [✄].

22. Similarly, ICAP provides wholesale intermediation/broking services to buyers and sellers in OTC and exchange-traded markets through voice/hybrid broking, as well as electronic platforms. ICAP's electronic trading platforms cover a wide range of asset classes and instruments. ICAP also sells data and offers a risk mitigation service.

23. ICAP's total revenues (not UK only) for the financial year ending 31 March 2015 were £1.27bn.

24. The Parties both operate in Europe, the Middle East, Africa, North and South America and Asia Pacific.

25. Other services provided by ICAP and Tullett, not relevant to the CMA's assessment of the Merger, are not set out here.

Transaction

26. Tullett proposes to acquire IGBHL which is the proposed holding company of ICAP's global wholesale broking business comprising ICAP's associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates[8] (defined above as IGBB).[9] IGBB's turnover in the UK for the financial year ending 31 March 2015 was [✂], its EEA wide turnover was around [✂] and worldwide it was around [✂].

27. The remainder of ICAP's business, ICAP NewCo, will not transfer to Tullett. As part of the consideration for the Merger:

    (a) the current shareholders of ICAP will acquire, in aggregate, 36.1% of the shares in TP; and

    (b) ICAP NewCo will acquire 19.9%[10] of the shares in TP and will also have the right to appoint one non-executive member of the TP Board. [i]

28. ICAP NewCo and TP will enter into transitional services agreements for a transitional period of up to two years. The founder and CEO of ICAP, Michael Spencer, will act for one year as Honorary President of TP, and will also act as a consultant on the integration between TP and IGBB for a similar period.

29. IPGL Limited (**IPGL**) is the largest shareholder in ICAP, with 16.26% of the shares. This will give it 5.87% of the shares in TP which means that IPGL will have an interest in TP both directly as a shareholder and indirectly as shareholder of ICAP NewCo. IPGL is currently controlled by Michael Spencer.

30. The pre- and post-Merger corporate structure is illustrated by **Figure 1** below.

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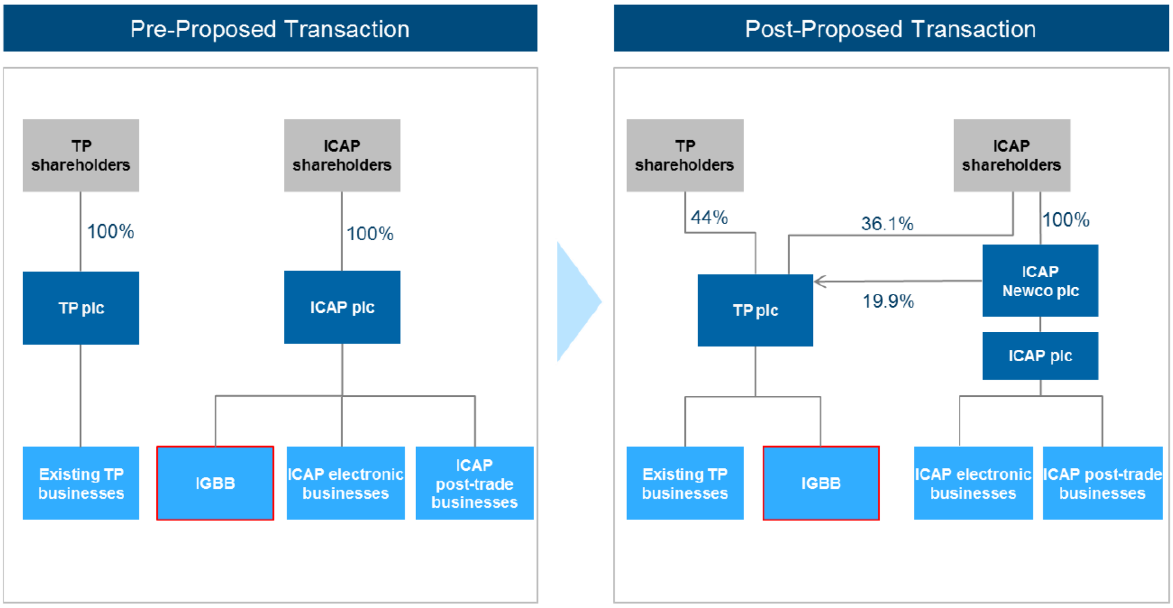
[8] As listed in Annex 1 to the Merger Notice dated 8 April 2016.
[9] As referred to in footnote 4 above, on completion approximately 64.5% of shares of IGBHL will transfer to TP. It is intended that TP will then exercise an option to acquire the remaining shares in IGBHL.
[10] The remaining 44% of TP's issued share capital is to be held by existing Tullett shareholders.

Figure 1: Pre- and Post-Merger Corporate Structure



Source: the Notifying Parties (to note TP plc in the Pre-Proposed Transaction caption is referred to as Tullett in this decision)

31. The Notifying Parties informed the CMA that the Merger is also the subject of review by competition authorities in the United States, Australia and Singapore. As at the date of this decision, merger clearance has been obtained in Australia.[11]

Rationale

32. The Notifying Parties stated that the rationale for the Merger is to combine the complementary strengths of two leading global voice/hybrid broking businesses and in order to achieve significant cost synergies of at least £60m. The Notifying Parties stated that by coming together they will benefit from improved scale, allowing for a significantly improved product suite and service for customers. Further, as a result of financial regulatory reform, the Notifying Parties submitted that global financial markets have profoundly changed and the Merger will enable them to meet the market's changing needs and better serve customers.

Jurisdiction

33. As a result of the Merger, Tullett - through its acquisition of IGBHL - would acquire full control of IGBB, such that the enterprises of Tullett and IGBB will cease to be distinct.

[11] http://registers.accc.gov.au/content/index.phtml/itemId/1195914/fromItemId/751043

34. The UK turnover of IGBB exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

35. The CMA 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 under the Act.

36. The CMA considered whether the transaction would result in TP being brought under the control of ICAP NewCo and therefore in the creation of a further relevant merger situation. Specifically, the CMA considered whether ICAP NewCo would gain material influence over the policy of TP.

37. The ability to exercise material influence is the lowest level of control that may give rise to a relevant merger situation.[12] When making its assessment, the CMA focuses on the acquirer's ability materially to influence policy relevant to the behaviour of the target firm in the marketplace. A finding of material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholders' meetings, together with, in some cases, any additional supporting factors. Material influence may also arise as a result of the ability to influence the board of the target, and/or through other arrangements: that is, without the acquirer necessarily being able to block votes at shareholders' meetings.[13]

38. Although there is no presumption of material influence below 25%,[14] the CMA may examine any shareholding of 15% or more in order to assess whether the holder might be able materially to influence the target's policy.[15]

39. ICAP NewCo's holding of 19.9% will give it voting rights which fall below the level (25%) that the CMA considers is likely to be seen as conferring the ability materially to influence policy.[16] However, the CMA considered whether ICAP NewCo would have the ability to block a special resolution as a practical matter or otherwise have the ability materially to influence a policy that would be expected to require a special resolution.[17] Of particular relevance, on the facts of this transaction, the CMA considered: the distribution and holders of the remaining shares; patterns of attendance and voting at recent shareholders' meetings based on recent shareholder returns; and the status

[12] Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.14.
[13] Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.16.
[14] Given the nature of the decisions that typically will require a special resolution – and which the holder could therefore block – a share of voting rights of over 25% is likely to be seen as conferring the ability materially to influence policy – even when all the remaining shares are held by only one person (Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.19 – 4.20).
[15] Exceptionally, a shareholding of less than 15% might attract scrutiny by the CMA where other factors indicating the ability to exercise material influence over policy are present.
[16] Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.19.
[17] Mergers: Guidance on the CMA's jurisdiction and procedure, paragraphs 4.18 – 4.27.

and expertise of ICAP NewCo and its corresponding influence with other shareholders. The CMA also considered whether ICAP NewCo would be able materially to influence the policy of TP through its Board representation.

40. The CMA considered the relative voting power ICAP NewCo's shareholding would achieve, as adjusted to take into account of effective turnout. On this basis, although raised above 19.9%, it appeared unlikely that ICAP NewCo's effective share of the vote would reach 25%. However, the CMA considered that ICAP NewCo may be expected to be able to influence the voting behaviour of IPGL which would lead to a combined voting strength of over 25%, as adjusted to reflect effective turnout.

41. The CMA also took into account the following factors in relation to other shareholders:

(a) ICAP NewCo would be the largest shareholder by a wide margin;

(b) ICAP has considerable industry expertise;

(c) ICAP NewCo may be expected to hold a special status as ICAP was the previous operator of one of TP's businesses; and

(d) ICAP NewCo would have existing ties with 36.1% of TP's shareholders (that would also be shareholders in ICAP NewCo).

42. The CMA notes that TP's shareholders include sophisticated institutions. However, the factors listed above, taken together, suggest that ICAP NewCo may be able to influence the voting of one or more TP shareholders in order to achieve a veto of a special resolution and also suggest that they may enhance ICAP NewCo's ability to positively influence the policy of TP at shareholder meetings and/or Board meetings.[18]

43. The CMA therefore considers the above factors indicate that, as a result of the acquisition of the Minority Stake (in addition to Tullett acquiring full control of IGBB as a result of the Merger), ICAP NewCo and TP may cease to be distinct.[19]

44. As set out below, however, the CMA did not find a realistic prospect of an SLC arising in relation to ICAP NewCo's acquisition of the Minority Stake. Therefore, it has not been necessary for the CMA to conclude whether ICAP NewCo would gain material influence over the policy of TP.

[18] See Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.22.
[19] See Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.14.

45. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 11 April 2016 and the statutory 40 working day deadline for a decision is therefore 7 June 2016. The Merger was considered at a Case Review Meeting.[20]

Counterfactual

46. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (i.e. the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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.[21]

47. There is no evidence supporting a different counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

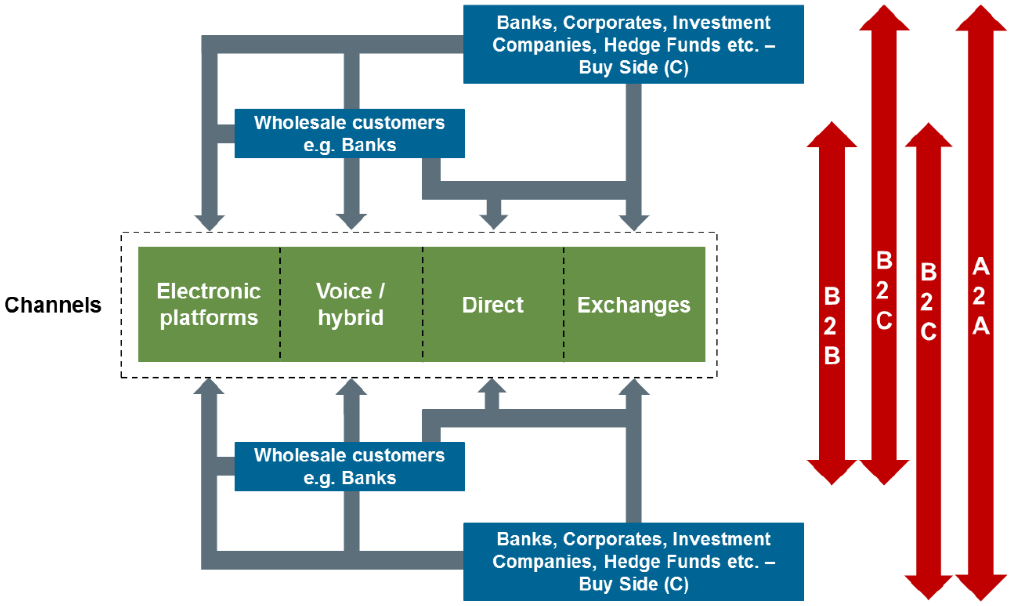
48. The CMA as part of its competitive assessment has taken into account (i) the existence of broader industry dynamics - in particular, shrinking volumes of voice/hybrid trading and an 'electronification' trend, meaning a move towards increased use of electronic trading platforms compared to use of traditional voice/hybrid broking services (a trend apparent across many asset classes although the degree of the shift varies by asset class and product category); and (ii) the significant regulatory reforms being introduced in the financial sector including - but not limited to - MiFID II.[22]

[20] See Mergers: Guidance on the CMA's jurisdiction and procedure from paragraph 7.34.
[21] 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, Annex D).
[22] MiFID I is the Markets in Financial Instruments Directive (Directive 2004/39/EC). In force since November 2007, this directive governs the provision of investment services in financial instruments by banks and investment firms and the operation of traditional stock exchanges and alternative trading venues. In October 2011, the European Commission tabled proposals to revise the Markets in Financial Instruments Directive (MiFID II)(Directive 2014/65/EU) with the aim of making financial markets more efficient, resilient and transparent, and to strengthen the protection of investors. The MiFID II package of reforms includes a new Regulation (MiFIR)(Regulation 600/2014). For further information on the status of MiFID II see: http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm

Background

49. A simplified overview of the various trading channels for financial transactions, including voice/hybrid broking, electronic platforms, direct trading and exchanges is illustrated in **Figure 2** below.

Figure 2: Flow of Financial Trades



Source: the Notifying Parties

*The terms B2B, B2C and A2A are explained in paragraph 56 below

Voice/hybrid broking

50. Voice brokers act as intermediaries for 'buy-side' and 'sell-side' customers[23] in the buying and selling of OTC financial products. Voice brokers relay and match bids and offers by telephone. The principal customers for voice brokers are the large sell-side banks that provide market liquidity, although brokers may also trade with buy-side institutions.

51. Voice/hybrid broking refers to traditional 'pure' voice[24] broking where the whole process of buying and selling is carried out over the telephone and,

[23] The sell-side tends to consist of large global investment banks who are generally seen as 'market makers' or 'dealers' in that they are willing to provide large pools of liquidity through their buying and selling activities. In the interdealer market, dealers use brokers to quote prices to each other. The sell-side facilitates trades for the buy side who tend to be the end users of the financial instruments being traded. A summary of OTC markets and interdealer broking can be found here: http://www.imf.org/external/pubs/ft/fandd/basics/markets.htm
[24] Reference to 'voice' in this decision should be read as including voice/hybrid broking unless otherwise indicated.

more typically, 'hybrid' broking where a broker and customer interact over the telephone but with some support from electronic tools such as electronic platforms and proprietary screens displaying historic data, analytics and real-time prices.

52. Customers may choose to use a voice/hybrid broker for a number of reasons. In addition to trader preference, these include:

(a) Convenience and market insight: a trader can outsource execution to a broker who will trade when the time and price is right;

(b) Price discovery: brokers can search the market for the best executable price which may not be available on electronic platforms;

(c) Size discovery: a broker can find a buyer/seller for particular sized lots, preventing the need for larger trades to be parcelled up and drip-fed to the market;

(d) Complexity of transactions: some products may have multiple elements which the trader wishes to transact simultaneously, or other complex features; and

(e) Discretion and anonymity: a buyer/seller may not want their identity known.

