Anticipated acquisition by Moneysupermarket.com Financial Group Limited of Decision Technologies Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6749/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 August 2018. Full text of the decision published on 20 September 2018.

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

SUMMARY

1. Moneysupermarket.com Financial Group Limited (**MSFG**) (part of the Moneysupermarket.com Group, **MSM**) has agreed to acquire Decision Technologies Limited (**DTL**) (the **Merger**). MSM and DTL 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 MSM and DTL is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. 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 digital comparison tool (**DCT**) services for mobile and home communications switching in the UK. DTL also operates upstream in the provision of white label and application programming interface (**API**) services to providers of DCTs. The CMA has therefore assessed the impact of the Merger in the following product and geographic frames of reference:

(a) the supply of DCT services for mobile switching in the UK; and

(b) the supply of DCT services for home communications switching in the UK;

(c) the supply of API and white label services for use by DCTs in mobile switching in the UK; and

(d) the supply of API and white label services for use by DCTs in home communications switching in the UK.

4. The CMA did not find competition concerns in any theory of harm:

(a) The CMA considered that, while the Parties represent two of the larger players in each of the markets for the supply of DCT services for (i) mobile and (ii) home communications switching in the UK, sufficient constraints from other DCTs and non-DCT switching routes will continue to exist post-Merger; and

(b) The CMA considered that the merged entity would not have the incentive to foreclose the supply of API and white label services for use by DCTs in (i) mobile and (ii) home communications switching in the UK.

5. The CMA believes that the Merger therefore does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral or vertical effects.

6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. MSM is a provider of price comparison services in the UK. The ultimate parent company of MSM is Moneysupermarket.com Group PLC. The turnover of MSM in 2017 was approximately £329.7 million, all of which was achieved in the UK.

8. DTL is a performance marketing, data and technology business. It provides price comparison services through its own websites such as Broadband Choices as well as API and white label price comparison services in the UK. The turnover of DTL in 2017 was approximately £9.8 million worldwide and approximately £9.6 million in the UK.

Transaction

9. The proposed Merger relates to the purchase by MSM, through MSFG, of the whole of the issued share capital of DTL.

Procedure

10. The CMA's mergers intelligence function identified this transaction as warranting an investigation.[1]

11. The Merger was considered at a Case Review Meeting.[2]

Jurisdiction

12. Each of MSM and DTL is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

13. The Parties overlap in the supply of DCTs services for home communications (ie landline, broadband and TV) and mobile switching, with a combined share of supply (by revenue) of [25-30]% (increment [10-15]%) in home communications[3] and a combined share of supply (by revenue) of [20-25]% (increment [0-5]%) in mobile.[4] 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 13 June 2018 and the statutory 40 working day deadline for a decision is therefore 7 August 2018.

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.

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[1] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.
[2] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.
[3] See paragraph 82 below
[4] See paragraph 111 below

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]

17. The Parties submitted that the CMA may consider in the counterfactual DTL's supply of home communications and mobile white label services to MSM. At the time of the Parties' submission, MSM had completed a procurement process, which had selected DTL as the preferred white label supplier. The contract with DTL was nearly final and was executed on 22 June 2018. The Parties submitted that given the procurement process was independent of the Merger considerations, it would be reasonable to conclude that absent the Merger DTL will supply white label services to MSM.[6]

18. The CMA notes that the Merger with DTL was in contemplation from [✂]; shortly after the launch of the procurement exercise. Based on the evidence available, the CMA considers that the procurement process was influenced by the ongoing Merger discussions. Evidence from MSM internal documents indicate that [✂].

19. Given these considerations, the CMA considers that it is appropriate to use the pre-procurement exercise conditions of competition as the relevant counterfactual for its assessment, ie where MSM is being supplied by another white label provider but is considering switching/changing suppliers.

20. The CMA has nonetheless taken into account evidence on the strength of DTL's offering as a white label/API supplier from this procurement exercise in the competitive assessment.

Background

21. Before discussing the relevant frames of reference and the competitive assessment, the CMA sets out some background in relation to:

    (a) The nature of DCT and white label or API services, including the relevant supply chain;

[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).

[6] The procurement process is discussed further in the competitive assessment.

