

Completed acquisition by Restore plc of certain businesses of TNT UK Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6756/18

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 9 August 2018. Full text of the decision published on 16 August 2018.

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

SUMMARY

1. On 1 May 2018, Restore plc (**Restore**) acquired parts of the TNT UK Limited business trading as 'TNT Archive Services', 'TNT Records Management' and 'TNT Business Solutions' (together, **TNT BS**) (the **Merger**). Restore and TNT BS are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Restore and TNT BS is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of records and information management services (**RIMS**), in particular records management services (**RMS**). RMS consists of the collection, transportation, storage and retrieval of paper documents and other physical records. The Parties also overlap in the supply of scanning services. Due to the different types of customers served, the CMA believes that there are national and local/regional aspects to competition for RMS and scanning services. The CMA has therefore assessed the impact of the Merger on:

- (a) the supply of RMS to national customers in the UK;
 - (b) the supply of RMS to local customers on a local/regional basis; and
 - (c) the supply of scanning services to each of national customers in the UK and local customers on a local/regional basis.
4. The CMA had particular regard to the evidence and assessment of competition undertaken in its recent Iron Mountain/Recall investigation.¹ The CMA also conducted further detailed evidence gathering for the purposes of this merger inquiry and considered a broad range of evidence in conducting its competitive assessment of the Merger, including shares of supply, the strength of competitors' offerings, customer switching and tender data, and third party views on competition.
5. With regard to the supply of RMS, the CMA found that:
- (a) The Parties are not close competitors and TNT BS does not impose a strong competitive constraint on Restore; and
 - (b) Post-Merger, there are a sufficient number of credible RMS providers who would continue to compete effectively with the combined entity, both for national customers and for local/regional customers. In particular, there are at least three credible RMS providers offering a broader national coverage than TNT BS.
6. With regard to the supply of scanning services, the CMA found that the Parties are not close competitors and there would be a number of credible scanning suppliers remaining post-Merger.
7. 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.
8. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

¹ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016.

ASSESSMENT

Parties

9. Restore is an AIM-listed company which provides document management and relocation services to offices and workspaces in the private and public sectors. Its document management services include RMS, off-site data protection services (**OSDP**), scanning services and shredding services. The turnover of Restore in 2017 was approximately £176 million.
10. TNT BS also provides RMS, OSDP and scanning services in the UK. TNT BS was a trading subdivision of TNT UK Limited whose ultimate owner is FedEx Corporation. The turnover of TNT BS in 2017 was approximately £23 million in the UK.

Transaction

11. On 26 March 2018, Restore announced that it had entered into an agreement to acquire TNT BS for a total consideration of £88 million, on a cash and debt free basis. The Merger completed on 1 May 2018.
12. Restore announced that the rationale for the Merger was to further strengthen Restore's position in UK records management, particularly with public sector customers. Restore expects that there will be operational and property synergies deriving from the Merger, as well as cross-selling opportunities.²

Procedure

13. The CMA's mergers intelligence function identified this transaction as warranting an investigation.³

Jurisdiction

14. Each of Restore and TNT BS is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
15. The Parties overlap in the supply of RMS to national customers, with a combined share of supply of approximately [20-30]% based on revenues. The

² See <https://www.restoreplc.com/News/acquisition-of-tnt-business-solutions-and-placing-of-new-ordinary-shares-to-raise-up-to-163515-million>.

³ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9 to 6.19 and 6.59 to 60.

increment from the Merger is approximately [5-10]%.⁴ The CMA therefore believes that the share of supply test in section 23 of the Act is met.

16. The Merger completed on 1 May 2018 and was first made public on 26 March 2018. The four month deadline for a decision under section 24 of the Act is 9 October 2018, following extension under section 25(2) of the Act.
17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 June 2018 and the statutory 40 working day deadline for a decision is therefore 16 August 2018.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁵
20. The Parties submitted that TNT BS was planning to [X] and that this proposal to [X] had been agreed internally within TNT BS (and active steps had been taken to implement [X]) prior to the announcement of the Merger. The Parties therefore submitted that the counterfactual should include [X].
21. In support of the Parties' position, the CMA found that:
 - (a) TNT BS's internal documents relating to the proposed [X] did not mention the Merger;

⁴ See the share of supply information at Table 1 below. Given the limitations in the data available to the CMA in relation to RMS providers' split of revenue between national and local/regional customers, the CMA believes it is reasonable to use the total RMS revenues from the providers listed at Table 1 below as a proxy for estimating the shares of supply of RMS to national customers. If the CMA were to examine a narrower frame of reference and calculate the Parties' combined share of supply of RMS to public sector customers (or, more specifically, to public sector customers that use the Crown Commercial Service framework for "Records Information Management Service"), the CMA believes that the Parties' combined share of supply would be higher than [20-30]%.
⁵ *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).