53. Customers wanting to trade in financial or energy/commodity products seek liquid market places where there are sufficient counterparties to trade and price visibility. In OTC markets, brokers bring counterparties to a trade together and report prices. The liquidity a broker can offer is in part dependent on the number of clients or contacts with potential trading partners they hold. It has been explained to the CMA that 'liquidity attracts liquidity' as customers are drawn to trading venues (including brokers) with many buyers and sellers. As such, there are network effects associated with broking.

54. Commission charged by voice/hybrid brokers is usually paid by both the buy-side and the sell-side of a trade (based on rates negotiated with the customer). Commission will vary depending on a range of factors including the liquidity of the product being traded, the size of the transaction as well as customer-specific considerations.

Electronic trading and exchanges

55. Tullett and ICAP both have electronic platforms. In contrast to voice/hybrid broking, electronic trading platforms match bids and offers without any involvement from brokers, by providing proprietary electronic trading systems

through which participants post prices, enter orders and execute transactions. The customer can 'click and trade' without needing to engage with a broker.

56. Pure electronic trading platforms allow for execution of trades by counterparties through the electronic matching of bids and offers to execute trades. These can be wholesale platforms, that are typically open only to bank participants or their brokers (bank to bank – B2B), or platforms that have a wider pool of participants (including buy-side traders) such as bank to customer (B2C) electronic platforms for OTC products. As an alternative to trading OTC, trading can take place on 'all to all' or 'anyone to anyone' (A2A) platforms such as an exchange.

Direct trading

57. Customers of brokers can trade directly with one another without the use of an intermediary such as a broker. For instance, this can be through a bank's Single Dealer Platform (**SDP**) available through the bank or via a platform such as Bloomberg. Customers may also trade directly with one another through a bilateral trade.

Data sales

58. The Parties' data businesses collect, collate and distribute real-time and historic financial trade information. The data sold by the Parties is for a range of financial instruments and takes two key forms:

(a) Real time data feeds (**RTDF**): data is distributed to customers via a feed in real time (often supplied via a downstream aggregator); and

(b) Packages of data: data is compiled periodically and sold as a package of historic data (normally to back/middle office end-users rather than the front office).

59. Data can be distributed either by a third party aggregator (for example Bloomberg or Thomson Reuters) or through a direct data feed from the Parties to the end user. The majority of the Parties' data sales revenues are derived from data that is distributed by aggregators.

60. Where the data is distributed via a data aggregator, the customer can have a direct contractual relationship with the Parties or the customer can purchase the data as part of their subscription with the aggregator (with the aggregator paying a royalty to the Parties for the right to sell the data).

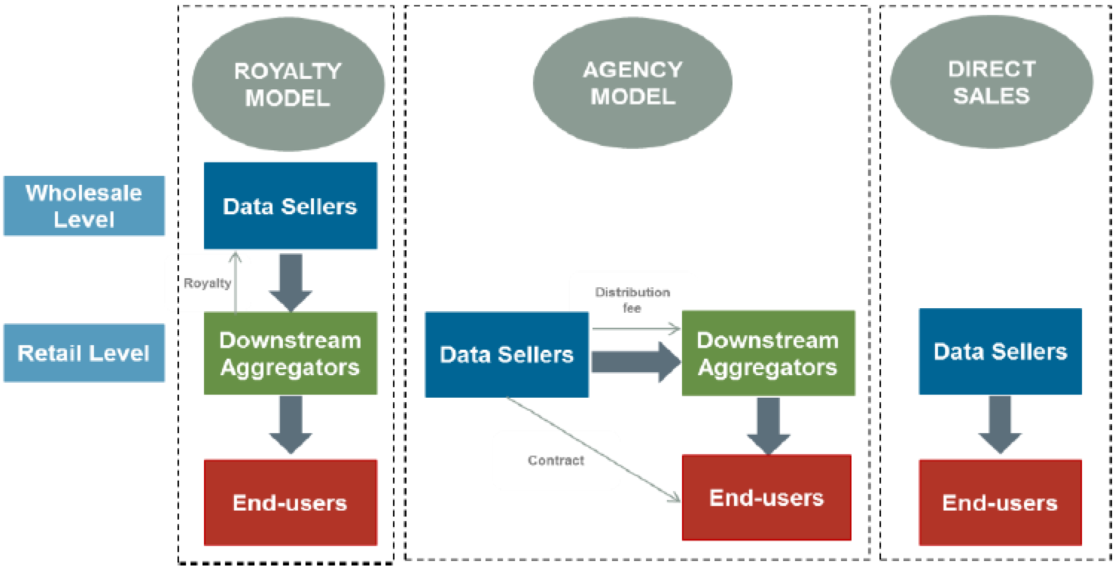
61. As such, there are two groups of customers:

(a) Wholesale customers (aggregators): at the wholesale level the aggregator either distributes the raw data as a retail product or uses it as an input, among other inputs, into a broader product containing other data feeds. An aggregator may consolidate multiple RTDF products and also provide extra products such as charting and analytics.

(b) Retail customers: customers could include sell-side and buy-side customers. These customers may use the data for a range of purposes including evaluation of historic trading activity, valuation models or support of trading activities.

62. The three principal methods of data supply at the wholesale and retail levels are illustrated by **Figure 3** below.

Figure 3: Methods of Data Supply



Source: the Notifying Parties

Risk mitigation services

63. The Parties both provide risk mitigation services which allow customers to identify, remove, neutralise and reconcile risks within their trading portfolios. Risk mitigation services help trading institutions mitigate basis risk for derivatives products. Providers of risk mitigation services run a 'matching run' to compare the portfolios of multiple customers and use algorithms to identify opportunities to reduce risk by identifying a counterparty with an opposing risk. When a counterparty is identified, the system automatically executes a trade between two banks. These matching runs tend to occur at a set time.

Frame of reference

64. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgment. 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 important than others. The CMA will take these factors into account in its competitive assessment.[25]

65. The frame of reference section first looks at voice/hybrid broking, considering: (a) the means of trading; and (b) the products traded. The frames of reference for data sales and, finally, risk mitigation are then considered.

Product scope – voice/hybrid broking

66. The Parties overlap in the provision of voice/hybrid broking services in 20 product categories[26] within five asset classes. The asset classes are: Treasury; Fixed Income Securities; Equities; Interest Rate Derivatives; and Energy/Commodities. The 20 overlapping product categories in those asset classes are set out in **Table 1**. Within those product categories, there may be further sub-categorisation of particular products. For example, within the Oil product category, sub-categories would include Middle Distillates and Fuel Oil.

Table 1: the Parties' overlaps in voice/hybrid broking

Asset Class	Treasury	Fixed Income Securities	Equities	Interest Rate Derivatives	Energy / Commodities
Product Category	Spot FX Forward FX Cash Deposits FX Options	Government Bonds Repurchase Agreements ("Repos") Corporate Bonds Credit Derivatives	Cash Equities Equity Derivatives	Interest Rate Swaps ("IRS") Interest Rate Options ("IROs") Inflation Swaps	Power Gas Oil Emissions Coal Metals Iron Ore

Source: adapted from a table provided by the Notifying Parties

[25] Merger Assessment Guidelines, paragraph 5.2.2.
[26] In Treasury, ICAP is not directly active in FX Options but has a 23% stake in a joint venture with Tradition in this product category.

67. In *Collins/Fulton* (2004)[27], the OFT[28] considered whether intermediated trades competed with direct trading and exchange-based trading. The OFT did not conclude on the issue as, even on a narrow basis, no competition concerns arose but it considered that the constraint provided by direct trading and exchanges varied depending on the category of financial instruments. The OFT considered voice and electronic broking in combination and as separate segments.[29]

68. The Notifying Parties submitted that the relevant frame of reference should include all trading channels, and that there is no longer a discrete interdealer broking market. The frame of reference would therefore include all wholesale (B2B) platforms, direct trading, as well as B2C and A2A platforms and exchanges. In the Notifying Parties' view, exchanges and electronic platforms in particular are a growing constraint on voice/hybrid broking, due to both the increased use of technology (which makes trading electronically cheaper and easier) and regulatory reform (arguably 'pushing' trading from OTC trading towards exchange-based trading). The Notifying Parties acknowledge that the choice of trading channel is dependent on many factors, including the particular product, the nature of transaction (eg size, timing, complexity, risk) and the particular preferences of the parties involved.

69. There are, therefore, two dimensions to the product market: the products traded and the means by which they are traded. Typically the CMA's approach to market definition is to begin with the overlap products of the parties in the narrowest plausible candidate market and then to assess whether this can be widened on the basis of demand-side substitution and, under certain circumstances, supply-side factors.[30]

70. As its starting point, therefore, the CMA took voice/hybrid broking as the relevant product frame of reference for the means of trading. It considered whether this product frame of reference could be widened as a result of (i) demand-side substitution and/or (ii) supply-side substitution.

71. With regard to the products traded, the CMA did not consider it practical to assess this transaction at the narrowest possible level (which would be each individual trade that could be carried out). The CMA therefore took as its starting point the 20 product categories identified above and considered whether it was appropriate to: (a) group these together on the basis that

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[27] https://assets.digital.cabinet-office.gov.uk/media/555de45eed915d7ae200012f/collinsstewart.pdf
[28] The Office of Fair Trading – the CMA's predecessor body.
[29] See paragraphs 9 to 15 of the decision (https://assets.digital.cabinet-office.gov.uk/media/555de45eed915d7ae200012f/collinsstewart.pdf)
[30] See Merger Assessment Guidelines, paragraph 5.2.6.

conditions of competition were sufficiently similar; or (b) narrow further within the relevant product category.

72. In terms of customer segmentation, the CMA considered any differences in the supply of voice/hybrid broking services to both smaller and larger banks, and other non-bank customers, as part of its competitive assessment.

(a) The means of trading

(i) Demand-side substitution

73. The Notifying Parties submitted detailed evidence (on a product category-by-product category basis) regarding the move to electronic trading which they consider is accelerating as technology advances. The Notifying Parties submitted that new technology means that electronic platforms can accept more complex or bespoke products.

74. The Notifying Parties provided evidence in relation to a number of electronic platforms active in the various asset classes and product categories in addition to the constraint exerted on voice/hybrid broking by exchanges. They also provided evidence regarding the volumes of electronic trading, direct trading and trading on exchanges in relation to certain asset classes and product categories which, they submitted, show the shift of volumes from voice/hybrid broking execution to execution through electronic platforms and exchanges. For a number of product categories, the Notifying Parties provided voice/hybrid trading volume figures and revenue figures showing broadly a decline in both.

75. The Notifying Parties also provided to the CMA internal documents which included evidence supportive of a degree of constraint exerted by electronic platforms and exchanges. However, the CMA also notes that certain of these documents also pointed to a degree of OTC business remaining voice/hybrid, for instance where there is illiquidity and lack of standardisation.

76. In its market testing, the CMA received some evidence supportive of a 'blurring' of the boundaries between the different trading channels and a trend towards electronification of trading activities generally evident across asset classes and product categories (with minor exceptions). Some views were received that regulatory reforms affecting the industry, including as a result of MiFID II, may move trading increasingly towards exchange-based trading and that there will be additional regulatory requirements associated with new regulated trading venues to be introduced such as Organised Trading Facilities (**OTFs**).

77. Views provided to the CMA in relation to the constraint from OTC electronic platforms, direct trading and exchanges broadly indicated a degree of demand-side substitutability between the following trading channels and voice/hybrid broking services:

(a) direct interbank trading between sell-side banks or trading between buy-side institutions/smaller banks and sell-side banks through an SDP - available either directly or hosted via a platform such as Bloomberg;

(b) electronic platforms including both B2B and B2C platforms; and

(c) A2A trading platforms and venues including exchanges.

78. However, other third party comments noted that there are still many types of transactions where the services of voice/hybrid brokers remain important. The evidence available indicates the decision to use a voice/hybrid broker normally reflects the circumstances of a particular transaction and is, to a certain extent, driven by the needs of that transaction (rather than the relative cost of other platforms) including for product categories where a large proportion of trades are already electronic. A large majority of the responses from customers emphasised that the role of a broker is principally about finding pools of liquidity. This is a primary driver concerning any decision about which trading channel to use and a voice/hybrid broker will be used if there is a need to pro-actively source liquidity from the market.

79. The CMA recognises that for some product categories the transition to electronic trading is relatively advanced. For example, this would seem particularly true of categories such as Cash Equities, Government Bonds and Spot FX. Nevertheless, the CMA also believes that even amongst these categories where electronic trading occurs to a significant degree, there appear to be certain types of trades where customers continue to have a need for voice/hybrid brokers. Given how advanced these categories are in the move to electronification, it is possible that these categories have already bifurcated between transactions capable of being traded electronically - which have moved to electronic platforms - and those which require the service of a voice broker which represent a distinct market.

80. Many of the responses suggest that there are various common characteristics in types of products or trading conditions where voice/hybrid broking remains important:

(a) The product is bespoke, complex, or highly structured. The trend towards electronification has, therefore, been stronger for liquid, standardised, fungible and less complex products or trades.

(b) Irregularly traded products, for example a new product coming to market.

(c) Where price discovery and specialist market insight is required to obtain 'market colour'.

(d) Size of the transaction (a larger trade may require a broker to ensure anonymity is maintained and discretion to avoid the market moving against the trader).

(e) Market volatility - electronic liquidity is likely to dry up at points of market stress.

(f) For OTC derivatives where there are many potential instruments (due to certain derivative instruments varying in multiple ways from one trade to another) it may be difficult for an electronic platform to build sufficient liquidity.

81. It seems that the decision to use a voice/hybrid broker - as opposed to an electronic platform - largely reflects the nature of the trade (e.g. size or complexity) and market conditions prevalent at the time (liquidity). Although voice/hybrid trading may in certain instances be more expensive than electronic trading, the Notifying Parties submitted that even the smallest advantage in price that a voice/hybrid broker can secure for a trade can outweigh the difference in cost between use of a broker or use of a platform. While it is possible that a hypothetical monopolist of voice/hybrid broking may have concerns that raising commission rates could accelerate the transition from voice to alternative trading channels, it is far from clear that these considerations would constrain a small increase in commission rates for particular products.[31]

82. The majority of customers also noted, either generally or in relation to specific products and sub-categories of products (with the range of products cited being wide[32]), that a small but significant increase in the cost of voice/hybrid broking would be unlikely to result in them altering their trading behaviour.

83. The CMA does not believe, therefore, that the evidence available to it sufficiently supports widening the product scope frame of reference on the basis of demand-side considerations beyond voice/hybrid broking to include

[31] In applying the hypothetical monopolist test, the CMA will assess whether a hypothetical monopolist could profitably raise price in the candidate market by at least a small but significant amount over a non-transitory period of time (ie by a 'SSNIP'—a small but significant and non-transitory increase in price), see the Merger Assessment Guidelines, paragraph 5.2.11.