(b) The two-sided nature of DCT, and white label or API, services; and

(c) Monetising the provision of price comparison services.

The nature of DCT and white label/API services

Introduction

22. DCTs are two-sided platforms that aim to help consumers by bringing together a number of products or services, offering a variety of ways to help them choose between options, and sometimes to make purchases or change providers.[7]

23. The CMA has previously found that DCTs offer two types of benefit: first, they save time and effort for people by making searching around and comparing easier and more appealing, particularly for household services that are often complicated and not immediately interesting to people. Second, they make suppliers compete harder to provide lower prices and better choices to consumers. Overall DCTs should result in lower prices and better choices.[8]

24. DCTs offer these benefits in a variety of ways, from the most basic ‘best buy’ tables, to the traditional price comparison website (**PCW**) and increasingly to more automated services enabled by newer technology.

The relevant supply chain

25. DCTs can bring together consumers and products through either:

(a) Self-supply, by:

(i) Negotiating directly with product providers (such as mobile network operators) or seeking deals from affiliates (who act as intermediaries between a number of DCTs and product providers) to obtain the deals they will have on their DCT product; and

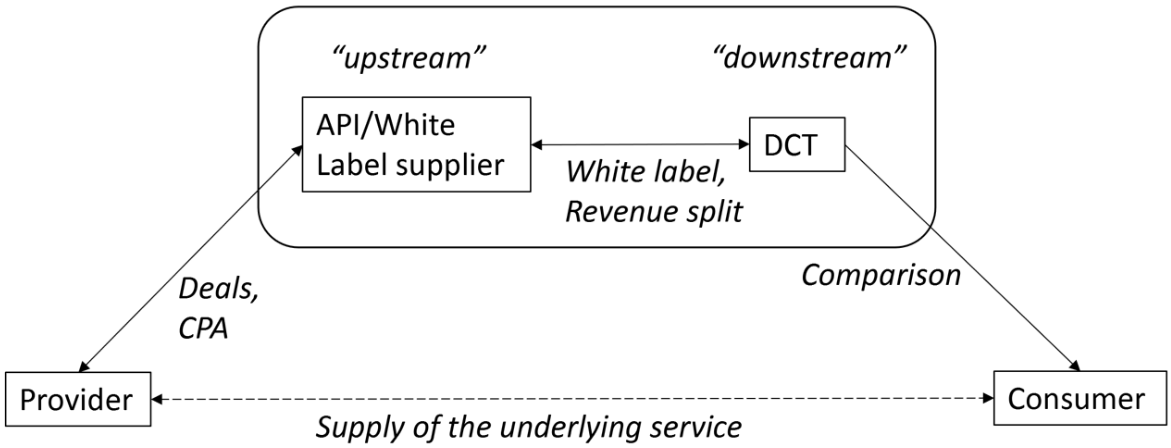
(ii) Building, maintaining and hosting a DCT product through which consumers can access those deals; or

(b) Outsourcing aspects of this service, by:

[7] CMA DCTs Market Study, Final Report, paragraph 1.1
[8] CMA DCTs Market Study, Final Report, paragraph 1.2

(i) Contracting with a third party who negotiates with product providers and affiliates to supply the DCT with deals,[9] as well as builds, maintains and hosts the DCT product (usually using the DCT's branding but possibly including the white label provider's branding) – known as **white label** supply; or

(ii) Contracting with a third party who negotiates with product providers and affiliates to supply the DCT with a data feed of deals that the DCT can then incorporate into its own product – known as **API** supply. This allows the DCT client more flexibility than white label supply but requires greater investment from the DCT.



White label and API services

26. In its DCTs market study, the CMA found that in many sectors DCTs can effectively purchase a 'DCT-in-a-box' solution from a white label provider, which includes a panel of suppliers and products which can easily be rebranded. The largest multi-sector DCTs all use white label providers to offer comparison services in at least part of a wider range of product markets.

27. The CMA understands from third party responses that DCTs are more likely to use white label or API services to complement their offering where the product line is outside the DCT's core offering and represents a small proportion of that DCT's business. In these areas, white label and API suppliers are considered to be a cost-effective option which provides a DCT with the right market expertise and required information more

[9] The CMA understands that in some instances DCTs will also negotiate their own deals, either individually or in collaboration with a white label supplier.

efficiently and in a more commercially favourable way than building that capability in-house.