- (b) The proposed [REDACTED]; and
- (c) The individual who formulated the [REDACTED] proposal⁶ was not aware of the possibility of the Merger at the time he formulated the proposal.
22. However, Restore said it understood that the individual who approved the [REDACTED] proposal in November 2017⁷ was made aware of the possibility of the Merger possibly as early as August 2017. On this basis, the CMA cannot be confident that the Merger did not influence the decision to approve the proposal for [REDACTED].
23. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Background

24. The CMA has recently conducted an in-depth investigation into a transaction involving RIMS – the Iron Mountain/Recall phase 2 investigation (hereafter **Iron Mountain/Recall**)⁸ – in which it considered in detail the product and geographic frames of references and the competitive conditions for the supply of RIMS.
25. The CMA found in Iron Mountain/Recall that the level of customer switching for RMS was low and that there were two key barriers that impeded customer switching: slow rates of transfer and “perm-out” fees (see paragraph 34 below).⁹ In particular, the CMA noted that perm-out fees “deter the customer from switching, or may necessitate competitors offering to pay or offset some or all of these fees. This makes gaining customers from competitors very difficult even where lower charges are being offered; it imposes an upfront cost or defers revenue and so reduces the attractiveness of entry even if an entrant has the financial resources to contribute to perm-out fees in the short term”.¹⁰ This was broadly supported by customer responses received by the CMA for this merger inquiry, with many customers stating that switching RMS providers is costly and difficult and one competitor noting that the ability of customers to exit relationships with existing RMS providers is significantly hampered by onerous exit fees. Indeed, many of the customers that

⁶ This individual was, at the time, the National Operations Manager of TNT BS.

⁷ This individual was, at the time, Vice President of Ground Operations UK and Storage, Fashion & Solutions, FedEx Express Northern Europe.

⁸ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 7.12 to 7.24

⁹ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, para. 7.104.

¹⁰ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 6.47 to 6.49.

responded to the CMA had not recently tendered for RMS or switched RMS provider.

26. As described in further detail below, the CMA has had particular regard to the findings in Iron Mountain/Recall in determining the appropriate frames of reference and in its competitive assessment of the Merger.

Frame of reference

27. 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.¹¹

28. The Parties overlap in the supply of RIMS in the UK, operating from a total of 52 sites. The RIMS which the Parties supply comprise the following:

- (a) RMS, consisting of the collection, transportation, storage and retrieval of paper documents and other physical records (eg microfiche);
- (b) OSDP, consisting of the collection, transportation and storage of records/data on physical electronic media such as magnetic tapes and discs, often for back-up or disaster recovery purposes;
- (c) Scanning services; and
- (d) Ancillary services,¹² consisting of services such as photocopying, sale of storage materials and document management consulting services. The CMA has not considered ancillary services separately from other RIMS. For those customers that require an ancillary service as a complement to the main services provided, any competition concerns arising from the Merger in relation to other RIMS could apply to ancillary services as well, depending on what competition is offered by a wider set of suppliers.¹³

¹¹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹² While Restore is active in the provision of on-site and off-site bulk shredding services in the UK, the Parties confirmed that TNT BS is not active in bulk shredding services and only provides on-site shredding services (entirely through sub-contractors) as an ancillary service to RMS if requested by customers. The CMA has therefore assessed these on-site shredding services provided by TNT BS as an ancillary service.

¹³ With regard to customers who purchase only these services from the Parties (ie, on a stand-alone basis and not in conjunction with other RIMS), the CMA does not further address this segment, as the evidence available to

Product scope

29. In Iron Mountain/Recall, the CMA considered a number of potential segmentations for the purposes of the frame of reference. The CMA concluded in Iron Mountain/Recall that:¹⁴
- (a) RMS and OSDP were in separate frames of reference;¹⁵
 - (b) There was a relevant frame of reference for physical RMS, separate from electronic alternatives;¹⁶ and
 - (c) In-house RMS was not in the same frame of reference as outsourced RMS, particularly due to the costs and practicalities (in terms of time and space) of switching from out-sourced to in-house services.
30. The CMA believes, based on the evidence received from the Parties and third parties, that the product frames of reference in Iron Mountain/Recall continue to be appropriate and has accordingly assessed the impact of the Merger on the supply of RMS (excluding in-house RMS and electronic RMS). This is the main area in which the Parties' activities overlap. As noted below, the CMA has also assessed the impact of the Merger on the supply of scanning services.