[32] In addition to general comments the products specifically cited by customers that they could not switch away from voice/hybrid trading in the event of a 5% increase in price were: 'certain types of derivatives', term repos, block trades, repos, corporate bonds, forward FX, FX options, IRS, IRO, inflation swaps, equity derivatives, less liquid currency pairs, oil and gas requiring physical delivery, and swap OTC transactions.

electronic trading, direct trading and exchanges across any of the product categories where the Parties overlap. Nevertheless, the CMA recognises that this is a cautious approach and has considered carefully the constraint that these alternative trading venues provide on a product-by-product category basis as part of its competitive assessment.

(ii) Supply-side substitution

84. On the supply-side, the Notifying Parties submitted that all major voice brokers now offer customers hybrid and electronic broking options to complement their traditional voice brokerage services. Conversely, electronic platform operators such as Bloomberg and Dealerweb have started to hire voice brokers to complement their electronic trading services. The Notifying Parties consider this suggests a blurring of the boundaries between different channels, implying strong supply-side substitutability.

85. The CMA did not receive sufficient evidence that electronic platform operators were also providing voice broking services on a consistent and regular basis across the relevant product categories. As such, the CMA concluded that it was not appropriate to widen the product frame of reference on this basis as a result of supply-side substitution.

86. In light of the above, on a cautious basis, the CMA concluded it remained appropriate to use a narrow voice/hybrid broking product frame of reference for the asset classes and product categories where the Parties' voice/hybrid broking activities overlap and considered out of market constraints in its competitive assessment.

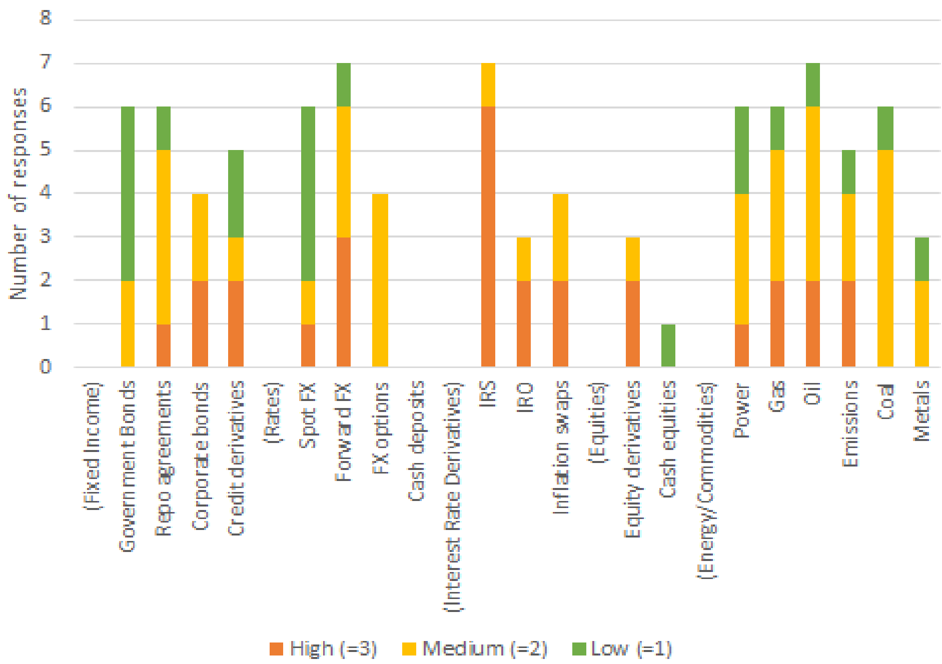
(b) The products traded

(i) Demand-side substitution

87. The CMA also considered whether the product frame of reference should be further narrowed within asset classes and/or by product categories within those asset classes. The CMA considers that the possibility of demand-side substitution between product categories is unlikely, given a customer will likely want or need to trade a specific instrument. Within a product category, there will be some degree of substitutability between individual instruments to the extent that their prices are linked, but the CMA understands that there are limits to this (indeed third parties have told us that many trades are undertaken deliberately to take a position on different price movements within a product category). In practice, the evidence suggests that the conditions where the characteristics set out in paragraph 80 are consistently discernible varies by asset class and product category.

88. Responses to the CMA's market testing revealed that customers' preference for voice trading was stronger for some product categories than others. Recognising the limitations of this evidence given the relatively small sample of customers which responded, those product categories where customers indicated the strongest preference for using a voice/hybrid broker were: IRS, IROs, Equity Derivatives and Inflation Swaps. Other areas where customers had a mostly high or medium preference for voice were Corporate Bonds, Repos, Forward FX, FX Options, and all Energy/Commodity product categories. In those areas where most customers stated that they had a low preference for trading by voice/hybrid trading, such as Spot FX, it is notable that some customers indicated they had a medium or even high preference.

Figure 4: **Respondent preference for voice brokers**



Source: the CMA's market testing

89. This evidence was also supplemented by comments received from many of these customers as part of the CMA's market testing. The third party evidence provided to the CMA offered further detail on the extent to which customers were willing to switch between voice/hybrid and alternative platforms for different products or types of trades within a product category.

(ii) Supply-side substitution

90. The CMA may also aggregate together individual products on the basis of supply-side substitutability, where suppliers can readily switch between the supply of individual products and the conditions of competition are the same.

91. The CMA considered whether the ease of switching by voice/hybrid broking houses from one product category to another would suggest that a single broking frame of reference covering all product categories or markets grouped by asset classes should be defined. The CMA understands that a broking house trading in one product category would not necessarily trade all other product categories within the same asset class. In this regard, the main impediment for a broking house to move into a new product category will be sourcing individual brokers with experience and contacts in that product category. As set out below under the barriers to entry section, the challenge of recruiting experienced brokers is likely to be sufficiently difficult and untimely to suggest that the supply-side constraints are insufficient to expand the frame of reference in this way.

92. While the evidence available to the CMA suggests that the above is - in many respects - consistent across product categories, there may be limits or exceptions to this. The CMA recognises, therefore, that any anti-competitive effects from the Merger could be felt more acutely within sub-categories of a particular product category. The CMA nevertheless considers that the evidence available to it supports a finding that the conditions of competition are broadly similar across multiple products within particular categories, such that a product category frame of reference is appropriate. Where exceptions have been apparent as a result of the CMA's market testing, these have been considered as part of the competitive assessment.

Geographic scope – voice/hybrid broking

93. The CMA considers that the appropriate geographic frame of reference is EMEA-wide, as most respondents to the CMA's questionnaire indicated that time-zone rather than geographic location of the broking services was a more relevant consideration when selecting brokers to trade through.

Conclusion on frame of reference – voice/hybrid broking

94. For the reasons set out above, the CMA has considered the impact of the Merger on the basis of a voice/hybrid broking frame of reference for the asset classes and product categories where the Parties' voice/hybrid broking activities overlap. The CMA considered out of market constraints in the competitive assessment. The CMA considered the differences between asset

classes and product categories on a disaggregated basis as part of its competitive assessment where the evidence was supportive of a differentiation.

95. The CMA considers the appropriate geographic frame of reference to be EMEA-wide.

Product scope – data sales

96. As explained in the background section, as part of their broking activities the Parties generate proprietary pricing data which is sold to financial institutions and professionals. These institutions and professionals use this data to make decisions and monitor the market.

97. The Parties overlap in the provision of data for the following asset classes and product categories:

- Treasury: (i) Forward FX; (ii) Cash Deposits;
- Fixed Income: (i) Government Bonds; (ii) Repos; (iii) Corporate Bonds; (iv) Credit Derivatives;
- Interest Rate Derivatives: (i) IRS; (ii) IROs; (iii) Inflation Swaps; and
- Energy/Commodities: (i) Power (ii) Gas; (iii) Oil; (iv) Emissions; (v) Coal; and (vi) Metals.

98. The Notifying Parties submitted that the relevant frames of reference are i) the wholesale supply of data to downstream aggregators, and ii) the retail supply of data to end-users.

99. The Notifying Parties submitted that the relevant wholesale market includes pricing data provided by exchanges, dealer banks, brokers, B2C platforms and clearinghouses. Given the consolidated form in which data is sold by downstream aggregators, the Notifying Parties stated that the same is also true at the retail level.

100. The Notifying Parties see little reason to distinguish between the supply of RTDF and supply of price and reference data as, in the majority of cases, they provide both RTDF and periodic data as a package to both aggregators and end users. The Notifying Parties also submitted that the market should not be split by asset class as they also provide the majority of their customers with packages of data covering multiple asset classes. Finally, the Notifying Parties submitted that the pricing data generated through one wholesale

intermediary's activity cannot horizontally overlap with another wholesale intermediary's activity as they are complements not substitutes.

101. The CMA looked at the following factors when considering the relevant product frame of reference for data:

(a) RTDF and historic data;

(b) the supply of retail data directly and via data aggregators;

(c) whether broking data is itself a separate relevant frame of reference; and

(d) the supply of data associated with different product categories.

(a) RTDF and historic data

102. In *Reuters/Telerate*[33], the European Commission distinguished between (i) the provision of real time market data to end-users, (ii) the supply of price and reference data to middle and back office functions addition, (iii) the supply of market data platforms, and (iv) the supply of foreign exchange order management software.

103. The CMA considers that even if both real time data and historic data are purchased by the same customer, they are likely to have different applications, for example RTDF would appear to be more relevant to support trading activity, suggesting that the scope for substitution between this and packages of periodic data the Parties supply may be limited.

104. The CMA notes that the comments it has received from third parties do not typically distinguish between RTDF and historic data, although certain comments noted the different parts of a bank which may use different data (front office functions typically use RTDF whereas back and middle office functions would normally use historic data).

105. For the purposes of its assessment, the CMA did not need to conclude on whether RTDF and historic data should be distinct frames of reference as, on the facts of this case, both Parties supply both and any segmentation between RTDF and historic data would not have changed the CMA's conclusions.

(b) Supply of retail data directly and via data aggregators

106. A retail customer purchasing data from voice/hybrid brokers could either contract with the voice/hybrid broker directly or with a third party data

[33] Case No COMP/M.3692 - REUTERS / TELERATE, 23/05/2005

aggregator. The Notifying Parties submitted that there are consistent licensing and commercial arrangements based on customer usage, irrespective of whether the customer is obtaining the data directly or via an aggregator. Further, the Notifying Parties explained that both Thomson Reuters and Bloomberg have 'drop in' agreements with the Parties, giving them the right to receive any data that the Parties make available to any other customer (be it retail or wholesale).

107. The CMA has not been made aware of any substantive differences in the quality of the data or licencing terms depending on whether the customer purchases directly at the retail level or via a wholesale aggregator. The CMA considers, therefore, that the retail market for the provision of data includes both direct supply of broker data and supply via aggregators.

(c) Broking data as a separate relevant frame of reference

108. Responses have been mixed as to whether data from alternative trading venues represents a good alternative to the data generated by voice/hybrid brokers for either retail customers or wholesale customers.

109. The CMA has been provided evidence that there are multiple sources of data for many of the various asset classes and product categories. These include other brokers, trading banks, trading venues including platforms, specialist calculators, analysts, sell-side providers, exchanges and aggregators.

110. Although customers may purchase data from a wide range of sources, this does not in itself indicate that they are close substitutes for data generated by voice/hybrid brokers. In particular, there are still several products where voice/hybrid brokers are the primary trading venue. The CMA also received views which suggested that customers had a distinct demand for data generated by voice/hybrid brokers for those products where a high proportion of trading takes place through such brokers.

111. In light of these views, and in particular the existence of various concerns expressed in relation to the impact of the Merger on the supply of data, the CMA considers it is appropriate – on a cautious basis - to take the narrowest plausible candidate market, that is, interdealer broking data, as the relevant product frame of reference.

(d) Supply of data associated with different product categories

112. The CMA has considered whether trading data associated with each product category is likely to form a separate frame of reference. On the demand-side, a user is unlikely to regard data associated with one product category as a

substitute for another. The CMA notes that some respondents to its market testing appear to purchase a wide spectrum of data, while others explained they buy a more selective range of data covering only specific products.

113. On the supply-side, the CMA has considered the scope for a voice/hybrid broker providing data in a particular product category to start supplying data in another product category. However, the CMA notes that data sales are derived from the primary activity of a voice/hybrid broker, intermediating between counterparties looking to trade a particular financial instrument. Therefore, it is not possible to supply broker data unless the data supplier first enters the market as a broker and builds sufficiently broad coverage in this area. While the opportunity to sell data may affect the calculation as to whether it is profitable to enter a new area as a broker, brokers still generally earn a relatively small proportion of their revenue from data services. A small increase in fees charged by data providers for a particular product or asset class would seem unlikely to encourage brokers to move into the trading of a new product category.

114. While trading data associated with each product category may form a separate frame of reference, it was not necessary for the CMA to conclude on this point. The CMA has considered the extent to which concerns may be more acute for specific asset classes or product categories as part of its competitive assessment.

Conclusion on product scope – data sales

115. On a cautious basis, for both real time data feeds and historic data, the CMA carried out its assessment on the basis of a distinct product frame of reference for the:

(a) provision of proprietary trading data generated by brokers to wholesale customers (i.e. data aggregators); and

(b) provision of proprietary trading data generated by brokers to retail customers.

116. The CMA has set out in its competitive assessment the extent to which concerns may be more acute for specific asset classes and products. In particular, the extent to which data was available from other sources such as exchanges, clearing houses and banks, etc. The CMA did not need to conclude on the frame of reference as on the narrowest plausible market it does not believe there is a realistic prospect of an SLC.

Geographic frame of reference – data sales

117. In relation to geographic scope, the CMA considers that the geographic frame of reference is likely to be EMEA, consistent with the geographic market for voice broking services from which the underlying data is derived. However the CMA did not need to conclude on the geographic frame of reference.

Conclusion on frame of reference – data sales

118. For the reasons set out above, the CMA has considered on a cautious basis the impact of the Merger both on RTDF and historic data by reference to the provision of proprietary trading data generated by voice/hybrid brokers to:

   (a) wholesale customers (i.e. data aggregators); and

   (b) retail customers

   on an EMEA-wide basis.

119. The CMA did not find a realistic prospect of an SLC under the narrowest plausible candidate frame of reference and, therefore, it did not need to conclude on either the product or geographic frame of reference for data sales.

Product scope - risk mitigation (related to ICAP NewCo's acquisition of the Minority Stake)

120. The Parties' risk mitigation products which overlap (tpMatch and RESET) both mitigate basis risk for Interest Rate Derivatives and non-deliverable futures (FX Options and Forward FX). These are automated trading platforms that identify where a bank has risk in its trading position of a particular product and look to execute a trade with another bank that has an opposing risk.

121. Given these are product-specific risks, a customer mitigates this risk via a risk mitigation tool comparing customers with positions in the same, or similar, products. Views of third parties were that there were no similar products other than those offered by the Parties.