28. White label providers can maintain the relationships with product providers (including building the panel of product providers and managing those relationships), reconcile sales made through the partnership, and collect and distribute the commission per action (**CPAs**) earned. In addition, white label providers can provide marketing services.

29. Third parties also told the CMA that white label providers with multiple DCT customers can differentiate between those customers through exclusive deals negotiated specifically for that DCT and developing the DCT's consumer-facing site to be in line with the rest of that DCT's site and less similar to the white label's standard offering.

Differentiation

30. The Parties submitted that DCTs compete with each other (i) to attract consumers (eg by investing in marketing, providing a good comparison service, offering low prices and, in some cases, rewarding consumers for using their site); and (ii) to attract product providers and negotiate with them to obtain the best possible (and exclusive) deals to display on their websites.

31. DCTs which are powered by a common white label or API provider may be similar. However, DCTs may still differentiate between themselves, and compete, on a number of metrics including exclusive offers funded by providers or the DCT, unique product features, brand, marketing, service differentiation, and the providers on their panel.[10]

32. Therefore, an important avenue of competition for DCTs is branding and marketing. DCTs compete to persuade consumers to visit their websites by creating a well-known brand, which is something they typically do through offline advertising,[11] and by trying to make sure that consumers who search for a particular product are given the opportunity to click through to the relevant DCT.[12] The latter strategy can rely on organic search, whereby the DCT uses search engine optimisation (**SEO**) strategies to make sure that it appears among the first few organic search results when a consumer searches for particular search terms, or it can rely on paid – usually pay-per-click (**PPC**) – advertising. Paid advertising

[10] [✂]
[11] CMA DCTs market study, Final Report, paper E, paragraph 2.21.
[12] CMA DCTs market study, Final Report, paper E, paragraph 2.22.

on search engines means that the DCT appears next to or above the organic search results when a consumer searches for particular search terms.

The two-sided nature of DCTs and white label or API services

33. DCTs act as intermediaries between consumers and suppliers, presenting a range of products or services for consumers to choose from, through a variety of platforms.[13]

34. White label and API suppliers are also two-sided platforms as they act as intermediaries between their “consumers”, ie DCT clients, and product providers.

35. In providing price comparison services for mobile and home communications, the Parties facilitate transactions between consumers and product providers by giving consumers access to a list of mobile or home communications products that they may wish to buy, and by giving those product providers access to a pool of consumers looking for those products. To be successful, a DCT must attract a sufficient number of consumers and product providers. However, as discussed above, it can rely on a white label or API provider or affiliate feed to attract a sufficient number of product providers.

36. There are positive feedback effects between the two sides of the market: a given DCT is more attractive to providers if it is more popular among consumers, in which case it will be able to negotiate more, and better, exclusive deals and inducements from providers, which in turn will make it more popular among consumers. Equally, a given white label or API is more attractive to providers if it has access, through its DCT clients, to more consumers, in which case the white label or API supplier will be able to negotiate more, and better, exclusive deals and inducements from providers, which in turn will make it more popular among its current and prospective DCT clients.

Monetising the provision of price comparison services

37. Price comparison services tend to be free to the end-consumer (and in some cases the consumer may receive an inducement – such as vouchers or a toy – to use the service). The DCT, and any white label or

[13] CMA DCTs market study, Final Report, paragraph 2.9

API supplier that it may rely on, obtain their revenue from the product providers.

38. In return for a price comparison service directing a consumer to the product provider's site, should the consumer buy that product, the product provider will usually pay an agreed CPA. The level of CPA will be negotiated between the product provider and the DCT, or the white label or API supplier.

39. The CMA understands that the sales volumes that can be achieved by a white label or API supplier that supplies multiple DCTs allows that supplier to obtain better commercial terms from product providers (particularly higher CPAs). The CMA understands that those improved commercial terms may be passed on in part to DCT clients (for example through revenue share agreements), and so attract more DCT clients.

40. White label and API suppliers, where present, will collect the CPAs paid by the product providers and take an agreed share of those CPAs before passing the remainder on to its DCT client. The CMA has not observed instances of flat fees being levied by upstream price comparison service providers; it appears that each level of the supply chain takes a share of the CPA.