RMS

31. RMS are typically provided from warehouses, with security protection (such as fencing, CCTV and biometric or other locking systems). Facilities are often located on the edge of, or outside, major commercial districts and cities. Major customers for RMS include financial companies, law firms, consultancy firms, government departments and NHS trusts.
32. The most common form of RMS storage in the UK is that of paper records, stored in cardboard boxes. These are then stacked on large shelving units. A barcode, or similar system (such as an RFID tag),¹⁷ on each box identifies where the box is in the warehouse, and to whom it belongs. An IT system complements this which allows the customer the ability, typically through an

the CMA suggests that the volume of these sales is minimal and there would be sufficient competition remaining post-Merger.

¹⁴ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 6.5 to 6.35.

¹⁵ The Parties overlap in the supply of OSDP. However, TNT BS' activities in this area are negligible, so this overlap is not discussed further in this decision.

¹⁶ The Parties also overlap in the supply of electronic RMS, which comprises the storage of documents in digital form (such as through cloud solutions). However, TNT BS' activities in this area are negligible, so this overlap is not discussed further in this decision.

¹⁷ Radio Frequency Identification (RFID) tagging is an ID system that uses small radio frequency identification devices for identification and tracking purposes.

online portal, to request boxes for return to its premises (or other services such as permanent destruction), and for the RMS provider to track boxes for retrieval and delivery.

33. RMS are typically used for archiving, but occasionally customers need to retrieve boxes – which can be done at relatively short notice for a fee. A customer’s request goes through to the warehouse, where the boxes are located using a barcode or equivalent system. The boxes can then be transported via a van, usually the next day (or immediately), depending on the customer’s contract/retrieval time requirements and the urgency of the customer’s need. Rapid retrievals typically incur a higher charge. Customers will notify the RMS provider when a box is ready for recollection through the same online portal.
34. If a customer wishes to move its RMS holdings to a new supplier (or take them permanently in-house), there are typically three costs that they will incur, at or even after the end of a contract with the RMS provider. The customer will generally incur the usual withdrawal fee, and additionally an exit fee often referred to as a ‘perm-out fee’. The customer will also have to pay for the costs of transporting its inventory to the new supplier. RMS providers typically charge a separate fee for the permanent destruction of records.
35. In light of customer and competitor responses to the CMA’s merger investigation, the CMA considered whether any further segmentation was appropriate in relation to:
 - (a) The supply of RMS to customers that require high security or “ultra-secure” document storage services, as almost half of customers stated that the storage of their records required higher security measures in light of the personal or classified nature of the information contained in their records; and
 - (b) The supply of RMS to public sector customers, as some public sector customers and one competitor stated that public sector customers often procure RMS through specific procurement frameworks (such as the Crown Commercial Service framework).¹⁸
36. With regards to the supply of RMS to customers that require high security or “ultra-secure” document storage services, the CMA found that records which benefit from high security or “ultra-secure” measures are typically stored in the

¹⁸ The Crown Commercial Service has a framework for “Multifunctional Devices, Managed Print and Content Services and Records and Information Management”, which started on 26 October 2016 and is due to end on 25 October 2020. Lot 4 of this framework relates to records information management services and therefore includes RMS.

same storage sites as other documents (for example, in a separate private area within the storage site with restricted access). As such, the CMA believes that little specialist equipment is required to offer high security or “ultra-secure” measures. This was supported by third parties, as several competitors responding to the CMA’s merger investigation noted that they provided high security document storage services at the same sites used for records that did not require high security measures.

37. With regards to the supply of RMS to public sector customers, the CMA found that public sector customers are not required to use any particular procurement framework and they are able to use alternative methods of procuring RMS (such as tendering via the Official Journal of the European Union). Some public sector customers also told the CMA that they had used alternative procurement routes to the Crown Commercial Service framework.
38. Therefore, in light of the above, the CMA believes that any further segmentation beyond the supply of RMS is not appropriate. However, the CMA has taken into account for the purposes of its competitive assessment that certain customers may have particular security requirements and public sector customers may have a preference to procure RMS via specific routes.

Scanning services

39. In Iron Mountain/Recall, the CMA included scanning services in the frame of reference for ancillary services.¹⁹ Restore submitted that the supply of scanning services constitutes a separate product market on the basis that:
 - (a) The Parties have customers with distinct scanning contracts and there is little overlap between their major scanning customers and their RMS customers;
 - (b) Tender processes for scanning services rarely include RMS and scanning services are often procured by the IT departments of customers, rather than their facilities management departments (which typically would procure RMS); and
 - (c) The operational requirements of scanning are different to RMS, with “*a high labour content, strong IT content and high specification equipment*”.²⁰
40. The CMA found that:

¹⁹ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, para. 2.2(d).

²⁰ Restore’s response to Question 18 of the CMA’s Section 109 Notice of 27 April 2018.