122. On the supply-side, several respondents commented that the service increases in value as more banks participate (as it increases the likelihood that a match will be found) and if that service can match their risks they do not need to use another service. This, it was suggested, led banks to concentrate spending with one or two providers. Such network effects suggest it is not appropriate to expand the market on the supply side to include other risk mitigation platforms given the expected challenge of unseating an incumbent.

123. The CMA considered the overlap of risk mitigation on the basis of a distinct frame of reference for risk mitigation services for Interest Rate Derivatives and FX Derivatives.

124. The geographic market is potentially worldwide given these services can be run outside of market opening hours. The CMA notes that both products are run through Singapore.

Conclusion on frame of reference – risk mitigation

125. The CMA has considered the overlap in risk mitigation services as a result of the acquisition of the Minority Stake on the basis of a product frame of reference for risk mitigation services for Interest Rate Derivatives and FX Derivatives on a worldwide basis.

126. The CMA did not conclude on the product frame of reference and geographic frame of reference as on the narrowest plausible candidate market the CMA does not believe there is a realistic prospect of an SLC.

Competitive assessment

Horizontal unilateral effects

127. 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.[34] Horizontal unilateral effects are more likely when the merger parties are close competitors.

128. The CMA assessed whether it is, or may be the case, that the Merger may be expected to result in an SLC in relation to unilateral horizontal effects resulting from a loss of existing competition in the provision on an EMEA basis of:

   (a) voice/hybrid broking services on the basis of a voice/hybrid broking frame of reference for the product categories where the Parties' activities overlap (Theory of Harm 1 (**TOH 1**)); and

   (b) proprietary trading data generated by voice/hybrid brokers to (i) wholesale customers and (ii) retail customers (**TOH 2**).

129. In relation to ICAP NewCo's proposed acquisition of a 19.9% shareholding in TP, the CMA assessed whether it is, or may be the case, that the acquisition

[34] Merger Assessment Guidelines, from paragraph 5.4.1.

of the Minority Stake may be expected to result in an SLC in relation to unilateral horizontal effects resulting from a loss of existing competition in the provision of risk mitigation services for Interest Rate Derivatives and FX Derivatives on a worldwide basis (**TOH 3**).[35]

TOH 1 - Horizontal unilateral effects resulting from a loss of existing competition in the provision of voice/hybrid broking services

130. The concern under this theory of harm is that the removal of one party as a competitor could allow the Parties to increase prices (commissions), or otherwise worsen their product offering. After the merger, it is less costly for the merging company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company.

131. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:

    (a) shares of supply;

    (b) the closeness of competition between the Parties;

    (c) competitive constraints from alternative suppliers of voice broking services;

    (d) out of market constraints exerted by electronic platforms and exchanges; and

    (e) negotiations of existing commission rates.

132. The CMA assessed the impact of the Merger on the above basis for each of the product categories where the Parties' voice/hybrid broking services overlapped. As set out in the frame of reference, the CMA conducted its competitive assessment and market testing on the basis that voice/hybrid broking represented a distinct frame of reference for each of these product categories. However, as set out below, on the basis of the evidence from the Notifying Parties and the CMA's market testing, the CMA identified that

[35] Other overlapping activities were also considered as part of the CMA's assessment of the proposed acquisition of the Minority Stake. These include overlaps in electronic platforms for specific products (forward FX and repos). The CMA did not believe that any plausible form of influence would give rise to a theory of harm relating to these overlaps on the basis of the low increment arising as a result. Only the competitive assessment for the risk mitigation overlaps is set out in this decision document.

broadly the competitive conditions were similar in relation to voice/hybrid broking of:

(a) first, financial instruments within the following asset classes: Fixed Income, Treasury, Equities and Interest Rate Derivatives; and

(b) second, Energy/Commodity products within the following product categories: Power; Gas; Emissions; Coal; and Metals.[36]

133. Therefore the analysis below splits into two sections along the lines above. However, for Oil, the conditions of competition differ from those prevalent in relation to the other Energy/Commodities product categories identified in the paragraph above. There were a number of differentiating factors for Oil, based on the evidence the CMA received and customer concerns flagged in the CMA's market testing. The CMA therefore presents evidence relating to Oil separately from the evidence for the other product categories within the Energy/Commodities section.

Shares of supply

134. The CMA considered the Parties' market shares in the provision of voice/hybrid broking in each product category where the Parties overlap.

135. Based on the data provided by the Notifying Parties and supplemented (to the extent possible) with data from third parties through its market testing, the CMA has identified a number of product areas where the Parties' combined market share is high. For example, in 11 areas it is above 40%.[37] These are:

- Interest Rate Derivatives – Inflation Swaps ([40-50]% with an increment of [10-20]% post-Merger); IROs ([40-50]% with an increment of [30-40]%); IRS ([50-60]% with an increment of [30-40]%);

- Fixed Income – Government Bonds ([40-50]%: with an increment of [10-20]%); Credit Derivatives ([40-50]% with an increment of [20-30]%);

- Treasury – Forward FX ([40-50]% with an increment of [20-30]%); Spot FX ([80-90]% with an increment of [40-50]%); Cash Deposits ([40-50]% with an increment of [10-20]%); and

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[36] In Iron Ore, Tullett's revenue is negligible (generating [✄] in 2015) and so this overlap was not considered further.

[37] As set out in the Merger Assessment Guidelines, the CMA may be less likely to find concerns over unilateral horizontal effects where the merged entity has a combined market share of less than 40%. See Merger Assessment Guidelines paragraph 5.3.5. However such a threshold is only an indicator of where concerns are less likely and the CMA also included those product categories where the Notifying Parties' combined shares were below 40% as part of its market testing and competitive assessment.

- Energy/Commodities – Power ([40-50]% with an increment of [20-30]%); Gas ([50-60]% with an increment of [20-30]%); Oil ([50-60]% with an increment of [5-10]%).

136. Although the Merger does lead to high shares of supply in a number of product categories in voice/hybrid broking, as set out below the CMA does not consider that these shares are necessarily indicative of market power given the presence of other factors.

Closeness of competition between the Parties in voice/hybrid broking

137. Both Tullett and IGBB provide global voice broking services across a similar range of asset classes and products.

138. Customer responses to the CMA's market testing noted that there was little to differentiate ICAP and Tullett. One respondent commented that the business is all about human capital and the individual relationship of the dealers. The CMA's view is that where IGBB and Tullett overlap in relation to voice/hybrid broking, they are likely to be close competitors.

(a) Voice/hybrid broking of financial asset classes

Background

139. The Notifying Parties submitted that the wholesale financial trading environment is characterised by a global decline in broking revenues and volumes. The Notifying Parties have seen a consistent drop in revenues in the past five years:

(a) Tullett's EMEA brokerage revenues have been declining at [✂] % per annum since 2010, resulting in a fall of annual revenues from [✂] in 2010 to [✂] in 2015; and

(b) ICAP's global broking revenues have fallen at [✂] % per annum since 2011, resulting in a fall of annual revenues from [✂] in 2011 to [✂] in 2016.

140. The Notifying Parties submitted that this has resulted in significant cost-cutting and a substantial reduction in broker headcount, and all in the context of increasing regulation and compliance costs year-on-year.

141. The Notifying Parties, in their internal documents provided to the CMA, submitted further supporting evidence of third party consultancy analyses demonstrating that revenue from voice/hybrid broking is expected to continue

to decline, and the revenue from electronic broking is expected to continue to grow.

Competitive constraints from alternative voice brokers

142. The Notifying Parties submitted that considering the Merger on a narrow voice/hybrid broking only basis, there are plenty of traditional voice/hybrid brokers with which to trade. While the identity of the broker cohort varies by asset class/product category, this includes major global players such as BGC/GFI and Tradition as well as numerous specialist brokers in various product areas and geographies.

143. The CMA's market testing identified that the four largest global voice brokers, ICAP, Tullett, BGC/GFI and Tradition were perceived as strong or moderate competitors by almost all respondents in relation to financial product categories. In addition, a large number of smaller competitors with a focus on specific niches were also considered relevant competitors in relation to specific products.

144. The CMA received a number of comments from customers in financial markets that the Merger was likely to concentrate trading activity in a small number of brokers in certain asset classes, in particular in relation to FX and Rates. Although market shares appear to be high in a number of product categories, customers generally considered that they had a range of options, including both large and smaller/niche brokers, which enabled them to switch to alternative providers of the relevant services if prices increased or if service quality decreased following the Merger.

145. The CMA also received views from several customers that they sought to actively monitor how much of their trading was with any individual voice/hybrid broker and in some cases sought to actively balance this spend and avoid a concentration of liquidity with any one broker.

Ease of switching between voice brokers by smaller banks

146. The CMA considered carefully whether smaller bank customers, which can often be characterised as liquidity takers[38], would have the same flexibility as a market-maker to switch between brokers if the conditions offered by a particular broker worsened. The CMA’s concern was that if a large bank moves some of its trading activity to a different broker, they will bring with them a significant increase in liquidity at that competing broker and, therefore,

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[38] The CMA recognises that in certain more niche markets, smaller tier 2 and tier 3 banks may be market liquidity makers.

potentially attract counterparties to trade with. However, a smaller bank might be more tied to using those brokers that have attracted liquidity from the large ‘market-making’ banks in order to secure the most favourable counterparty to trade with. As such, for the smaller banks switching from a larger broker (with access to more liquidity) to a smaller broker could potentially entail a cost.

147. While the CMA had limited submissions from smaller banks on this point, those it did receive responses from held views broadly indistinguishable from the larger banks, both in terms of the range of alternative brokers available and the ease of switching to other brokers. Accordingly, the CMA is not of the view that the ease of switching is more difficult with respect to smaller banks than for larger liquidity makers.[39]

Out of market constraints exerted by electronic platforms and exchanges

148. As set out in the frame of reference section, the Notifying Parties have submitted that there has been a significant shift away from voice/hybrid brokers towards electronic trading venues. The Notifying Parties also submitted that as a result of regulatory changes in the near future a high proportion of the current OTC trading business will need to be traded on an electronic platform. This will mean that products currently less suited to electronic platforms/exchanges will quickly become more suited in anticipation of this.

149. The CMA recognises that trading through voice brokers appears to have contracted. While overall trading volumes themselves appear to have decreased, in particular since the financial crisis, this (at least in part) reflects a trend towards greater ‘electronification’, where trading of certain products has moved from voice/hybrid broking to other trading channels such as electronic platforms and exchanges. However, the CMA considers that electronification is more developed in some asset classes/product categories than in others.

150. For certain products, such as Spot FX and Government Bonds, third party comments were received that electronification of these products was particularly advanced and customers typically had a low preference for using voice brokers in these areas. In relation to these asset classes the movement away from voice/hybrid towards electronic trading seems likely to represent a significant competitive constraint on the Parties going forward. If the Parties’ share of a broader market is considered (either a wholesale market or wider

[39] The CMA also notes that in this case ‘smaller banks’ are very large, sophisticated financial institutions with often strong positions in particular geographies/products.

market including exchange trading), the Parties' combined share would be too low to suggest a realistic prospect of an SLC.

151. The objective of many of the forthcoming regulatory reforms is to move trading activity from unregulated space to regulated, more transparent, trading venues and so it seems that trading of financial asset classes on regulated venues will likely increase in response to these regulatory reforms. Given in a number of respects the reporting and recording obligations are more readily and more easily achieved where electronic systems are used, the move to electronification of trading will likely continue as a result of the objectives of the regulatory reforms and will likely further drive trading towards more lit and regulated venues, reinforcing a growth in liquidity on such venues.

Negotiations on commission rates

152. The CMA recognises that any evidence provided to it relating to negotiations between customers and suppliers will reflect market conditions and the extent of any pre-Merger competition which may change after the Merger. However, the CMA also considers that such evidence can provide useful insights into the mechanisms and the extent to which customers may continue to be able to exert leverage over the Parties post-Merger.

153. The Notifying Parties have provided evidence of their customers' countervailing buyer power. The Notifying Parties explain that their customers often negotiate aggressively on fees. [✂].

154. The CMA also received evidence from the Notifying Parties [✂].

155. In addition, the Notifying Parties provided evidence of declining average commission rates across a number of specific products.

156. The fact that customers regularly and successfully negotiate fees downwards has been broadly corroborated in our market testing, although one bank noted it may be more challenging in particularly concentrated asset classes to negotiate commissions downwards. The CMA has received evidence from customers that they have secured discounts in fee negotiations.

157. As it did when considering the ability of banks to switch between brokers, the CMA also explored the extent to which smaller banks have been able to achieve discounted rates. The evidence supported the finding that smaller banks had a wide choice of brokers and examples were provided to the CMA of such banks successfully negotiating brokerage rates downwards.

158. The CMA is aware of the existence of specialist consultancies in relation to brokerage rates and contacted one such consultancy which confirmed it had assisted [✄], in negotiating the commission rates paid to brokers downwards.

Conclusion in relation to voice/hybrid broking of financial asset classes

159. While post-Merger the Parties will have high market shares in a number of product categories across a range of asset classes for trading of financial instruments, the CMA does not consider that these market shares are indicative of market power given the presence of other factors, in particular:

(a) competition from other brokers:

- TP would be constrained post-Merger by other large global interdealer brokers with broad coverage over multiple asset classes such as BGC/GFI and Tradition;
- in addition, in many asset classes/product categories, there are numerous existing smaller and niche voice/hybrid brokers which would also constrain TP; and
- customers generally considered that they had a range of options to enable them to switch to alternative providers of the relevant services if prices increased or if service quality decreased following the Merger;

(b) out of market constraints exerted by electronic platforms and exchanges:

- there appears to be a trend of contracting volumes of trading through voice brokers. While overall trading volumes themselves appear to have decreased, in particular since the financial crisis, there has also been a trend (although not universal) where trading volumes have moved from voice/hybrid broking to other trading channels such as electronic platforms and exchanges. This shift is evident across many asset classes/product categories but the extent to which it has taken place varies within those classes/categories;

(c) influence by large customers over the liquidity available to brokers:

- the large ‘market makers’, generally the largest investment banks, appear to have a significant degree of bargaining power in negotiating brokerage commission rates – in certain instances across multiple asset classes;

- large customers bring significant liquidity and are able to move trading volumes between brokers relatively easily; and
- there is evidence of customers actively monitoring broker concentration to ensure liquidity is split between brokers; and

(d) limited customer concerns and decreasing brokerage commissions:

- with some exceptions, respondents to the CMA's market testing[40] generally expressed low levels of concern across all financial products about the potential impact of the Merger on voice/hybrid broking services;
- while smaller banks may not influence liquidity to the same extent as the largest banks, the evidence provided to the CMA supported the finding that smaller banks had many options available to enable them to switch to alternative providers of the relevant services if prices increased or if service quality decreased following the Merger; and
- there was evidence of both large and smaller banks aggressively and successfully negotiating brokerage rates (which were broadly declining across many asset classes). In some instances, [✂]. The CMA considers that sufficient good alternatives remain post-Merger such that [✂].