41. The CMA considers that competition occurs at the different levels of this supply chain; DCTs, and white label or API suppliers, compete by negotiating better CPAs from providers, some of which may be given away to fund exclusives or inducements that attract consumers. Exclusives and inducements are not always funded in this way; they may also be negotiated and funded separately by the product providers.

Frame of reference

42. 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.[14]

[14] *Merger Assessment Guidelines*, paragraph 5.2.2.

43. The Parties overlap in the supply of DCT services for mobile and home communications switching in the UK.

Product scope

44. As described above, the CMA considers the markets for (i) mobile and home communications DCT switching; and (ii) the provision of white label or API services, to be two-sided. In assessing the frame of reference for a two-sided product, the CMA may consider the constraints from demand substitution on either side.[15] Therefore, for the purposes of determining the relevant frame of reference, the CMA has assessed the relevant demand and supply considerations, and the competitive constraints, on both sides of the market in turn,[16] taking a cautious approach throughout its considerations.

45. The CMA considers below:

(a) The supply of DCT services, and whether the CMA should distinguish between:

(i) Home communications and mobile switching;

(ii) DCTs and other switching channels; and

(b) The supply of white label and API services, and whether the CMA should distinguish between:

(i) Home communications and mobile switching;

(ii) White label and API services; and

(iii) Self-supply of white label or API services and supply by third parties.

The supply of DCT services - Home communications and mobile switching

46. The CMA has considered whether it would be appropriate to include the supply of DCTs for (i) mobile and (ii) home communications switching in the same frame of reference.[17]

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[15] Ticketmaster Europe Holdco Limited/Seatwave, CMA, 26 March 2015, paragraph 28

[16] Just Eat/Hungryhouse, CMA, 16 November 2017, paragraph 4.11

[17] Home communications providers typically supply broadband, landline and TV products. The CMA's DCT market study further found that broadband is most commonly offered in a range of bundles including landline and TV. The CMA has therefore not further segmented the candidate market to (i) broadband, (ii) landline and (iii) TV.

47. The Parties submitted that mobile and home communications should be considered in a single frame of reference. To support this, they noted that both they and a number of their most important DCT competitors were active in both segments, and that it was common for consumers to buy mobile and home communications as part of a single package.

48. The evidence available to the CMA indicates that the supply of DCTs for mobile should be assessed separately from the supply of DCTs for home communications.

49. While demand for bundles which include mobile is increasing, such bundles remain relatively uncommon. The Parties estimated that 53% of deals in home communications and mobile are dual-play,[18] 36% are triple-play,[19] 7% are single play[20] and only 4% are quad play[21] – suggesting that mobile is not frequently bought in the same package as home communications. This is broadly in line with observations made in *BT/EE* where, at that time, quad play bundles had been taken by around 2% of UK households,[22] and also in line with Ofcom's 2017 Communications Market Report which reported that 3% of UK households had taken quad play bundles in 2016 and 2017. [23,24] Further, home communications DCT services are not usually a demand side substitute for mobile DCT services, or vice versa.

50. On the supply side, the CMA has also found that while some of the same DCTs compete in both mobile and home communications, there are others who offer their services for only one. Examples include Simplify Digital and Broadband Genie, who are not active in mobile.

51. With regard to the websites used to provide DCT services, the Parties told the CMA that there were substantial differences in the search criteria that home communications and mobile customers might use. Moreover, a home communications DCT needs to be able to accommodate the greater complexity of these products.

52. Taking a cautious approach, the CMA therefore considered separately the supply of DCTs for mobile switching and the supply of DCTs for home

[18] Dual play means landline and broadband bought together in a bundle
[19] Triple play means landline, broadband and pay TV bought together in a bundle
[20] Ie one product only
[21] Ie encompassing mobile, broadband, landline and TV, bought together from the same provider
[22] BT/EE, CMA, 15 January 2016, paragraph 19.72
[23] Figure 1.5, https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf
[24] The CMA notes that Ofcom's 2018 Communications Market Report reports that 5% of UK households took quad play bundles in H1 2018.

communications switching. However, no competition concerns arose on any plausible frame of reference so there was no need to conclude on this frame of reference.

