

Anticipated acquisition by Open International Limited of Transactor Global Solutions Limited and related businesses

Decision on relevant merger situation and substantial lessening of competition

ME/6694-17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 17 July 2017. Full text of the decision published on 26 July 2017.

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

SUMMARY

1. Open International Limited (**Open**) has agreed to acquire Transactor Global Solutions Limited and related businesses (**Transactor**) (the **Merger**). Open and Transactor are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of insurance policy administration system (**PAS**) software solutions. PAS software solutions connect intermediaries who sell insurance products (ie insurance brokers and managing general agents – for ease of reference, together referred to as **insurance brokers**) with insurers, to allow insurance brokers to quote and write insurance policies on

insurers' behalf, and to manage policies once written. PAS software solutions can be used for personal-lines and commercial-lines insurance products.¹

4. Some PAS software providers specialise in either personal-lines or commercial-lines insurance, and certain technical and functional aspects of PAS software solutions can differ depending on whether it is used for personal-lines or commercial-lines insurance. The CMA therefore assessed the impact of the Merger in the supply of all PAS solutions in the UK, as well as in narrower frames of reference for the supply of PAS used for each of commercial-lines and personal-lines insurance.
5. The Parties submitted, and the CMA's investigation confirmed, that the Parties' shares of supply are moderate, that the Parties are not particularly close competitors, and that they will continue to be constrained post-Merger by several significant competitors.
6. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Open is an insurance software company, headquartered in the UK, whose primary activity is providing software to insurance brokers in the UK and Ireland. In the UK, Open serves around [X] insurance brokers. The turnover of Open in the year ending 31 March 2016 was £[X] million worldwide and £[X] million in the UK.
9. Transactor is an insurance software company, headquartered in the UK, which also provides software to insurance brokers primarily in the UK. Transactor serves around [X] insurance brokers. The turnover of Transactor in the year ending 31 March 2016 was £[X] million worldwide and approximately £[X] million in the UK.

¹ Personal lines insurance relates to insurance cover for individuals, eg home insurance, motor insurance, etc. Commercial lines insurance relates to insurance cover for businesses which may include premises and motor insurance, but also potential business risks such as professional negligence, director and officers' liability etc.

Transaction

10. The Merger involves the acquisition by Open of all shares in Transactor Group Solutions Limited and i-WH Newco 1 Limited, pursuant to a Sale and Purchase Agreement entered by the Parties on 5 April 2017.
11. The Parties informed the CMA that the Merger is also the subject of review by the competition authority in Macedonia.

Jurisdiction

12. As a result of the Merger, the enterprises of Open and Transactor will cease to be distinct.
13. The Parties overlap in the supply of PAS software solutions to insurance brokers for brokering personal lines insurance, with a combined share of supply of [20-30]% (increment [5-10]%)² based on revenues. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
14. 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.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 7 June 2017 and the statutory 40 working day deadline for a decision is therefore 1 August 2017.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie 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, either 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.³

² See paragraph 39 below.

³ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

17. The Parties submitted that assessing the Merger against the pre-Merger situation would overstate Open's position in the market. They submitted that UK insurance brokers are seeking software solutions based on multi-tenant 'cloud' or SaaS solutions and Open does not currently offer this. [REDACTED] internal documents submitted by Open indicate that [REDACTED]⁴. In addition, the CMA's market testing found that suppliers have a range of offerings at differing stages of technological development. In this context, neither the Parties' submissions nor third party feedback indicated that Open is currently facing a significant competitive limitation because of its inability to offer cloud/SaaS technology.
18. On the basis of this evidence, the CMA believes the prevailing conditions of competition to be the appropriate counterfactual against which to assess the impact of the Merger. However, the CMA has taken into account the different technologies available from both the Parties and third parties in its competitive assessment.⁵

Frame of reference

19. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging 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.⁶

Background

20. The Parties overlap in the supply of PAS software solutions for commercial and personal lines insurance for use by insurance brokers. PAS software provides an electronic system that enables insurance brokers to support their customers through the lifecycle of an insurance policy from quote to claim administration. PAS software operates as a platform which links insurers and insurance brokers by allowing:
 - (a) brokers to access insurers' products in order to meet their client's requirements, eg obtaining quotes and sending policy documentation; and

⁴ Annex 9.1 to the Merger Notice (from October 2016).

⁵ [Merger Assessment Guidelines](#), from paragraph 4.3.2.