160. 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 in relation to voice/hybrid broking of financial products.

(b) Voice/hybrid broking of Energy/Commodities product categories

161. The Notifying Parties explain that unlike other asset classes, where voice brokers act as intermediaries in relation to 'wholesale' trading,[41] when trading energy products Tullett and IGBB's customers are a mixture of players – mainly commodity specialists such as Oil and Gas majors, utilities and commodity trading houses and corporates, as well as investment banks and other financial institutions. In other words, counterparties to an energy trade could include a mix of financial and end-user institutions. In particular, end-users may have a greater need to trade in relatively complex or illiquid

[40] One unsolicited complaint was received by the CMA during the pre-notification period (the transaction was announced on 11 November 2015 and the Merger was formally notified to the CMA on 8 April 2016).
[41] Wholesale trading refers to interbank trading, i.e. trading amongst 'sell side' institutions – see the background section for more detailed explanation of interbank trading.

products than would be the case in asset classes dominated by financial players.

162. The broader range of customers that trade energy products with brokers such as Tullett and ICAP means that demand for broking services is inevitably more fragmented than in relation to other asset classes. For example across all asset classes the 20 largest customers account for around [✂]% of total revenues of Tullett and IGBB, with the top 10 customers accounting for around [✂]% of total revenues. In some asset classes this is even more notable. In relation to Interest Rate Derivatives and Fixed Income Trading, the top 20 customers make up approximately [✂]% of the Parties' total revenue. In relation to Energy/Commodities, however, demand is less concentrated with the Parties' top 20 customers accounting for around [✂]% of total revenue and the top 10 customers for around [✂]% of total revenue.

163. As noted previously, the CMA's frame of reference for the purpose of its assessment is the provision of voice/hybrid broking in each product category where the Parties overlap. In relation to Energy/Commodities, the product categories where the Parties overlap are Power, Gas, Oil, Emissions, Coal, and Metals. Based on data provided by the Parties, and supplemented to the extent possible by evidence collected from third parties, the CMA has identified 3 product categories where the Parties' combined market share is above 40%, namely Power, Gas and Oil. The CMA discusses these separately in the next sections of this document.

164. In relation to those product categories where the Parties' market share does not exceed 40%, namely Emissions, Coal and Metals, the CMA considers that there will continue to be sufficient competitive constraints after the Merger (broadly for the same reasons discussed below in relation to Power and Gas combined with greater actual competition by other voice/hybrid brokers) and, as such, it does not believe the Merger will give rise to a realistic prospect of an SLC in relation to voice/hybrid broking of these product categories.

165. In relation to, firstly, Power and Gas, and, secondly, Oil the CMA has considered in detail the competitive constraints that the Parties will face taking account of: a) closeness of competition and shares of supply; b) competition from other voice/hybrid brokers; c) out of market constraints from energy exchanges and d) evidence from negotiations over commission rates.

Power and Gas

Closeness of competition and shares of supply

166. Both IGBB and Tullett are significant providers of voice broking services in relation to the energy sector. Furthermore the Parties share a common group of customers, for example [✂].

167. The CMA has defined a frame of reference for the provision of voice/hybrid broking for a) Power and b) Gas. Based on estimates provided by the Notifying Parties and supplemented, to the extent possible, with data from third parties, the CMA estimates that the Parties' market share is above 40% in relation to both of these:

(a) Power: [40-50]%, with an increment of [20-30]%; and

(b) Gas: [50-60]%, with an increment of [20-30]%.

168. In relation to voice/hybrid broking of Power and Gas, much of this takes place over an electronic trading software called Trayport. Trayport's Trading Gateway, configured with its desktop screen 'Joule', enables traders to discover prices and initiate trades across multiple brokers or commodities exchanges from one screen, where the different prices will be displayed alongside each other.

Competition from other voice/hybrid brokers

169. The Notifying Parties state that, even considering the Merger on the basis of voice/hybrid broking, there are many alternative brokers which trade energy product categories. The Notifying Parties state that for Power and Gas strong competition will come from BGC/GFI, Tradition and Marex Spectron. They further list 18 other voice/hybrid brokers they consider significant. A competing broker also commented that there were at least eight brokers competing in energy markets.

170. Several customers noted that for Gas, Power, Emissions and Coal they traded with brokers based on the best price available through Trayport. The CMA received comments that Trayport was advantageous for customers as it brought competing brokers together and offered pricing transparency, allowing traders to compare prices available at different brokers. This enabled traders to identify and trade on the best price. The CMA notes that, unlike in relation to Oil as set out below, no concerns were specifically raised in relation to Gas and Power. Likewise the CMA did not receive any comments that

customers considered that they would have insufficient choice of brokers post-Merger or that it would be difficult to switch between them.

171. In relation to Energy, the Notifying Parties have highlighted that a development of note was the entry of Griffin as a Gas, Coal and Power voice/hybrid broker in 2011. The Notifying Parties state that it offered low rates [✂]. The Notifying Parties also provided the example of [✂].

172. A customer noted that the ease of comparing different brokers across Trayport made it easier for competitors to expand as was shown by the growth of Griffin.

Out of market constraints from energy exchanges

173. The Notifying Parties have submitted that trading in all Energy/Commodity product categories, including Gas and Power, is increasingly conducted via exchanges. The Notifying Parties note that the share of exchange-executed volumes has been increasing: in Gas the share of exchange traded volume reported by Trayport increased from about 19% in 2011 to about 25% in 2014, and in Power it increased from about 5% in 2011 to about 26% in 2015. The Notifying Parties state that key exchanges for trading Gas and Power would include Intercontinental Exchange, Inc (**ICE**), CME Group Inc (**CME**) and European Energy Exchange (**EEX**). They note that ICE is able to compete closely with voice/hybrid brokers because some of its WebIce[42] prices are displayed on the Trayport screen alongside prices available from voice/hybrid brokers.

174. As noted in the previous section in relation to financial products, the CMA received a number of general comments from market participants that there is an ongoing trend towards electronification of trading activity. However, the CMA has also received comments in relation to the trading in Energy/Commodity product categories that exchange-traded contracts are not always a good alternative to OTC contracts arranged via a voice broker. In relation to Gas and Power, one exchange commented that it considered it competed with OTC trades conducted by brokers such as the Parties and it considered that products in Power, Gas and Emissions rights are freely interchangeable between OTC and exchanges. It noted that most companies trading these product categories would have access to both brokers and alternative trading venues. A competing energy broker also commented that it considered that it competed with purely electronic trading for a share of

[42] WebIce is a an internet based subscription service, providing real time access to trading activity on the ICE platform and is distributed to members of the ICE exchange, or subscribers active in the financial and energy/commodities markets

execution business. Another energy broker stated that although its service competes with the likes of ICE and EEX, for certain products it considered its service differentiated and when it considered market shares it did so as a proportion of the brokered markets. It said that trading on exchanges was concentrated in products close to delivery, whereas products further along the curve had less availability on exchanges. This is consistent with the CMA's provisional findings in relation to its Energy Market Investigation that other than products close to delivery, the large majority of trading by generators and suppliers was conducted OTC.[43]

175. The CMA has received relatively few comments specifically about the constraints from exchanges on Gas and Power trades, but it notes that the overarching trend towards electronic trading also appears present to some extent and, as with trading of other asset classes and product categories, this would seem to be an ongoing feature of the market.

Negotiation of commission rates

176. The CMA received a small number of comments about negotiations and entry with one customer noting that bilateral negotiations take place over rates in Gas and Power, leading to a reduction of brokerage fees. It noted that as prices were shown to everybody over Trayport, a broker was unable to show a price to a favoured customer first. If it considered that a particular broker was uncompetitive it would choose to stop viewing rates from this broker on its Trayport screen. Another commented that in general fees were under pressure in the last few years due to the entry of new players.

Conclusion in relation to Gas and Power

177. Although the Parties have high market shares in relation to voice/hybrid broking of both Gas and Power, the CMA does not consider that these market shares are indicative of market power given the presence of other factors, in particular:

(a) Competition from other voice/hybrid brokers;

- Competing voice/hybrid brokers include Tradition, BGC/GFI and Marex Spectron as well as a number of smaller specialist brokerage businesses; and

[43] CMA, Energy Market Investigation, Provisional Findings Appendix 6.1 paras 15-17.

- The constraint from competitors of different sizes would appear to be uniquely enhanced by the trading of Gas and Power contracts on Trayport, which allow customers to compare trading prices across different brokers on a single platform. It has been suggested that this also makes it easier for brokers to move into new areas and grow, as Griffin has done.

(b) Out of market constraints exercised by exchanges which, although clearly not an alternative for certain trades conducted by voice brokers, do appear to be growing and are likely to provide a degree of constraint on pricing by voice/hybrid brokers;

(c) Limited customer concerns and decreasing brokerage rates;

- The CMA received no concerns about the degree of concentration in Power and Gas or difficulty of switching between providers; and

- There is some evidence that, in contrast to Oil trading (see next section), brokerage rates have been decreasing in recent years, in part due to pressure resulting from a new entrant into Power and Gas trading.

178. In the light of these factors, taken together, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to voice/hybrid broking of these Energy/Commodity product categories.

Oil

Closeness of competition and shares of supply

179. The Parties are close competitors in relation to broking Oil. In November 2014 Tullett purchased PVM Oil Associates Ltd (PVM), a previously independent broker of financial and physical Oil instruments. As can be seen in **Table 2** below, PVM is a particularly large broker of many of the sub-product categories within Oil, with revenues [✂]. Since purchasing PVM, Tullett has kept the business separate and it told the CMA that PVM competes for trades with the Oil trading desks within Tullett. As noted below, several third parties have commented that, particularly in light of Tullett's purchase of PVM, the Merger will bring together two significant competitors, and three brands, in Oil trading.

180. In relation to the Oil market generally, the Notifying Parties estimate that their combined market share (including PVM) is [50-60]% (with an increment of [5-10]%). However, a number of the concerns that the CMA has received have

often been directed at more granular sub-product categories within the broader Oil product category. The Notifying Parties have subsequently identified 13 sub-product categories within Oil roughly based on how their trading desks are organised (given their trading desks are organised somewhat differently).

181. As can be seen from **Table 2** below, IGBB is active and the Parties overlap in relation to the following sub-product categories: Crude Oil, Middle Distillates, Fuel Oil, Oil Futures, Crude Oil Options and LNG. While most of these sub-product categories are broadly consistent with third party comments received (for example a number of third party comments related to Middle Distillates), other comments received were about the effect of the transaction at a still more granular individual product level (for example one customer noted that the identity of competitors within Middle Distillates varies at a narrower product level covering: i) Jet Fuel ii) Ultra Low Sulphur Diesel and High Sulphur Gasoil iii) Gasoil Cracks, and iv) Middle Distillate Futures). In other cases it was not always possible to map comments against the Oil sub-product categories provided by the Notifying Parties.

182. While the CMA has explored the effect of the transaction on the Oil broking market generally and, to the extent possible, on the basis of the sub-product categories of Oil provided by the Notifying Parties, given the lack of granularity in the Notifying Parties' submissions it has not been possible to narrow the assessment, or isolate the concerns, at any narrower group of individual Oil products. The Notifying Parties' estimate of their share of supply in relation to the sub-product categories of Oil is sometimes higher than their overall market share for Oil. This is consistent with comments received by third parties (see the following section).

Table 2 – revenue of PVM, Tullett and IGBB and estimated market share

Desk	PVM revenue[4]	Tullett (TP) revenue	IGBB revenue	TP share incl[3] PVM	IGBB share	TP + IGBB shares
Crude Oil	£ [✂]		£ [✂]	[70-80]%	[10-20]%	[80-90]%
Middle Distillates	£ [✂]	£ [✂]	£ [✂]	[40-50]%	[20-30]%	[70-80]%
Fuel Oil	£ [✂]	£ [✂]	£ [✂]	[30-40]%	[10-20]%	[50-60]%
Commodity and Oil Futures	£ [✂]	£ [✂]	£ [✂]	[40-50]%	[5-10]%	[50-60]%
Crude Oil Options	£ [✂]	£ [✂]	£ [✂]	[20-30]%	[5-10]%	[30-40]%
LNG		£ [✂]	£ [✂]	[20-30]%	[0-5]%	[20-30]%
Fuel Oil Physical	£ [✂]	£ [✂]		[90-100]%		[90-100]%
Gasoline	£ [✂]	£ [✂]		[90-100]%		[90-100]%
Liquid Petroleum Gas	£ [✂]	£ [✂]		[50-60]%		[50-60]%
Gasoil Physical	£ [✂]	£ [✂]		[40-50]%		[40-50]%
Naphtha	£ [✂]	£ [✂]		[30-40]%		[30-40]%
Naphtha Physical		£ [✂]		[10-20]%		[10-20]%
Biofuels		£ [✂]		[10-20]%		[10-20]%
Total	**£** [✂]	**£** [✂]	**£** [✂]	**[40-50]%**	**[5-10]%**	**[50-60]%**

[1]Includes £[✂]from Tullett's classification Crude Oil, Commodity and Oil Futures [2]Includes £[✂]from Tullett's classification Crude Oil, Commodity and Oil Futures [3]Share data from Response to the Issues Paper dated 17 May, Annex 4 Margins Concentration Analysis "Margin-concentration_Desk_level.xlsx" [4]All revenues are from the RFI response dated 23 May 2016 Tables 1-3, pp.3-5.

Competition from other voice/hybrid brokers

183. The Notifying Parties have submitted that even considering the Merger on a narrow basis, i.e. providers of traditional voice/hybrid broking services only, there will remain a sufficient number of competing brokers. In relation to each of the areas where IGBB and Tullett/PVM's Oil trading desks overlap (see **Table 2** above) they identified between 5 and 6 competing brokers which they estimated had at least a 5% share of the product area.[44] These competitors are set out in **Table 3** below.

Table 3: Competing voice brokers in Oil Sub-Product Categories

Desk	Voice brokers competing with the Parties seen as significant competitors	Voice brokers competing with the Parties seen as smaller competitors
Commodity and Oil futures	Marex Spectron, Alpha, Evolution, Starsupply, Tradition, BGC	Schneiders / Union Brokers, ADM, DQL, New Edge, EDF Man, X-Connect, Coex, GF Financial markets, RJ O'Brien, Arian Financial
Crude Oil	Tradition, Evolution, Alpha, OTC Global Holdings, Schneiders, Starsupply	Marex Spectron, Poten, GFI, Vantage
Crude Oil Options	LCM, Eagle, BGC/GFI, Cornerstone, Tradition, Evolution, OTC, Marex Spectron	Magus, Venture Commodities, Trident, ION, Market Securities, Vantage, Sunrise
Fuel Oil	Marex Spectron, Tradition, Oil Brokerage, BGC, Star Supply	Starfuels
LNG	GFI, BGC (Mint), Poten	
Middle Distillates	Tradition, Alpha, Marex Spectron, Star Supply, OTC Global Holdings	DQL, Schneiders, Thistle

Source: the Notifying Parties

184. The Notifying Parties also submitted margin concentration analysis suggesting that higher shares or concentration levels across a range of product categories (i.e. not just Oil) were not associated with higher gross profit margins.[45] However, this does not show causation and, given the other evidence, the CMA did not consider that the analysis was sufficient to demonstrate that the Merger would not lead to increased margins in particular products. Furthermore, the CMA had concerns about the consistency of the Tullett margin data, which appeared to be based on revenue data excluding PVM, with the reported shares including PVM. Finally, the analysis does not

[44] The exception was LNG where there are two competitors.
[45] Response to the Issues Paper dated 17 May, Annex 4 Margins Concentration Analysis and RFI response dated 23 May 2016 Tables 1-3, pp.3-5. This analysis covered all product categories not just oil.

take into account out of market constraints, which the CMA believes to be strong in relation to some products but not in relation to others (notably Oil), as discussed below.