The supply of DCT services - DCTs and other switching routes

53. The CMA has considered whether it would be appropriate to include non-DCT switching routes within the relevant frames of reference.

54. The Parties submitted that non-DCT switching routes, including direct online and offline routes with resellers and product providers (such as mobile network operators), should be included within the relevant frames of reference.

55. The CMA's starting point is to identify the narrowest market that satisfies the hypothetical monopolist test,[25] which in this instance it considers is other DCTs.

56. The CMA has received evidence supporting a DCT-only frame of reference, ie that non-DCT channels may not be the most immediate constraint faced by the parties, namely:

(a) The CMA considers that the service provided by DCTs differs from the service provided by alternative switching channels such as resellers:

(i) On the provider side, resellers (such as Carphone Warehouse) operate a different business model to that of DCTs – for example resellers have a different business model with providers (rather than adopting the CPA revenue model) and they hold stock.

(ii) On the customer side, a reseller customer can complete their entire switch on that reseller's website, rather than be directed to a provider's site by a DCT in order to complete their purchase.

(b) The CMA considers, and third parties confirmed, that direct routes do not provide a similar proposition to DCTs because a product provider's site does not provide a comparison of that product across different providers.

(c) Providers told the CMA that they considered that indirect switching channels (including resellers) offered a different way of reaching consumers. In this regard, DCTs were perceived as a particularly

[25] *Merger Assessment Guidelines,* para 5.2.3

important route for reaching customers that may not have otherwise gone direct to the provider.

(d) The CMA found in its DCTs market study that around 40% of people using DCTs did not use any other sales channel.[26]

(e) The Parties' internal documents generally identify DCTs as their primary competitors.

(f) Third party DCTs told the CMA that they do not typically consider non-DCT switching routes to be their primary constraint.

57. On a cautious basis, based on the evidence above, the CMA has excluded other channels, including other online channels, from the relevant frames of reference. However no competition concerns arose on any plausible frame of reference so there was no need to conclude on this frame of reference

58. However, the CMA has taken account of the evidence of the constraint from non-DCT channels in its competitive assessment. This is discussed further in paragraphs 96 to 105 and 122 to 125 below.

The supply of white label and API services

59. On the basis of the Parties' submission that their vertical overlap should be assessed in the context of the proposed market for the supply of DCT white label services and API services to third parties, the CMA has considered whether this proposed frame of reference should be further segmented by reference to (i) home communications and mobile switching; and (ii) white label and API services, and whether this should be expanded by reference to (iii) self-supply of white label and API services.

Home communications and mobile switching

60. The Parties submitted that mobile and home communications should be considered in a single frame of reference. To support this, they submitted that white label and API suppliers can expand their operations from one sector into another relatively easily.

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[26] CMA DCTs market study, final report, paper A, figure A.6

61. As with the supply of DCT services, the CMA notes that white label or API services for mobile and home communications are not demand-side substitutes for providers or DCT clients.

62. With regard to supply side factors, the CMA notes that the Parties provided evidence showing that it is relatively uncommon for a white label or API provider to be active in more than two sectors. In one internal document, MSM says that "*The market comprises small players, focussing on single products and with PCWs as their primary customers*".

63. The Parties also told the CMA that, of all product segments, it is relatively easy to enter the home communications segment. However the CMA received evidence from third parties, including other white label and API service providers, showing that there are substantial costs involved in expanding to an additional sector, because that requires the company to build a new network of relationships with providers, as well as key industry knowledge.

64. Therefore, on a cautious basis, the CMA has assessed as separate frames of reference white label and API services for home communications and mobile, however no competition concerns arose on any plausible frame of reference so there was no need to conclude on this frame of reference.

White label services and API services

65. The CMA has considered whether it would be appropriate to separate white label and API services in the candidate frames of reference.

66. The Parties submitted that white label and API services should be considered in a single frame of reference.

67. The CMA has found that white label and API services may not always be substitutes from the point of view of DCT clients, as they may have different preferences based on their existing DCT offering and the level of technical support they need.