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

- (b) insurers to interact easily with insurance brokers, facilitating the distribution of insurance products.
21. In return for these services, software providers charge fees to both brokers and insurers.
22. Providers of PAS software compete for business from both insurance brokers (to purchase and use the PAS software) and from insurers (to list their products on the PAS software). While noting the two-sided element of PAS software solutions, the CMA's market testing found that the choice of PAS software is primarily driven by insurance brokers. For this reason, the CMA has focused on brokers' requirements for the purposes of determining the appropriate frame of reference. The CMA has considered the implications for both insurance brokers and insurers in its competitive assessment.
23. Therefore, for the purposes of determining the appropriate frame of reference, the CMA considered the extent to which it should distinguish between:
- (a) PAS software solutions for use in insurance brokering and more generic PAS software solutions;
 - (b) PAS software solutions for commercial lines and for personal lines insurance; and
 - (c) Out-sourced and in-house PAS software solutions.

Product scope

PAS software solutions for insurance brokering

24. The Parties submitted that the appropriate product frame of reference is the supply of PAS software solutions to insurance brokers. In previous cases concerning business software, most recently in *Xchanging / Agencyport*, the CMA has typically considered a relatively narrow frame of reference based upon supply of software to a certain customer type.⁷ Third party feedback in this case confirmed that brokers looking for a PAS software solution would not consider using a more generic PAS software product, ie not adapted to meet the needs of brokers selling insurance products. The CMA therefore believes

⁷ CMA Decision: *Completed acquisition by IRESS UK Holdings of Avelo FS Holdings Limited*, 5 June 2014, which considered wealth management and portfolio management software to fall within separate frames of reference. See also OFT Decision: *Anticipated acquisition by Mortgage Brain Limited of Mortgagestream Limited*, 16 July 2012.

that the supply of PAS software solutions for insurance brokers is an appropriate starting point for its assessment.

PAS software used for commercial lines / personal lines insurance

25. As noted above, the Parties' supply PAS software solutions for administering insurance policies across a range of insurance products. The Parties submitted that, for the purpose of assessing the impact of the Merger, it was not necessary to distinguish between different types of insurance products and, in particular, between commercial and personal lines insurance as: (a) the majority of insurance brokers sell both commercial and personal lines products; and (b) software functionalities do not vary significantly between the two categories.
26. Third parties confirmed this view, indicating that the basic functionality of PAS software is the same, whether it is used for personal or commercial lines (ie the ability to connect brokers to insurer offerings and to manage the life cycle of a policy). Therefore, there is high supply-side substitutability. However, third parties also highlighted a range of possible demand and supply-side differences. These included:
- personal lines software tends to be a linear and more automated process, whereas greater flexibility and process variation (and therefore specialisation) is required in software for commercial lines;
 - the system for integration with insurers differs between personal and commercial lines products, as while personal lines sales typically integrate with electronic data interchange (ie overnight feeds of data), commercial lines sales use XML (ie real-time) technology; and
 - the pricing of PAS software products for commercial lines or personal lines use can be different.

The CMA also notes that some market participants have invested in specialising in *either* commercial lines or personal lines insurance brokers.

27. Evidence from both the Parties and third parties did not indicate that it was appropriate to further segment the frame of reference within personal and commercial lines PAS software solutions for specific insurance products (eg vehicle insurance, home insurance, etc), given that the software functionality was easily adaptable.
28. Therefore, on a cautious basis, the CMA has assessed the effect of the Merger in relation to the supply of PAS software for each of commercial lines and personal lines insurance, and on a combined basis. However, as no

concerns arise on either a narrow or a broader frame of reference, it has not been necessary to conclude on the appropriate product frame of reference. The CMA has considered any further differentiation by type of insurance product in its competitive assessment.

In-house supply

29. The Parties submitted that the in-house supply of PAS software should be included in the product frame of reference because customers, especially larger customers, can develop their own PAS software, and the threat of switching to in-house supply imposes a competitive constraint on the Parties.
30. Third party feedback on in-house PAS software solutions was mixed. A small minority of customers indicated that they had considered, or were in the process of developing, in-house PAS software solutions and/or add-ons to their third-party provided PAS software solution. However, most customers said that they did not consider an in-house solution to be either possible (due to their current IT resources) or cost effective. In addition, the CMA notes third party research submitted by the Parties which indicated [REDACTED].⁸
31. Therefore, the CMA has not included in-house PAS software solutions within the frame of reference.

Geographic scope

32. Previous UK cases considering specialist software for financial services have primarily considered a UK-wide frame of reference, while leaving the precise geographic market open. However, where there is evidence of competition from outside the UK, this has been taken into account in the competitive assessment.
33. The Parties' submissions and evidence from third parties indicated that a UK-wide frame of reference is appropriate in the present case as well, as there are specific standards for UK software arising out of local regulation. The CMA received little evidence that a wider frame of reference was appropriate.
34. Therefore, the CMA has assessed the effects of the Merger in a UK-wide frame of reference.

⁸ [REDACTED].

Conclusion on frame of reference

35. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the following frames of reference:
- supply of PAS software solutions in the UK;
 - supply of PAS software solutions for the sale of personal lines products in the UK; and
 - supply of PAS software solutions for the sale of commercial lines products in the UK.