185. The CMA received few comments from banks about trading of Energy/Commodity products generally or Oil specifically. The CMA has received comments from three energy customers raising concerns about a loss of competition amongst brokers for Oil. One bank also noted the degree of concentration within Oil.

186. In relation to the Oil market, customers expressed views that the Merger would concentrate trading activity, and in relation to certain of the Oil sub-product categories (or individual Oil products), given that Tullett already controls PVM, this would essentially bring under common ownership three of the strongest brands in the market (of which Tullett controlled two pre-Merger):

(a) An energy company told us that for Dated Brent it only uses four brokers and after the Merger three would be part of the same group. It similarly stated that in relation to physical trading of Middle Distillates, IGBB and Tullett/PVM were both strong competitors and it did not identify any significant other competitors.

(b) Another company stated that if the Merger were completed, it believes that broking in certain Oil products would be highly concentrated in PVM/Tullett/ICAP. It noted that Tullett, PVM and ICAP are the main three brokers that it uses. It stated that there are other brokers in individual markets that also provide strong services (e.g. it stated Tradition was strong in Fuel Oil, Marex Spectron in Fuel Oil and some futures, Star Supply for barge, and OTC Holdings in Crude OTC markets) but the three are consistently strong in most Oil markets. In certain markets, the Merger will result in the number of leading firms being reduced from three to two. This is particularly relevant for Oil physical and swap markets. It also noted a particular concern in relation to Distillates.

(c) Another company that uses the Parties and a small number of others for Oil products (including Crude, Fuel Oil, Distillates, Light Ends and Bio Fuels) commented that post-Merger the top three brokers will be under common ownership.

(d) A trader of energy products noted that the Parties were strong in Distillates, Fuel and Oil Options.

187. The CMA sought further data from [✂] in order to understand the relative size of the Parties compared to this group of competitors.

188. [✂] earned approximately [✂] in Oil broking revenues in 2015 [✂]. However the majority of this revenue [✂][46] derived from trading [✂], which would make it similar in size to the Parties combined post-Merger in this area. In [✂] earned approximately [✂] and in [✂] in both cases making it significantly smaller than the Parties' combined business. In other areas, such as [✂] it is not present at all. [✂] trades [✂], [✂] and [✂]. In each of these areas it is smaller than each of Tullett, PVM and IGBB. [✂] revenue in relation to [✂] was slightly higher than IGBB or PVM but slightly below Tullett's revenue. However its combined revenue from [✂], significantly below any of Tullett, PVM or IGBB. Likewise the only other area where [✂] overlaps with the Parties is in broking [✂] where it earned [✂], less than any of the Parties' revenue.

189. Unlike comments received in relation to voice broking of financial product categories or other Energy/Commodity product categories, views were expressed that there may be few good alternatives to the Parties in relation to trading of certain Oil product categories (or individual Oil products):

(a) having noted the high degree of concentration in Dated Brent, and that it currently used all three brokers involved in the Merger and only one other, an energy customer stated that its ability to move demand in response to the Merger will be based on whether liquidity will move to other brokers or platforms; and

(b) a customer in the energy sector commented that it does not expect a move of demand to other brokers or platforms in response to the Merger as it would be difficult to do so in relation to some products due to the strong market position of the Parties.

190. The CMA notes that Griffin has been cited as a successful entrant within the Power and Gas broking. The CMA also notes that the Notifying Parties have not cited Griffin as a material competitor in any of the individual products where they overlap within Oil.

191. The CMA notes that while Trayport has been highlighted by a number of customers trading in Energy/Commodity product categories as enhancing competition in Gas and Power as it increases transparency (as referred to above), with some minor exceptions Oil contracts are not traded over Trayport.

192. Finally it was noted by both a customer and a competitor that the structure of the transaction, whereby PVM, Tullett and IGBB will be kept in separate

[46] [✂] USD

trading units competing for transactions with each other, may in itself make it difficult for competitors to grow in relation to the Oil market. A customer noted that that there is in practice limited room for voice brokers to co-exist trading a particular product. It said that having three or four brokers is optimal, as beyond that liquidity becomes diluted. Therefore, the individuals working in these organisations will continue to be the primary point of contact for customers seeking a different perspective on liquidity in the market even once they are under common ownership.

Out of market constraints from energy exchanges

193. The Notifying Parties have submitted that the trading landscape in relation to all Energy/Commodity product categories has changed dramatically over the last few years and there is no longer a meaningful discrete traditional voice/hybrid broking channel. Instead the services offered by voice brokers compete with other trading channels and specifically exchanges. The Notifying Parties estimate that in 2014 the large majority of Oil was traded on exchanges, with the Notifying Parties submitting that ICE is particularly strong in Oil trading, which they estimate has an approximately 50% share of all exchange-traded Oil volumes.

194. The Notifying Parties submitted that this constraint from exchanges exists regardless of the specific type of contract under consideration, as exchanges are the primary venue for trading Oil derivative products. In support of this, they submitted that there are approximately 500 Oil contracts listed on ICE that are available to all global market participants. The Notifying Parties also said that given the range of contracts that are exchange listed (primarily through ICE and CME) all voice brokers are able to offer their customers all types of contracts, meaning that all those competitors trading a particular type of Oil contract are able to provide a constraint on the Parties.

195. As noted in the frame of reference, the CMA has received comments in relation to the trading of Energy/Commodity product categories in general, and Oil product category specifically, that exchange traded contracts are not always a good alternative to OTC contracts arranged via a voice broker. For example, one respondent estimated that, in substance, 80% of swap transactions are traded OTC (but noted that due to regulatory requirements most swap transactions are formally processed as futures contracts through exchanges), and that virtually all physical transactions are traded OTC. As set out in the frame of reference, customers stated that voice broking is used when the trade in question must take into account multiple or complex factors (e.g. physical delivery or transacting more than one part of a spread

simultaneously[47]) whereas others commented that while certain futures contracts are widely traded on exchanges, such as ICE, other transactions are primarily concluded OTC by voice brokers due to limited liquidity on an exchange, or not being traded on exchange. However, it was also noted to the CMA that there is nothing intrinsic about Oil that prevented it from being traded electronically and one customer said that it was a logical next step for Oil to move in the direction of being traded electronically.

196. In relation to the specific Oil sub-product categories, estimates from competitors and customers suggested that the volumes traded OTC compared to exchange varies significantly depending on the Oil sub-product category (or in some cases individual Oil product) in question and in many areas voice broking continues to dominate. A competing broker explained that there are around 5 individual Oil products where futures contracts are widely traded on exchanges, but beyond these contracts most Oil is traded OTC via brokers. The 5 products where futures contracts are most commonly exchange-traded are: Brent, Gas Oil, RBOB, Heating Oil, and WTI. The competitor stated that for some of these, brokers mainly execute on exchange and the customer could in theory do so itself using WebICE. However exchange trading tends to be short dated products, and the longer dated the product ('back end of the curve'), the less liquid the product would be, which is where OTC trades dominate. Another example are spread trades which it considered inherently unsuited for pure electronic trading. This is because (a) there are so many of these spreads that they are not liquid, and (b) a trader wants to be able to carry out both/all trades of the spread simultaneously. For example, a report from Trayport[48] suggests that Singapore Fuel and Middle Distillates are traded on WebICE to varying degrees.

197. The CMA notes that for certain individual Oil products, exchange trading may provide a viable alternative to trading through the Parties' voice broking services. However, it also seems that in relation to much of the Oil market, executing through a voice broker continues to be the dominant form of trading. It is in the areas where voice brokers are most active that the constraint from exchange trading appears to be relatively weak, and the CMA has not seen evidence that this is likely to change in the foreseeable future. Therefore, for these areas, out of market constraints are likely to be weak.

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[47] An example would be buying oil for delivery in one month and selling for delivery in another or a 'crack spread' where a customer takes a position on refining margin by buying one product and selling a related product, or a 'box spread' which may combine both of the above.
[48] Trayport, Oil volume report – Q1 2016, Apr 2016

Negotiation of commission rates and influence over liquidity by large customers

198. The Notifying Parties submitted that in relation to Energy/Commodity product categories there are a number of customers which represent a material amount of liquidity (and revenue) to each voice/hybrid broker, constraining any hypothetical attempt by such broker to increase prices.

199. As noted above, unlike in the case of purely financial markets, energy markets tend not to feature a small number of large banks acting as 'market makers', and instead have a mix of energy companies and financial institutions trading Oil. While this means that the largest customers collectively make up a significant part of the Parties' overall customer mix, it is still the case that the largest customers each represent only around [✂]% of the Parties' overall revenue in relation to Oil trading.

200. While the CMA received a consistent picture of a downward revision to commission rates from customers predominantly trading financial product categories, in relation to Oil products this was less clear:

(a) A customer told us there is generally little scope for negotiation and it had not secured significant reductions in recent years. It stated that even though it is a large trader of Oil it had little leverage in negotiations as any threat to withdraw from using the Parties in Oil markets would not be credible, given the harm to itself from not using the principal brokers for several key Oil products.

(b) Another customer told us commissions will usually fall as liquidity increases and that commissions will be driven by market conditions rather than by their negotiating power. If the Parties did not offer reasonable rates post-Merger, it would look for alternatives although it would still need to use the Parties for some of its business. This customer contrasted Oil trading with trading Gas and Power products where brokerage rates have gone down. It considered the environment to be different in Gas and Power given that brokerage is negotiated separately, and in Gas and Power prices are on screen and there was no ability to show bids to certain customers before other customers. If a Gas or Power broker were uncompetitive on rates, it would 'switch off' its Trayport feed from this broker, which would mean its traders no longer had access to its prices.

(c) Another customer stated that there had been no recent negotiations over commission rates, at a time when commission rates have been falling in other products.

201. Two traders of energy products both commented that that they were not aware of any broker offering significant discounts or other incentives based on transaction volumes. This contrasts with trading of financial products where the CMA received comments that customers had secured volume-related discounts in negotiations with brokers.

202. The CMA also received comments that it was unlikely that prospect of sponsored entry would provide a credible constraint in relation to Oil trading. Two significant Oil customers noted that individually they did not consider they would be in a position to sponsor entry as on their own they were too small to provide the necessary liquidity to make the entrant a success.

Conclusion in relation to Oil

203. The CMA notes that the Parties will have a high market share in relation to the voice/hybrid broking of Oil. Looking at this on a narrower basis based on the sub-categories of Oil products provided by the Notifying Parties, the Parties' share of certain Oil products is likely to be higher. The CMA also notes that are a number of features in relation to voice/hybrid broking of Oil that distinguishes Oil from voice/hybrid broking of either other Energy/Commodity product categories such as Gas and Power or in relation to financial product categories:

(a) Tullett has relatively recently purchased one of the largest voice brokers involved in trading of Oil. As such, Tullett already has a particularly strong position in trading a range of Oil sub-product categories pre-Merger.

(b) Customers suggested that for trading certain Oil sub-product categories or individual Oil products there would be limited choice once PVM, Tullett and IGBB were all under common ownership. Some products where customers noted a particular degree of concentration included Dated Brent, Middle Distillates and Crude Oil.

(c) Exchange trading may be a weak alternative for many products traded by voice/hybrid brokers.

(d) Unlike in the case of financial product categories, the CMA did not receive views suggesting that large customers influence liquidity or are able to move trading volumes between brokers relatively easily. Comments received suggested that even large customers considered that, independently, they would not be sizeable enough to support a new entrant or assist a competitor expand.

(e) The CMA understands that little Oil is traded via Trayport, which means that the transparency, ease of comparability and switching between

different brokers prices found in Gas and Power is not present to the same degree in relation to Oil.

(f) The CMA is concerned that it may be more challenging for competitors to expand in Oil than in other energy markets where Trayport is more widely used.

(g) The Notifying Parties' plan to keep Tullett, PVM and IGBB under separate brands but competing for individual contracts could in itself make it challenging for competitors to grow post-Merger, given that these three brands would represent the primary source of information for many customers and customers may only actively source prices from three or four brokers for a given trade.

(h) Unlike in relation to trading of other products, the CMA was provided with little evidence from customers suggesting they were active in initiating regular negotiations and achieving significant reductions in commission rates in relation to Oil.

(i) The CMA also notes that in relation to Oil trading, several customers have expressed concerns about the Merger.

204. These factors, combined with the Parties' high share of voice/hybrid broking of Oil, suggest that the competitive constraints faced by TP post-Merger may not be sufficient to constrain it from worsening its offer post-Merger. Many of the customer comments combined with the estimated shares in Oil sub-product categories provided by the Notifying Parties suggest that this concern is likely to be particularly acute in relation to the trading of certain Oil sub-product categories or individual Oil products. The CMA also notes that in some Oil sub-product categories or individual Oil products the presence of strong competitors may provide a degree of constraint. However, given the lack of granularity of evidence provided by the Notifying Parties, the CMA has not been able to rule out concerns more widely. Similarly the CMA notes that the classification of Oil products provided by the Notifying Parties does not always map across to how competitors record trading activity in relation to different Oil products or where customers have raised concerns.

205. Therefore, in light of the above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in relation to voice/hybrid broking within the Oil product category.

TOH 2 - Horizontal unilateral effects resulting from a loss of existing competition in the provision of data services

206. The second theory of harm is that the data services provided by Tullett and IGBB overlap closely in terms of products covered and quality of their data. Post-merger for certain asset classes or products the Parties would face limited constraints from either the data provided by other interdealer brokers or trading data garnered from alternative trading venues, such that post-Merger the Parties will be able to raise prices to both wholesale customers and retail customers or otherwise worsen their product offering.

207. The Parties generate proprietary pricing data which is resold to financial institutions and professionals. This is sold to: i) aggregators that purchase the product in a wholesale market and resell to the end users of the data, or ii) to end users that purchase the data in the retail market. If the end user purchases the data from the Parties directly, they can have the data feed distributed by the Parties or via an aggregator (e.g. Bloomberg or Thomson Reuters).

208. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA has assessed the following factors in relation to both the wholesale and retail market:

    (a) shares of supply;

    (b) closeness of competition between the Parties;

    (c) the competitive constraints from alternative providers of voice/hybrid data services;

    (d) the competitive constraints from alternative providers of data concerning the same products; and

    (e) the potential impact of forthcoming regulatory reforms.

Shares of supply

209. A market report produced by Burton-Taylor and provided by the Notifying Parties suggests that the Parties have low combined market shares in the sale of data (less than [0-5]% across each asset class covered) in the retail market, with sales being dominated by players such as [✂]. To serve as a proxy for the value of the Parties' share in the wholesale market, the Notifying Parties have estimated their share of sales to [✂] which they estimate would be below [5-10]% within EMEA. For those products where equivalent pricing

data is available from alternative trading venues, this would suggest the Parties' share of data across all asset classes may be low.

210. However, the CMA is concerned that (i) data for different products may not be substitutable and (ii) for some products at least, there may be a distinct market for data generated by voice/hybrid brokers. For any specific product, the report - which provides market shares at asset class level and from different types of provider (e.g. electronic platforms and exchanges) - offers little insight into the Parties' market position.

211. The CMA is not able to estimate the Parties' market share of broker data sales for different asset classes with any degree of precision. However, it is likely that the Parties' share of any market for data services provided by voice/hybrid brokers would be highest in those areas where the Parties have the highest market share in voice broking, given other providers would have a less comprehensive coverage for these products. This is likely to be exacerbated by the fact that the Parties appear to have the most developed data business of all the main global interdealer brokers. Some of the comments received by the CMA in its market testing also suggest the market share of the Parties could be significant and far exceed the levels suggested in the Notifying Parties' submissions on the basis of the Burton-Taylor report.

Closeness of competition

212. The CMA has examined the closeness of competition between the Parties.

213. The Notifying Parties have stated that the pricing data generated through wholesale trading intermediaries' activity cannot horizontally overlap with another wholesale trading intermediary's activity as they are complements not substitutes.

214. As set out below, the CMA has received evidence that (i) wholesale and retail customers view data services provided by voice/hybrid brokers as substitutes; (ii) there are various parameters data providers can compete over; and (iii) some customers identified a loss of competition resulting from the Merger. All of these points would suggest that the Parties' data services do horizontally overlap.

The extent to which data services provided by voice/hybrid brokers are substitutes

215. Most respondents to the CMA's consultation stated that one of the factors they took into account when deciding where to purchase their data was the breadth of data coverage (wider coverage was considered an advantage).

Likewise some customers noted that an advantage of the transaction is that it will improve the coverage of the Parties' data. The CMA received third party evidence from certain wholesale and retail customers that although they may buy data from different brokers, they do not need to purchase from all voice/hybrid brokers where they can get sufficient coverage from a subset of brokers. Many customers also considered ICAP and Tullett compete closely in this space. This suggests that the data provided by different voice/hybrid brokers are substitutes.

The parameters over which data services provided by voice/ hybrid brokers compete

216. Customers also provided an insight into the dimensions across which data providers can compete to win business. These views were similar for both wholesale customers and retail customers. As noted above, most respondents commented that 'coverage' or 'completeness' was one factor they sought. However, other factors noted were data 'quality' and 'credibility', with one wholesale customer emphasising the quality of the pricing and representativeness of the effective trades on the market. Several customers commented on the reputation, credibility or reliability of the data provider.

217. Other dimensions cited by customers included service level, technical delivery options, licensing terms and brand recognition. Several respondents also noted that price was a factor.

218. The CMA considers that the size of the broker is a key determinant to its ability to provide valuable data, as sufficient liquidity is required to ensure the pricing curves provided by brokers are credible. Therefore, the larger the liquidity pool, the more accurate, reliable and better quality the data that broker is able to provide. This is explained further below in relation to the correlation between coverage and market shares.

Competitive constraints from other voice/hybrid brokers' data services

219. Other voice/hybrid brokers should represent an alternative source of trading data for customers. However, rival voice brokers are only likely to provide a strong constraint to the extent that they have coverage of the same products and are capable of matching the service offering provided by the Notifying Parties.

220. Some of the customers responding to the CMA noted that they do already purchase data (or would consider purchasing data) from other voice brokers. In particular, Tradition and BGC/GFI were noted as suppliers or potential

suppliers by some wholesale and retail customers responding to the CMA's market testing.

221. However, certain customer comments suggested that they did not necessarily view alternative brokers to be a strong constraint on the Parties due to the breadth of the Parties' data coverage. There were concerns raised by both wholesale and retail customers about the strength of competition post-Merger. Given Tullett and ICAP were considered by certain customers to be the two main providers of broker data, and overlapped significantly in coverage, some customers were concerned that the Merger might diminish their negotiating leverage or might lead to less favourable licensing terms.

222. Some comments were received from competitors noting they were currently not as strong as Tullett and ICAP in the data area, due to a lack of historic focus or difficulty in displacing incumbents.

Switching costs

223. The CMA has considered if there are any switching costs that could make it more difficult for customers to switch to other data providers in the event of a price rise post–Merger or for potential competitors to quickly and effectively develop competing services. In this regard the CMA received certain views in its market testing from customers that there were costs associated with switching to an alternative data provider. However, the CMA notes that those switching costs would also apply between the Parties pre-Merger, which would reduce the competitive constraint that each imposes on the other.

Products where competition from alternative providers is weakest

224. Based on the evidence received, it is difficult to isolate precisely the asset classes or product categories where these concerns are most significant. However, some comments suggest customer concerns are centred on specific product categories and asset classes. One customer noted the markets of concern are where there is a large OTC presence instead of an electronic presence and another stated that for certain illiquid instruments/asset classes, Tullett and ICAP may be the sole source of quotes.

225. A competitor commented that a high market share in voice/hybrid broking would also confer an advantage in terms of data services. It submitted that the value of OTC data increases exponentially once a critical market share is achieved, at some point making the information 'must have' for users.

226. The link between market share as a voice/hybrid broker and an advantage as a data provider is supported by some of the views expressed to the CMA by

customers concerning the significance of market coverage in selecting their provider. This would also suggest, to the extent the Merger is likely to reduce competition amongst data providers, this may be more likely for product categories where the Parties will have a high market share in voice/hybrid broking post-Merger. However, the CMA also took into account that many data contracts are negotiated at a broader level rather than within narrow product categories.

Out of market competitive constraints from other data sources

227. The CMA notes that the Parties, as intermediaries, collect data about the trading activities of other financial institutions. As such, the component data which underpins their data services will also reside in a number of other businesses, e.g. the trading banks themselves. Therefore, the CMA has also considered the extent to which the Parties' data services are likely to be constrained from sources other than voice/hybrid brokers that have access to data about the same underlying trading activities. The CMA has also considered the extent to which upcoming regulatory changes may increase the sources from which customers may access this information.

Competitive constraints in the retail market from wholesale customers

228. The Notifying Parties submitted that downstream aggregators, in particular [✂], provide the vast majority of the Parties' data and hence would constrain the Parties' pricing in the retail market.

229. The CMA notes that as well as purchasing data directly from end-users a customer can purchase the data through a subscription with a data aggregator. The CMA does not have a complete picture as to whether there is a difference in the nature of the data made available through an aggregator, or the applicable licensing terms, compared to a direct sale. However, the Notifying Parties submitted that there are consistent licensing and commercial arrangements based on customer usage, irrespective of whether the customer is obtaining the data directly or via an aggregator. Further, the Notifying Parties explained that [✂].

230. If the data available through different sources at the retail level is equivalent, the Parties would be competing against their wholesale customers to sell the data to end users. However, if the Merger leads to a significant consolidation in any area where end-users will continue to demand the Parties' data, and alternatives brokers or trading venues data services provide only a weak constraint on the Parties, the fact that the there are other companies at the retail level reselling the Parties' data is unlikely to represent a significant additional constraint. If the Merger gives rise to an SLC at the wholesale level

it would result in higher prices to the data aggregators. The expectation is that these higher input prices would be passed on by those aggregators simply reselling the same data feed, reducing the constraint on the Parties from raising prices in the retail market.

231. On the other hand, where a data aggregator's product is different to the data service offered by the Parties (for example if it is combined with data from other providers and resold as a bundle or consolidated data product, combined with additional tools, or if restrictive licensing terms are placed on how the customer purchasing through an aggregator can use the data) they may not be competing closely as it not clear that this would be a good substitute to the Parties' data product.

Constraints from settling and clearing houses

232. The Notifying Parties submitted that in order to settle and clear trades, wholesale intermediaries use settling and clearing houses, for example Trayport for energy and LCH Clearnet for a multitude of products. The Notifying Parties submit that these operators would also be able to provide pricing data in respect of the same trades.

233. For cleared trades, a clearing house would have an equivalent, and likely broader, range of data about the trading activity the Parties and other brokers have been involved in. However, as a potential competitor in this space, this would only apply to OTC trades that are cleared through a clearing house, which is currently only a subset of all OTC trading activity. In the light of the customer comments received, the CMA believes that any data currently made available is not seen as equivalent by a number of customers.

234. In relation to energy trading, the CMA has received views from several customers that a number of products (Gas, Power, Emissions and Coal) are predominantly traded over Trayport. The CMA notes that it has received no comments from customers expressing concerns around data services in relation to these Energy/Commodity product categories. The one concern raised by a competitor was in relation to data for Oil products, which the CMA understands are generally not traded over Trayport.

Constraints from alternative trading venues

235. The CMA has not received a clear picture as to the product categories or asset classes where customers have more scope to switch from data provided by voice/hybrid brokers to data generated by alternative trading venues. However, the CMA also notes that for more liquid product categories or products, it would seem that both wholesale and retail customers are more

likely to have a range of data sources providing equivalent information than in the case of illiquid product categories or products.

236. As noted in its assessment of competition between voice/hybrid brokers, the CMA has received some evidence supportive of a 'blurring' of the boundaries between the different trading channels and a medium-term trend towards electronification of trading activities. The CMA's market testing is broadly consistent with the Notifying Parties' submissions that the liquidity available on OTC electronic B2B, B2C trading venues as well as A2A platforms such as exchanges is likely to increase.

237. To the extent this means that an increasing volume of comparable transactions and pricing data are likely to be generated on these platforms, it would be expected to weaken the ability of the Parties to raise prices or reduce service levels in the future.

Constraints from internally-generated data

238. Large sell-side banks internally generate trading data which provides coverage of the market. One bank noted that prices from brokers form one part of that picture but the type of data offered as a distinct service by brokers was not significant. Another bank, however, considered broking data to be an important source to independently verify the bank's own pricing assessment. A similar point was made by another bank.

239. For the largest trading banks, internally-generated data would appear be an alternative to the type of data sold by the Parties. As such, in regard to these large banks at least, it is unlikely that the Merger would give the Parties significant additional pricing power. However there may not be a clear distinction between large and small trading banks as at least three of the retail customers that raised concerns about this aspect of the transaction are typically classified as tier 1 banks.

240. The CMA was also told by an aggregator that although sell-side banks would represent an alternative source of pricing information to the Parties' data service, the banks considered this information to be competitively sensitive and currently do not make it available to aggregators.

How the forthcoming regulatory framework is expected to affect data provision

241. The CMA has taken account in its assessment of the fact the financial sector is presently undergoing significant regulatory reform at European level including as a result of MiFID II. MiFID II (and its associated regulation MiFIR) will enter into force on 3 January 2018. This date was extended by one year

from that previously determined, to take account of the exceptional technical implementation challenges faced by regulators and market participants.[49]

242. The MiFID II package is of particular relevance to data as one of the key elements of the new MiFID II regime will be the extension of pre- and post-trade transparency requirements to equity-like and non-equity instruments. In particular, one of the objectives of MiFID II is to enhance transparency of markets and, to achieve that aim, extensive reporting obligations regarding market data will be imposed.[50]

243. The Notifying Parties submitted that MiFID II will result in an increased volume of reliable and timely trading information being available to market participants at no or reasonable cost. The Notifying Parties consider this will result in aggregators and retail customers attributing less value to the Parties' pricing data such that the Parties will have to add value to their information services so that market participants will attribute more value to their data than the information made available in the public domain.

244. In response to concerns raised by the CMA in the context of its Issues Meeting with the Notifying Parties, the Notifying Parties provided a detailed memorandum[51] to the CMA, addressing the impact of MiFID II's market transparency reforms on the availability, cost and consistency of market data. The memorandum recognised that many of the statements by the relevant European authorities are in respect of legislation not yet in force and for which, in many respects, the content is not yet finalised.

245. The CMA took account of the evidence provided and the fact that there are aspects to the legislation coming into force which are yet to be determined through relevant guidance and technical implementing measures. Under MiFID/MiFIR rules, the European Commission has the power to adopt regulatory and implementing technical standards (RTS and ITS) to specify in greater detail how certain provisions will operate in practice. These standards concern purely technical matters and are adopted by the Commission on the basis of advice received from the European Securities and Market Authority (**ESMA**).[52]

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[49] http://europa.eu/rapid/press-release_IP-16-265_en.htm?locale=en
[50] This is explained in summary here: https://www.the-fca.org.uk/market-data-reporting
[51] The Notifying Parties also provided internal documents assessing the likely impact of MiFID II on their data businesses, as requested by the CMA to enable it to consider further the concerns raised by respondents to its market testing.
[52] As at 2 June 2016, the published overview and state of play of the RTS and ITS relating to MiFID and MiFIR is available here: Overview and state of play of RTS and ITS relating to MiFID/MiFIR

246. ESMA considers its technical standards, once implemented, will move a significant part of OTC trading onto regulated platforms.[53] ESMA itself will be responsible for the on-going publication of information on its website (e.g. reference data or volumes of trading executed under particular waivers). There are also provisions under MiFID II requiring trading venues to offer disaggregated data on a reasonable commercial basis.

247. At this stage, while the MiFID II/MiFIR legislation has been agreed the precise implementing standards have not been finalised. Nevertheless, the CMA believes - on the basis of the information it has considered – that, on balance, these reforms will substantially increase both the collection, scope and the availability of data and will alter significantly how the sector presently operates.

248. The CMA considers these reforms are relevant to the future availability of data and the amount of historic data that will become available through public means. These views were supported by certain responses in the CMA's market testing which commented on the forthcoming entry into force of MiFID II including:

(a) An aggregator respondent explained that MiFID II will result in far more data being made available to everyone, especially non-equity data. It noted MiFID II applies to non-equity markets (MiFID I applied to equity markets) and is likely to lead to a bigger change than its predecessor. MiFID II also means more alternatives will be available than ever before – the data will not be like-for-like with broker data, but the aggregator commented it is still a useful source. The aggregator also noted that undoubtedly the developments will increase the amount of information that it can collate.

(b) A customer respondent commented that pricing will become more transparent under MiFID II, and that such transparency might be a solution to data concerns posed by the Merger. While the respondent noted that data vendors will need to be more transparent about their costs under MiFID II, it was commented that at the moment it is still unclear how the transparency would be defined and so its impact – and whether it would open up the data market - was not yet clear. The respondent also considered that another interdealer broker will seek to improve the quality and importance of its data.