68. However, there is evidence that they can be considered supply-side substitutes. While there are incremental costs involved in expanding from white label services to API services or vice versa, the two services have many costs in common, most importantly the cost of building relationships with providers. They require the same skills, assets and relationships, and most suppliers of white label services also offer an equivalent API service. Based on evidence from providers of these services, the CMA considers that it is significantly easier to expand from one to the other than it is to

start providing the first service, and the CMA has seen examples of providers who have expanded from one to the other, or have plans to do so.

69. The CMA has therefore considered white label services and API services as a single frame of reference. However no competition concerns arose on any plausible frame of reference so there was no need to conclude on this frame of reference.

70. To the extent relevant, the CMA has considered any differences in the competitive constraint offered by white label-only and API-only providers in its competitive assessment. Throughout the rest of the decision, references to white label services should be taken to include API services (unless otherwise specified).

Self-supply of white label or API services

71. The CMA has considered whether to include in the candidate frame of reference the self-supply of white label or API services. This would encompass instances where a DCT maintains a panel of providers, negotiates its own CPAs and provides its own deal feed, or sources and builds a DCT product around a deal feed from an affiliate network.

72. The CMA believes at this stage (and discusses further in its competitive assessment) that the level of self-supply that would replicate that of a white label service is not a commercially viable option for many DCTs, particularly where the product sector is not complementary to that DCT's core product offering.

73. The CMA therefore has not included the self-supply of white label or API services in its candidate frames of reference, however no competition concerns arose on any plausible frame of reference so there was no need to conclude on this frame of reference. The CMA has considered in its competitive assessment, where relevant, the constraint that this may pose.

Geographic scope

74. MSM submitted that the relevant geographic frame of reference is the UK. The Parties' submission was based on prior CMA and OFT decisions[27]

[27] *eSure/GoCompare*, paragraph 32; *Google/BTQ*, paragraph 41

and on the basis that the Parties' commercial activities are conducted only in the UK.

75. The evidence available to the CMA supports using the UK as the geographic frame of reference.

Conclusion on frame of reference

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

(a) the supply of DCT services for home communications switching in the UK;

(b) the supply of DCT services for mobile switching in the UK; and

(c) the supply of API and white label services for use by DCTs in mobile switching in the UK; and

(d) the supply of API and white label services for use by DCTs in home communications switching in the UK.

Competitive assessment

Horizontal unilateral effects

77. 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.[28] Horizontal unilateral effects are more likely when the merging parties are close competitors.

78. 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 DCT services for (i) mobile; and (ii) home communications, switching in the UK.

Horizontal unilateral effects in the supply of DCT services for home communications switching

79. The concern under this theory of harm is that the removal of one party as a competitor could lead to increased prices (CPAs) to communications providers; lower quality of the comparison product to consumers (eg by reducing the range of deals included on their DCTs, or the number of

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[28] *Merger Assessment Guidelines*, from paragraph 5.4.1.

exclusive deals, or the number/value of inducements); and/or reduce innovation.

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

(a) The Parties' shares of supply;

(b) Closeness of competition;

(c) Competitive constraints from other DCTs; and

(d) The strength of constraint from non-DCTs.

Shares of supply

81. The Parties submitted that they had relatively low shares of supply of DCT services in home communications switching – an estimated [20-25]% combined share of supply with an increment of [5-10]%, based on revenue earned in 2017. The Parties in particular noted the presence of uSwitch as the market leader.

82. Through its third party market testing, the CMA was able to refine market share estimates based on 2017 revenue, and estimate that the Parties have a combined share of supply of [25-30]%, with an increment of [10-15]%.

Table 1: Market shares in the supply of DCT services for home communications switching, 2017

	%
Company	*Market share*
uSwitch	[50-55]
MSM	[15-20]
Broadband Choices	[10-15]
Compare the Market	[5-10]
Recombu	[0-5]
Broadbandgenie	[0-5]
Simplify Digital	[0-5]
Cable	[0-5]
Other DTL clients	[0-5]
Other	[0-5]

Source: DCTs

83. Based on the information provided by the Parties and supplemented by third parties, the CMA considers that these market shares have remained relatively stable over time (notwithstanding the CMA's observations in paragraph 93 below).