Competitive assessment

Horizontal unilateral effects

36. 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.⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors.
37. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of PAS software solutions. The CMA considered the merged entity's ability to raise prices or degrade quality both with regards to its services to insurance brokers as its primary customers and with regard to insurance companies, for which it acts as distributor.

Shares of supply

38. The Parties provided their own revenue data for sales of PAS software to insurance brokers in 2016 and estimates of both their and their competitors' shares of supply. Although the CMA was not able to confirm all competitor revenues through its market testing, the responses received suggested that the Parties' estimates were broadly accurate.
39. This data indicates that the Parties have a combined share of supply of [20-30]% (increment of [0-5]%) for PAS software solutions (excluding in-house supply) in the UK. The Parties have a combined share of [20-30]% (increment

⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

of [0-5]%) for PAS software solutions for personal lines, and [10-20]% (increment of [0-5]%) for commercial lines.

40. These shares of supply indicate that the Parties will continue to face a number of significant competitors post-Merger, with the three largest competitors (SSP, CDL, Acturis) having a combined share of supply of around 57% for PAS software solutions in the UK.
41. The CMA believes that the Parties' combined shares of supply are not indicative of competition concerns resulting from the Merger. However, in interpreting these figures, the CMA notes that insurance brokers tend to remain with their chosen supplier for long periods of time, indicating that shares of supply at any given point in time do not necessarily reflect the relative strength of competitors for marginal customers (ie customers who are likely to be switching in the shorter term), but rather reflect purchasing decisions of customers over the past 5 years or longer. Therefore, while the CMA believes this evidence indicative of a lack of competition concerns, it also considered other evidence to assess the impact of the Merger.

Closeness of competition

42. The Parties submitted that although their PAS software products are similar in their core functionalities, they are not close competitors. In particular, they noted that Open has a stronger and more developed offering for commercial lines products, while Transactor uses cloud-based technology.
43. The CMA spoke with many insurance brokers and insurers. Third-party feedback indicated that, while Open is a significant mainstream supplier of PAS software solutions, Transactor tends to focus on supplying certain niches of the market, such as brokers offering scheme insurance (eg for taxi companies). In general, neither insurance brokers nor insurance firms suggested that the Parties are close alternatives.
44. This view was consistent with tender data submitted by the Parties, which indicated that the Parties do not often bid against each another in competitive tenders. The Parties explained that Transactor targets different types of customers to Open (ie those focused on modern technology and cloud solutions). The CMA notes that these differences are reflected in the Parties' internal documents.
45. Based on this evidence, the CMA does not believe the Parties to be close competitors for the provision of PAS software solutions.

Competitive constraints

46. The Parties submitted that the merged entity will continue to face strong competition from several established providers of PAS software solutions. In particular, the Parties highlighted SSP, Acturis, CDL and Applied as significant competitors. In addition, the Parties identified several smaller competitors, such as Insly, Total System, Durell and SchemeServe. The Parties submitted that this competition would constrain the merged entity from being able to raise prices or worsen its service for either insurance brokers or insurers.
47. In addition, the Parties submitted tender data which showed that [REDACTED] is a significant competitor to both Parties, and customer losses data, which showed that [REDACTED].
48. Third party evidence also indicated the presence of significant competitive constraints as third parties cited several other firms as close competitors to each of the Parties. Insurance brokers told the CMA that SSP, Acturis, CDL and Applied are all credible and established alternatives to the Parties, while insurers confirmed that they list their products on multiple PAS software platforms in order to reach as many brokers as possible. The majority of insurers had no concerns about the Merger, noting that a number of significant PAS software providers will remain in competition the merged entity.
49. In addition, the CMA notes the Parties' low combined share of supply and that Transactor is only the sixth largest supplier of PAS software solutions.
50. Based on this evidence, the CMA believes that the merged entity will continue to be constrained by several significant competitors.

Conclusion on horizontal unilateral effects

51. As set out above, the CMA believes that the Parties do not appear to be particularly close competitors and that the merged entity will continue to be constrained by several significant competitors. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to PAS software solutions in the UK.

Barriers to entry and expansion

52. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.¹⁰
53. The Parties submitted that there are a number of software providers who could enter or expand into the supply of PAS software, and highlighted the relatively recent entry of Applied. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

54. The CMA contacted insurance brokers and insurers, and competitors of the Parties. The majority of customers who responded to the CMA did not raise any concerns about the Merger, and several commented that it could lead to an improved offering, in terms of more advanced technology for Open and greater scale for Transactor. A small number of third parties raised concerns around a reduction of choice in a market they consider to be characterised by only a limited number of significant suppliers. The CMA tested these concerns in its investigation.
55. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

56. Consequently, the CMA does not believe 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 UK.
57. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director of Mergers
Competition and Markets Authority
17 July 2017

¹⁰ [Merger Assessment Guidelines](#), from paragraph 5.8.1.