- (a) While many customers tender separately for RMS and scanning services, there are some customers that procure RMS and scanning services together; and
- (b) There is a degree of overlap in the competitors that offer RMS and scanning services, as many RMS providers offer scanning services (for example, Iron Mountain, Capita and EDM). However, there are also major providers of scanning services that do not supply RMS, such as Xerox, Swiss Post and Williams Lea.
41. Therefore, in light of the available evidence and on a cautious basis, the CMA has considered the impact of the Merger on the supply of scanning services separately to the supply of RMS.
42. However, it was not necessary for the CMA to reach a conclusion on the frame of reference for scanning services (including whether a broader frame of reference is appropriate encompassing both RMS and scanning services), since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on product scope

43. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- the supply of RMS; and
 - the supply of scanning services.

Geographic scope

44. Geographic markets may be local, regional, national or wider. In Iron Mountain/Recall, the CMA focused on local frames of reference for the supply of RMS and used radii of 50 miles as the appropriate starting point for assessing local frames of reference. In assessing competition within each local geographic market, the CMA also took into account that there may be customers present in that geography who also want local services elsewhere and as such may have a preference for providers that can provide wide geographic coverage.²¹

²¹ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 6.47 to 6.49.

Local/regional dimension

45. The CMA considered evidence from the Parties and from third parties in order to assess whether the approach taken in Iron Mountain/Recall remains the appropriate starting point for examining local frames of reference.
46. The Parties submitted that their customers are often further than 50 miles away from their sites. In particular, Restore estimated that the average distance within which 80% of its customers are located was a 50 to 100 mile radius of its sites and TNT BS noted that it services customers as far as 200 miles away from its sites in the Midlands and the South East.²² However, the CMA found that: (i) the 80% catchment area of two of TNT BS's five sites is less than 50 miles; (ii) based on data submitted by Restore on the location of each of its top customers by site and estimated site revenues, the 80% catchment area of many Restore sites appears to be less than 50 miles for its top customers.²³
47. Based on third party responses from customers and competitors, the CMA found that:
- (a) Retrieval time requirements vary between customers and can vary across industry segments, but there are no general rules. For example, some customers noted that NHS trusts and law firms may be more likely to require short retrieval times. In contrast, other customers told us that they do not regularly require their records to be retrieved or are generally content with longer retrieval times;
 - (b) The speed of retrieval times required by customers varied from around 90 minutes to 48 hours.²⁴ The CMA believes that the shorter retrieval times of some customers would generally require RMS suppliers to be located within 50 miles of the RMS supplier's site;
 - (c) Almost all customers expressed a preference in relation to the geographic location of RMS suppliers' storage sites, with many customers noting that they want their RMS suppliers to be located sufficiently close to meet stipulated retrieval times. The CMA believes that this may lead to some customers looking for an RMS provider within a relatively close geographic proximity of their offices, even though there may be providers which are further away who could meet the same requirements around retrieval times. In other words, some customers may have a preference for their RMS provider to be close to their offices (and select their RMS

²² See paragraph 5.3 of the briefing paper submitted to the CMA by the Parties on 12 June 2018.

²³ See Annex 1C to Restore's response to the CMA's questions of 8 June 2018.

²⁴ There were a few customers who were content with retrieval times above 48 hours.

provider accordingly), whether or not they make use of rapid retrieval times in practice; and

(d) The CMA asked competitors over what distance they could compete effectively for customers from their London, South East and Midlands sites. Their responses varied from 30 miles to 200 miles. For the reason given at paragraph 47(c) above, the CMA believes that competitors are more likely to be successful in winning customers at the lower end of this geographic distance.

48. The CMA believes that the evidence outlined above broadly supports the approach taken in Iron Mountain/Recall for assessing local frames of reference. On this basis, the CMA believes that the geographic frame of reference has a local dimension and using catchment areas of 50 miles is a reasonable (and cautious) starting point for assessing the local frame of reference.²⁵

National dimension

49. The CMA also considered whether the supply of RMS has a national dimension given that:

(a) While the CMA did not define a separate market for national customers or national providers in Iron Mountain/Recall, it did – when assessing competition within each local geographic market – take into account that there may be customers present in that geography who also want local services elsewhere and as such may have a preference for providers that can provide wide geographic coverage (as noted at paragraph 44 above); and

(b) Restore noted that: “*Providers of RMS can and do service customers nationally from sites located in the middle of the country (i.e. the Midlands), or at least not at the extremities (e.g. Northern Scotland and Cornwall)*”.²⁶

50. The CMA notes that some RMS customers have multiple sites from which they require delivery and retrieval services (ie **national customers**). Where these sites are located across multiple regions in the UK, national customers could service their requirements either by using multiple RMS providers across areas or by using a single RMS provider with sufficiently broad

²⁵ These local markets would ideally be measured as catchments around customers and in terms of driving distance. However, for reasons of practicality, the CMA has considered catchments around the Parties’ sites in terms of straight-line distance.