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[53] https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir

(c) Another respondent which purchased data noted that as a result of MiFID II it was anticipated that more data would be published and that the increase in data was already happening.

249. Requirements under MiFID II that sell-side banks produce post-trade data are particularly significant given that the proprietary data that voice/hybrid brokers monetise through their sale of trading data largely reflects the trading activities of these same sell-side banks. Depending on the nature of these disclosure requirements this could represent an overlapping source of data that could potentially allow third parties to replicate the product offering of the Parties and other voice/hybrid brokers.

250. In light of these factors, the CMA considers the transparency of markets will be increased significantly in the near-term as a result of the forthcoming legislative reforms under the MiFID II package. The CMA acknowledges that the objective of many of the proposals is to move trading activity from unregulated space to regulated, more transparent, trading venues[54] and so the CMA believes that trading on regulated venues will likely increase in response to these regulatory pressures. While the CMA recognises that aspects of the implementation of MiFID II are yet to be finalised, it considers the broad objective and extent of products covered by the new legislation is notably wide – expanding the reach of MiFID I considerably.

251. The CMA understands that compliance with MiFID II requirements will entail significant investments by brokers in how their data is captured and stored, but also provide opportunities to make incremental investments that would improve competitiveness of rival data services.

252. An interdealer broker confirmed to the CMA that data is a focus of its business and that it was actively seeking to expand its sales in data. It commented that MiFID II makes it necessary for it to have a more centralised data management system and so requires investment in terms of data management systems to manage the requirement for extensive data capture and reporting. It said that it therefore makes sense for it to also make the additional (incremental) investment that would enable it to expand its data sales capabilities.

[54] This includes the new concept of OTFs (Organised Trading Facility) as referred to above at paragraph 76 which is introduced by MiFID II as a new type of regulated venue for multilateral discretionary trading.

253. In light of the above, the CMA believes these reforms may both increase the utility of alternative sources to the Parties' data and reduce the costs of entry and expansion in the provision of services from competing brokers.

Conclusion in relation to data services

254. On balance, the CMA found that there is a degree of horizontal overlap and competition between Tullett and IGBB in relation to the provision of data services and is not persuaded by the Notifying Parties' view that the data provided by voice/hybrid brokers does not horizontally overlap. Third party evidence does not strongly suggest that that products are complements, in the sense that purchasing one party's data makes the other party's data more valuable not less, or that customers require complete coverage of all brokers. Instead the evidence suggests that at least some customers view the products provided by the Parties as alternatives. The third party evidence also suggests that there are a number of factors customers weigh up when deciding where to purchase data and, as such, there is scope for competition between voice/hybrid brokers when selling their trading data.

255. The CMA believes that the views expressed by third parties suggest that Tullett and IGBB are close competitors for the provision of data sales to at least some both wholesale and retail customers. The evidence also suggests that in a number of areas the constraint from competing brokers is currently likely to be weak as the Parties appear to have the most developed data offering, although to some extent they will face competition from other sources of similar data.

256. The CMA considers that post-Merger, the primary constraints on TP increasing prices or restricting access to broking data generated from its broking activities would be due to head-on competition from other large global interdealer brokers (notably Tradition and BGC/GFI) which have a broad data coverage across multiple asset classes.

257. While the evidence suggests that the Parties currently have the most developed data offering, there is evidence that the monetisation of data by brokers is perceived as a relatively new development. Given the range of products covered and comments received about the strength of alternative providers such as BGC/GFI and Tradition, and evidence provided to the CMA that competitors were actively looking to enter the data business or improve their existing data businesses, the CMA believes that the global interdealer brokers, in addition to smaller, more niche brokers, will be in a position to further enhance their data offering to act as significant competitors to the Parties which would also constrain the merged entity.

258. The CMA has carefully considered the nature of the complaints in this area. The CMA considers that, on balance, these concerns are adequately addressed by (a) the competitive constraints exerted by rival brokers on the merged entity and (b) the likely impact of the forthcoming regulatory reforms.

259. The CMA believes that, in the light of these constraints, taken together, the Merger does not give rise to a realistic prospect of a SLC in relation to broking data.

TOH 3 - Horizontal unilateral effects arising through the loss of existing competition in the provision of risk mitigation services

Overlaps considered as a result of the proposed acquisition of the Minority Stake

260. The CMA considered overlaps between TP and ICAP NewCo as a result of the acquisition of the Minority Stake. The only material overlaps identified by the CMA in electronic broking were in relation to the supply of risk mitigation and Repos[55] services.

Risk mitigation services

261. ICAP's RESET and Tullett's tpMatch are services that help trading institutions mitigate basis risk for Interest Rate Derivatives and non-deliverable futures (FX Options and FX Forwards). RESET and tpMatch are automated trading platforms that identify where a bank has an exposed risk and compares this risk to the trading book of other banks using the service to identify a counterparty with an opposing risk. Where it identifies a relevant counterparty, the platform automatically executes a trade between the two banks using pre-determined prices and terms.

Closeness of competition

262. The Notifying Parties submitted that the two services run 'matching runs' on different days of the week and that although tpMatch and RESET provide similar service for most, if not nearly all customers, these are complementary products rather than direct competitors. Many customers use both products to offload risk at different times during the week in order to maximise risk reduction and available liquidity.

[55] Repos, or 'repurchase agreements', are a product category that falls within the Fixed Income asset class (see Table 1). In a repo transaction one party agrees to sell a security to a second party and buy it back for a specified price at a later time.

263. The Notifying Parties submitted that if market share data were available they would expect their joint share of current risk mitigation volumes to be high.

264. Several customers commented that RESET and tpMatch are close competitors with few obvious alternatives. It was noted that the market is niche and specialised, the Notifying Parties also submitted that there was little room for more than two active competitors. There was, however, some evidence provided to the CMA supportive of the Notifying Parties' view that they face an effective constraint from potential entrants that could quickly and easily replicate their services.

265. The CMA considers the Parties to be close competitors and that there does not appear to be a current comparable service to those offered by ICAP and Tullett. While certain customers have expressed the view that other brokers represent a constraint as potential entrants, the CMA notes that as trading platforms which automatically match counterparties with opposing trading positions, this service is likely to be characterised by network effects, given its value to customers will increase the more customers that participate. Where there are already several sizeable platforms in the market effectively offsetting customer risk, this in itself, is likely to act as a barrier to entry to new entrants.

Reduced competitiveness of ICAP NewCo's risk mitigation services

266. The CMA considered whether there was a realistic prospect of an SLC arising from unilateral incentives for ICAP NewCo to increase prices or reduce the quality aspects of its risk mitigation service. The CMA's starting point was that a unilateral incentive for ICAP NewCo to increase prices or reduce quality of its risk mitigation service would only arise if the loss that it would incur from such behaviour would be offset by the proportion of any benefit to TP which ICAP NewCo would recapture through its 19.9% shareholding in TP.

267. The CMA considers that there is not a sufficiently clear correlation between customers diverting to TP, and any financial gain to ICAP NewCo to give rise to a realistic prospect of an SLC. In particular, the CMA took into account the following factors:

   (a) the potential financial uplift from any customer diversion would be limited:

      (i) ICAP NewCo would only be able to internalise a proportion of the benefit accruing to TP as a result of the 19.9% shareholding;[i]

      (ii) tpMatch represents approximately [✂]% of Tullett's total revenue and would, therefore, have an insufficiently significant effect on the financial gain that would pass to ICAP NewCo (eg, through dividends) to offset the direct loss from customers switching away from ICAP NewCo; and

(b) any financial gain from dividend payments or share valuation would be indirect, uncertain and dependent on a number of other factors which could affect the business' overall performance.

268. ICAP submitted that it would not have an incentive to reduce the competitiveness of its risk mitigation offer because to do so would jeopardise its customer base in relation to its other products or services. ICAP also submitted that it would not have the incentive to reduce its customer base in risk mitigation services because this would weaken the value of the service itself.

269. In light of the above, the CMA does not believe there is a realistic prospect of an SLC arising from unilateral incentives for ICAP NewCo to increase prices or reduce the quality aspects of its risk mitigation service.

Reduced competitiveness of TP risk mitigation business

270. The CMA considered whether ICAP NewCo's acquisition of the Minority Stake may lead to the realistic prospect of an SLC as a result of the weakening of the competitiveness of Tullett's tpMatch risk mitigation business. The CMA considered whether this could arise:

(a) through the use of ICAP NewCo's voting rights in TP; or

(b) through ICAP NewCo engagement with the TP Board as a shareholder in TP.

271. The Notifying Parties submitted that ICAP NewCo would have very limited opportunity to shape TP's policy outside of shareholder meetings.

272. The CMA considers that ICAP NewCo is unlikely to have the ability to affect the strategic direction of tpMatch on the grounds that:

(a) its shareholding relates to TP rather than tpMatch directly and tpMatch represents approximately [✄]% of the overall business of Tullett;

(b) the matters over which ICAP NewCo would have a shareholder vote, taken in the context of the sector and the nature of TP as a business, are not typically those that would directly affect the strategic direction of tpMatch.

273. The CMA also considers that, even if ICAP NewCo had the ability to influence the strategic direction and commercial objectives of tpMmatch, ICAP NewCo would not have sufficient level of influence to unilaterally control the prices or quality of tpMatch. In particular:

(a) the presence of other shareholders would act as a barrier to decisions that were not in the interests of the TP business and of the shareholders;

(b) in terms of ICAP NewCo's influence of TP management (as opposed to shareholder voting), TP management can typically be expected to act in the interests of the company shareholders as a whole, and the CMA has not found evidence of any countervailing incentives that the management would have to accommodate ICAP NewCo, which could override the duty on TP's management not to favour any particular shareholder; and

(c) as a shareholder in TP, ICAP NewCo would not participate in the management meetings relating to tpMatch nor the decision meetings of the tpMatch business.

274. The Notifying Parties submitted that, as a shareholder, ICAP NewCo would not have the incentive to take steps to weaken the performance of TP insofar as it would reduce the financial gain flowing to ICAP NewCo as a result of dividends. The Notifying Parties also submitted that there are conflict and confidentiality provisions under a Relationship Agreement[56] as between ICAP and Tullett, as well as the requirements of UKLA Code of Corporate Governance and competition law, that would prevent ICAP NewCo from behaving in this way.

275. In light of the above, the CMA does not believe ICAP NewCo would have sufficient ability or incentive as a result of its Minority Stake to influence TP's policy regarding tpMatch. The CMA therefore does not believe that the acquisition of the Minority Stake gives rise to a realistic prospect of an SLC in relation to the supply of risk mitigation services.

Electronic trading of Repos

276. TP and ICAP NewCo will continue to provide electronic platforms for trading Repos (Tullett's tpRepo and ICAP's BrokerTec). However, Tullett's revenue is currently very small in this area - only [✂] in 2015 which is less than [✂]% of the revenue earned by ICAP NewCo's BrokerTec platform through trading Repos. Given the small amount of revenue earned by Tullett in this respect,

[56] Submitted to the CMA on 18 January 2016

the CMA considers that it does not represent a significant competitive constraint on ICAP.

277. Furthermore, even if TP's tpRepo were considered to be a significant constraint on ICAP NewCo in trading of Repos, for the same reasons set out above in relation to risk mitigation services, the CMA does not believe ICAP NewCo would have sufficient ability or incentive as a result of its acquisition of the Minority Stake to influence TP's policy in relation to this platform.

278. The CMA does not believe that the acquisition of the Minority Stake gives rise to a realistic prospect of an SLC in relation to the supply of electronic broking for Repos.

Conclusion on the Minority Stake

279. For these reasons, the CMA does not believe there is a realistic prospect of an SLC in relation to the overlaps between ICAP NewCo and TP as a result of the proposed acquisition of a Minority Stake in TP by ICAP NewCo.

Barriers to entry and expansion – voice/hybrid broking

280. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[57] In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years.[58]

281. The main threat of entry comes from existing voice/hybrid broking houses expanding from one product/asset class into another. Several voice/hybrid brokers noted that the principal challenge of entering new markets is recruiting individual brokers with the relevant expertise and client relationships. As noted in the background section customers are drawn to trading venues (including brokers) where liquidity resides (liquidity attracts liquidity). Unless the broking house is able to attract an individual broker that is well connected and able to attract regular orders to both buy and sell from potential counterparties they will struggle to grow. One competitor emphasised that it is hard to attract the relatively small number of such 'rain makers', given these high revenue generators will be embedded in existing firms with contracts that (a) require a minimum period of service, (b) penalise resignation, and (c) contain onerous post-termination restrictions. Further, the

[57] Merger Assessment Guidelines, paragraph 5.8.3.
[58] Merger Assessment Guidelines, paragraph 5.8.11.

rain-maker will have a team in place that he would want to have with him at any new employer. The team will normally be on staggered contracts which makes a seamless transition even more difficult/impossible. It noted that these individuals accordingly rarely move – and when they do the new employer has to bid a high price for them. Another broker made a similar point but also emphasised the challenge of building the initial client flow without having to charge uneconomic levels of commission. It also stated that the concentration of liquidity of more than 40% in any one group forms a barrier to entry for competing brokers.

282. However, there are several examples of voice/hybrid brokers opening desks in new product areas. This includes a broker which entered two product areas after hiring a broking team from a competitor and another which opened a new product desk. Clients in Euro and Sterling IROs have reportedly sponsored HPC, a previously small French competitor, which is now the second largest player in these product categories. Also in the energy sector a customer cited the entry of new players, such as Griffin, [✄].

283. This would suggest that although entry or expansion is challenging it is not insurmountable. However the CMA has identified certain product areas within Oil where there are existing very high shares which have not been diluted by entry, suggesting that it is not straightforward. The CMA considers that it may be more challenging for competitors to expand in Oil than other Energy/Commodity product categories where Trayport facilitates trading. The CMA therefore believes that, given the challenges involved, any entry or expansion would not be timely, likely or sufficient to prevent the realistic prospect of an SLC arising.

Decision

284. Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

285. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised[59] whilst the CMA is considering whether to accept undertakings[60] instead of making such a reference. The Parties have until **14 June 2016** [61] to offer an undertaking to

[59] Section 33(3)(b) of the Act.
[60] Section 73 of the Act.
[61] Section 73A(1) of the Act.

the CMA.[62] The CMA will refer the Merger for a phase 2 investigation[63] if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides[64] by **21 June 2016** that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
7 June 2016

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[i] By subsequent agreement between Tullett and ICAP, ICAP Newco will no longer acquire 19.9% of the shares of Tullett, these will instead be acquired by the current shareholders of ICAP, which will therefore acquire, in aggregate, 56% of the shares of Tullett.

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[62] Section 73(2) of the Act.
[63] Sections 33(1) and 34ZA(2) of the Act.
[64] Section 73A(2) of the Act.