²⁶ Restore’s response to Question 17 of the CMA’s Section 109 Notice of 27 April 2018.

geographic coverage. The CMA therefore considered whether national customers had a preference for using a single supplier of RMS for their needs.

51. On the basis of evidence from national customers, the CMA believes that competition also has a national dimension:

(a) The majority of national customers had a preference for using a single RMS supplier and would not consider using multiple RMS suppliers to provide national coverage (ie by multi-sourcing). Reasons cited by these national customers included lower prices, having greater control over records, less risk (due to the reduced handling of records), logistical benefits (for example, when managing and accessing data) and administrative benefits (for example, when tracking documents from different sites and billing); and

(b) Although a few national customers stated that they currently use multiple RMS providers or would in principle be willing to multi-source, the majority of these national customers indicated that this was for legacy reasons (rather than as a result of a deliberate policy) and/or they were taking steps to reduce the number of RMS suppliers they use (for example, they were consolidating their RMS supplier base).

52. Therefore, in light of the evidence set out above, the CMA has considered the impact of the Merger on the supply of RMS to national customers on a national (ie UK-wide) basis.

Conclusion on geographic scope

53. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:

- a UK-wide frame of reference for national customers; and
- local frames of reference based on radii of 50 miles for local/regional customers.

Conclusion on frame of reference

54. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- the supply of RMS to national customers in the UK;

- the supply of RMS to local/regional customers on a local/regional basis; and
- the supply of scanning services to each of national customers in the UK and local/regional customers on a local/regional basis.

Competitive assessment

55. 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 to degrade quality on its own and without needing to coordinate with its rivals.²⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the supply of RMS and the supply of scanning services.

Horizontal unilateral effects in the supply of RMS to national customers

56. The CMA found that prices and other terms for the supply of RMS are typically individually negotiated based on the specific details of customers' requirements. In this context, the impact of the Merger will largely depend on the strength of the remaining alternative RMS providers available to customers.
57. The CMA first considered which RMS providers are able credibly to serve the needs of, and compete effectively for, national customers. The CMA then assessed the extent to which these RMS providers would impose a competitive constraint on the Parties post-Merger, as well as the extent to which the Parties are close competitors, using a broad range of quantitative and qualitative evidence, including evidence on:
- (a) Shares of supply;
 - (b) Switching and tender data from the Parties;
 - (c) The competitive strength of TNT BS's proposition;
 - (d) The strength of the proposition of competing RMS providers, including their size, quality, geographic coverage, spare capacity and ability to compete for different types of customers; and

²⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

(e) Third party views.

Competitor set

58. The CMA has assessed which providers are better placed to compete for national customers.
59. In Iron Mountain/Recall, the CMA assessed supplier characteristics in order to identify a set of competitors that the CMA considered was able to meet the needs of most types of customers.²⁸ In order to assess whether RMS suppliers would be better or worse placed to compete for customers with more demanding needs, such as large customers or those wanting higher standards of service, the CMA looked at the following supplier characteristics that are likely to matter to at least some customers:
- (a) Suppliers' size and ability to take on large customers, including their willingness to assist new customers with perm-out fees and their experience of serving large customers; and
 - (b) Suppliers' quality and reputation.
60. On the basis of the evidence obtained in Iron Mountain/Recall, the CMA found that, while there were differences between the largest 11 RMS providers, there was nothing to suggest that any of these providers were unable to compete effectively for customers. Since Iron Mountain/Recall, Restore has acquired PHS Data Solutions²⁹ and Oasis has acquired Box-it,³⁰ which means that nine of these 11 RMS providers (identified in Iron Mountain/Recall) remain, absent the Merger. This does not mean that other RMS providers are necessarily inferior or unable to compete effectively for customers.
61. The third party customer and competitor responses received by the CMA broadly supported the position in Iron Mountain/Recall that these nine RMS providers are able to compete effectively for customers, including national customers. The CMA has therefore focused its assessment of RMS providers on the largest nine RMS providers (including the Parties). The CMA has also taken into account that there may be differences between how effectively each of these nine RMS providers can compete for national customers for a variety of reasons, including the geographic coverage of their sites, the spare

²⁸ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 7.44 to 7.54.

²⁹ See <https://www.oasisgroup.com/news/oasis-group-acquires-box-it-3903.html>.

³⁰ See https://tools.eurolandir.com/tools/Pressreleases/GetPressRelease/?ID=3217030&lang=en-GB&companycode=uk-mvw&v=redesign_filter.

capacity at their existing sites and their experience of serving national customers.

Shares of supply

62. The CMA has presented shares of supply for RMS to national customers (based on revenues) in Table 1 below. For the reasons set out at paragraphs 58 to 61 above, the CMA has included only the largest nine RMS providers when estimating shares of supply for RMS to national customers.

Table 1: Shares of supply for RMS to national customers in the UK

Supplier	Revenue (£m)	Share (%)
Restore	[X]	[20-30]
TNT BS	[X]	[5-10]
Parties combined	[X]	[20-30]
Iron Mountain	[X]	[40-50]
Oasis	[X]	[5-10]
Crown	[X]	[5-10]
Capita	[X]	[0-5]
EDM	[X]	[0-5]
Deepstore	[X]	[0-5]
The Hill Company	[X]	[0-5]

Source: data from suppliers and Restore estimates where supplier data was unavailable

Note: the providers' total RMS revenues have been used as a proxy for revenues from national customers.³¹

63. Table 1 shows that, based on revenues, Iron Mountain is the largest RMS provider in the UK, Restore is the second largest RMS provider and TNT BS is the fourth largest RMS provider. Post-Merger, Restore will remain the second largest RMS provider.
64. The CMA is aware of limitations in the share of supply data. In particular:
- (a) Some competitors did not respond to the CMA's questions, so the CMA has used Restore's revenue estimates for these competitors; and
 - (b) There may be other RMS providers that can compete effectively for national customers. However, on a cautious basis, the CMA has focused on those providers that the CMA believes – based on Iron Mountain/Recall and third party responses to this merger inquiry – are

³¹ Based on the evidence received by the CMA from the Parties and third parties, the CMA does not believe that the competing RMS providers set out in this table generate a materially greater proportion of their revenues from national customers compared to the Parties.

better placed to compete for customers (see further paragraphs 58 to 61 above).

65. However, on the basis of Table 1, the Merger will result in an increase in concentration in an already highly concentrated market. In particular, the CMA notes that Restore's share of supply will increase further ahead of the third largest RMS provider post-Merger. Therefore, as well as examining the closeness of competition between the Parties, the CMA has assessed the extent to which there are credible RMS providers remaining post-Merger and the extent of competition from these RMS providers for national customers.

Closeness of competition

66. Restore submitted that TNT BS is not a close or active competitor of Restore as:³²
- (a) Tender and switching data from the Parties shows that: (i) [X]; and (ii) Restore has bid for [X] new contracts over the last two years, of which TNT BS was an active bidder against Restore on only [X] occasions and was successful against Restore on only [X] occasions; and
 - (b) TNT BS has [X].
67. The CMA has assessed Restore's submissions by looking at a broad range of evidence in determining the significance of the Parties' position relative to each other, in particular:
- (a) Evidence on the national service proposition of the Parties, including their scale, geographic coverage and capacity to serve national customers;
 - (b) Evidence on the significance of TNT BS's constraint on Restore as reflected by its growth prospects and the views of third parties; and
 - (c) Switching and tender data from the Parties.
68. The CMA found that the national service proposition of TNT BS is not as significant as that of Restore. While Restore has 47 sites located across the UK (including in London, Bristol, the South East, the East of England, the West Midlands, the North West, the North East and Yorkshire and the Humber), TNT BS only has five sites located in London, the South East and the Midlands of the UK. This means TNT BS has less geographic coverage than Restore and there are some regions in the UK where Restore (but not TNT BS) has a storage site. The CMA therefore believes that TNT BS does

³² See Section 3 of the briefing paper submitted to the CMA by the Parties on 12 June 2018.

not exert a particularly strong competitive constraint on Restore in relation to national customers.

69. In relation to TNT BS's competitive position, the CMA also found that:
- (a) TNT BS generates around [X]% of its revenue from a long-term contract with [X], which means TNT BS's share of supply may overstate its competitive position for the supply of RMS; and
 - (b) TNT BS has [X]. This may restrict the ability of TNT BS to grow in the short-term.

The CMA therefore believes that TNT BS is unable to compete as effectively for national customers compared to Restore (and other large RMS providers set out at paragraphs 75 to 77 below).

70. This is supported by third party responses received by the CMA. While some customers considered that both Restore and TNT BS were credible alternatives for RMS, the majority of Restore's national customers that responded to the CMA did not state that TNT BS was a credible RMS provider. This indicates that many national customers do not consider the Parties are competing closely.
71. While the switching and tender data submitted by Parties for the last two years does not relate only to national customers,³³ it indicates that there was limited direct competition between the Parties. In the context of the other evidence set out above, the CMA believes that the switching and tender data provides further supporting evidence that the Parties are not close competitors.
72. For the reasons set out above, the CMA therefore believes that Restore and TNT BS are not close competitors and TNT BS is not exercising a strong competitive constraint on Restore.

Competitive constraints from credible competitors

73. The CMA also assessed the extent of competition from other RMS providers for national customers.
74. In Iron Mountain/Recall, the CMA found that certain RMS providers, such as Iron Mountain, Oasis and Crown, were able to compete effectively for

³³ The CMA notes that, for a significant proportion of tenders in the last two years, the Parties were unable to provide details of the RMS provider that won the tender. The CMA has therefore treated this evidence with caution.

customers as they provided a sufficient quality of service to win the business of more demanding customers.³⁴

75. The CMA notes that Iron Mountain will remain the largest RMS provider (by revenues) and have the highest number of sites. The CMA found that Iron Mountain's sites are located across the UK, which indicates that Iron Mountain is able to compete effectively for national customers. This is supported by: (i) switching data from Restore, which shows that over [redacted]% of customers that have switched away from Restore in the last two years moved to Iron Mountain; and (ii) third party views, as Iron Mountain was most frequently mentioned by customers and competitors as a credible alternative for RMS.
76. As Oasis and Crown have a similar share of supply to TNT BS, the CMA also assessed the extent of competition for national customers from these two RMS providers. The CMA found that:
- (a) Both Oasis and Crown have a broad national coverage. The location of their sites indicates that they are able to provide RMS for national customers. As well as having at least one site in each region where TNT BS is active, Oasis and Crown also have sites located in other regions. As such, the CMA believes that the site networks of Oasis and Crown provide a greater geographic coverage than TNT BS's sites.
 - (b) Oasis has expanded significantly since Iron Mountain/Recall and has acquired at least four RMS providers in 2018. Indeed, Oasis describes itself as the fastest growing RMS provider across Europe.³⁵ Crown noted that [redacted].
 - (c) Oasis and Crown also currently have [redacted]. The CMA therefore believes that these providers are better placed than TNT BS to grow in the short-to-medium term.
77. The importance of these three RMS providers as competitors for national customers is further supported by:
- (a) Third party views, as customers and competitors that responded to the CMA frequently mentioned Iron Mountain, Oasis and Crown as credible alternatives to Restore; and

³⁴ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, paras. 7.44 to 7.54 and Appendix D.

³⁵ See: <https://www.oasisgroup.com/news/oasis-group-extends-market-reach-within-uk.4750.html>.

(b) Switching and tender data from the Parties, which shows that the Parties have [REDACTED].

78. Based on third party views and the Parties' switching and tender data, the CMA also found that there are other effective competitors who are able to compete credibly for national customers. In particular, the switching data shows that the Parties have lost customers to [REDACTED]. In addition, [REDACTED], which means it may be able to compete more effectively for national customers in the short-to-medium term.
79. The CMA therefore believes that, despite the loss of TNT BS as an independent competitor, sufficient competition for national customers will remain from a number of credible RMS providers that operate on a national basis.

Specific customer requirements

80. The CMA also assessed whether there were particular types of customers where the Parties are close competitors and there would be limited alternative RMS providers remaining post-Merger.
81. As noted at paragraph 35 above, there are some customers that require high security or "ultra-secure" document storage services. Restore submitted that little specialist equipment is required to offer high security or "ultra-secure" measures. The CMA also found that many RMS providers are able to provide RMS for records that require high security or "ultra-secure" storage. In particular, almost all competitors responding to the CMA's merger investigation stated that they were able to provide such services, while some customers told the CMA that there were many RMS providers that could provide such services. The CMA therefore does not believe that there would be limited alternative providers offering high security or "ultra-secure" document storage services post-Merger.
82. Moreover, as noted at paragraph 35 above, public sector customers often procure RMS through specific procurement frameworks (such as the Crown Commercial Service framework). The CMA notes that there are currently only a small number of RMS providers approved under the Crown Commercial Service framework. However, the vast majority of public sector customers responding to the CMA's merger investigation did not raise concerns about the choice of alternative RMS providers.
83. With regards to the supply of RMS to public sector customers, the CMA found that:

- (a) Public sector customers are not required to use any particular procurement framework and they are able to use alternative methods of procuring RMS (such as tendering via the Official Journal of the European Union). In this respect, the CMA received responses from some public sector customers that they had considered alternative procurement routes to the Crown Commercial Service framework; and
- (b) Almost all competitors that responded to the CMA's merger investigation have secured contracts with public sector customers, which indicates that they have the capability to provide RMS to public sector customers (regardless of whether they are approved under the Crown Commercial Service framework).
84. In relation to the longer-term position, two competitors told the CMA that they intend to apply to join the Crown Commercial Service framework (which expires in October 2020 and would need to be re-tendered in advance). Neither competitor envisaged any difficulties with joining the Crown Commercial Service framework.
85. The CMA therefore believes that there will be sufficient competition from other RMS providers to constrain the Parties post-merger with regards to the supply of RMS to public sector customers.

Conclusion

86. Accordingly, for the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of RMS to national customers.

Horizontal unilateral effects in the supply of RMS to local/regional customers

87. The CMA assessed the nature and extent of competition in local areas/regions served by both Restore and TNT BS. The CMA has adopted an approach of filtering local areas based on a fascia count analysis of the nine largest RMS suppliers ahead of undertaking a more detailed local assessment. The initial filter determines local areas where adequate competition is maintained post-Merger. If an area does not pass this initial filter, the CMA would then examine local circumstances in more detail, including an assessment of local RMS providers. This does not mean that local RMS providers are necessarily inferior or unable to compete effectively for customers; instead, the CMA believes that these local RMS providers should be considered in the context of a detailed local assessment, rather than any initial filter.

88. The CMA's assessment was based on the following methodology:
- (a) The CMA identified the relevant local/regional overlaps between the Parties using catchment areas of 50 miles around each TNT BS site.
 - (b) The CMA then assessed the impact of the Merger on a local/regional basis where a TNT BS site overlapped with a Restore site. Each TNT BS site overlapped with at least one Restore site.
 - (c) The CMA assessed the effects of the Merger in local areas around each TNT BS site using a simple fascia count of effective competitors within a 50 mile radius of each TNT BS site.³⁶
 - (d) On a cautious basis, the CMA has included only the nine largest RMS providers for the purposes of its fascia count, for the reasons set out in paragraphs 58 to 61 above. While the Parties identified other local RMS providers in these five local areas, the CMA believes, based on the evidence received, that not all of these RMS providers would offer a sufficiently similar service proposition to the nine largest RMS providers (including the Parties) so as to be able to impose a credible constraint. For example, the CMA understands that some of these local RMS providers may not offer retrieval services or have the capabilities to meet the security requirements of some customers.
89. Table 2 summarises the number of effective competitors within a 50 mile radius of each TNT BS site.

Table 2: Fascia counts around TNT BS sites (based on nine largest providers)

TNT BS site	Top 9 providers
Beckon	9 to 8
Coventry	6 to 5
Nottingham	6 to 5
Swadlincote	7 to 6
Thurrock	9 to 8

Source: CMA analysis of data provided by the Parties and their competitors.

90. Table 2 shows that, in each of these five local areas, there will remain four or more competitors to the Parties that are each likely to meet the needs of most customers (including Iron Mountain, Oasis and Crown). These competitors are likely to exert a sizeable constraint on the Parties post-Merger.

³⁶ These local markets would ideally be measured as catchments around customers and in terms of driving distance. However, for reasons of practicality, the CMA has considered catchments around the Parties' sites in terms of straight line distance.

91. In the two local areas where there will remain four effective competitors post-Merger (ie Coventry and Nottingham), the CMA also found that there are additional local providers who may be able to compete effectively to serve at least some customers, such as Stor-a-File and C&V Document Storage.
92. For the reasons set out above, the CMA believes that sufficient RMS providers will remain to constrain the Parties in each of these five local areas post-Merger.

Horizontal unilateral effects in the supply of scanning services

93. The CMA assessed whether the Parties are close competitors for the supply of scanning services and whether other scanning suppliers would provide a sufficient competitive constraint on the combined entity post-Merger.
94. The CMA found that TNT BS has a minimal presence in the supply of scanning services. It generated revenue of only £[~~3~~] from scanning services in 2017 and it has only a small number of distinct scanning customers. In addition, very few customers responding to the CMA's merger investigation listed TNT BS as a credible supplier of scanning services. As a result, the CMA believes that TNT BS does not exercise a strong constraint on Restore for the supply of scanning services.
95. The CMA also found that there are many credible suppliers of scanning services, both nationally and in the local areas/regions where TNT BS is active. Most RMS competitors stated that they also provide scanning services. In addition, several scanning customers identified a significant number of alternative scanning suppliers, including other RMS providers (such as Iron Mountain, EDM and Capita) and other large providers (such as Xerox, Swiss Post and Williams Lea). This is consistent with the CMA's finding in Iron Mountain/Recall that "*there is a range of national and local alternative suppliers for services such as scanning who can provide these services on a standalone basis*".³⁷
96. On the basis of the evidence set out above, the CMA believes that the Parties are not close competitors for the supply of scanning services and there will be a number of credible scanning suppliers remaining post-Merger (both on a national basis and in the local areas/regions where TNT BS is active).

³⁷ See [CMA report](#) on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited, 16 June 2016, para. 6.6.

Conclusion on horizontal unilateral effects

97. For the reasons set out above, the CMA believes that the Parties are not close competitors and sufficient competition for national customers and local/regional customers will remain post-Merger from alternative providers. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to each of the supply of RMS and the supply of scanning services.

Barriers to entry and expansion

98. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁸

99. 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

100. The CMA contacted customers and competitors of the Parties.

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

Decision

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

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

Joel Bamford
Director
Competition and Markets Authority
9 August 2018

³⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.