Closeness of competition

84. The Parties submitted that they are not each other's closest competitor; instead, they both look to the market leader uSwitch as their closest competitor. The Parties also explained that their marketing strategies do not focus on each other.

85. The CMA considered evidence of the extent to which the Parties competitively constrain each other based on shares of supply, third party comments and any focus on each other in their marketing/advertising strategy and internal documents.

86. The Parties' shares of supply indicate that they are the second and third largest suppliers in the market. In particular, the CMA notes that MSM holds a significant position even though it submitted that it does not actively promote or advertise its home communications and mobile offerings. This indicates that its general branding, advertising and consequent non-product-specific scale nonetheless makes it a significant supplier from the perspectives of both providers and consumers.

87. A number of providers noted some differences in the Parties' service proposition and listed a number of other suppliers which were rated similarly to the Parties. However, third parties generally considered that the Parties were close alternatives. In particular, competitor DCTs mostly ranked MSM and Broadband Choices among the closer competitors to their own offering, noting the similarities in their services.

88. Given the Parties' different marketing strategies, the CMA does not consider that the Parties' submissions on lack of focus on each other in their advertising and marketing strategies is indicative of a lack of competitive constraint between the Parties.

89. The Parties provided few documents assessing the relevant competitive landscape which were produced prior to contemplation of the Merger. Those pre-Merger documents provided by MSM, while high level and historic, acknowledge uSwitch and Broadband Choices/DTL as main DCT competitors. Internal documents produced after contemplation of the Merger generally reflected a view that they were two of a number of competing DCTs. The CMA believes that internal documents, particularly those prepared in anticipation of the Merger, need to be interpreted cautiously and alongside the other evidence available.

90. On the basis of the evidence above, the CMA considers that the Parties are significant competitors and compete relatively closely with each other,

but the CMA has not seen evidence to indicate that they compete particularly closely.

Competitive constraints from other DCTs

91. As shown in the market share table above,[29] uSwitch is the market leader in the supply of DCT services for home communications switching. This is echoed in third party responses, where product providers generally rated uSwitch most highly of the provider's DCT partners. The Parties' internal documents – created both pre-Merger and in contemplation of the Merger – confirm this evidence by consistently identifying uSwitch as the largest and strongest market player. Third party DCTs also named uSwitch among their competitors. The CMA therefore considers that uSwitch poses the greatest constraint on each of the Parties.

92. The evidence available to the CMA from third parties also indicates that the Parties will continue to face constraints from other multi-product, well-known DCTs which have a presence in this space (such as Compare the Market, GoCompare, and Confused).

93. Third party testing indicates that these large DCT brands are considered to be significant competitors to each other, with providers generally using the full range of these larger DCTs, and DCTs acknowledging these types of large DCT as close competitors. In particular, the CMA notes that Compare the Market's share of supply is growing, indicating that its constraint on the Parties may increase.

94. The Parties noted the presence of numerous smaller, growing players in the market, which are included in the market share table above.[30] The CMA has received mixed evidence on the extent of the constraint from these suppliers. While some providers rated particular suppliers such as Broadband Genie quite highly, few of these smaller competitors were regularly acknowledged by competitor DCTs. As such, the CMA believes that these suppliers will provide some constraint but may not impose sufficient standalone constraint on the Parties post-Merger.

95. The CMA considers that the merged entity will therefore face sufficient constraint from other DCTs (particularly uSwitch) in order to prevent an SLC in this frame of reference. However, taking a cautious approach (given the Parties' shares of supply in the structure of this market) the

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[29] Paragraph 82
[30] Paragraph 82

CMA also considered other constraints that the Parties may face post-Merger.

Competitive constraints from other routes to market

96. The Parties submitted that they were constrained by a number of other channels for selling or purchasing home communications and mobile products, including direct sales from providers, both online and offline, comparisons and switching in Carphone Warehouse stores, and other online sites such as cashback sites.

97. The Parties told the CMA that DCTs are a small subset of the overall switching market, and that mobile and home communications are more complex products which do not as readily lend themselves to DCT switching, given the data points and variables that form part of a switching decision – more so if the consumer is choosing a bundled product. In this regard, the Parties noted the limits on the amount of information a DCT can provide about these types of products, such as broadband speed.

98. The Parties submitted that this is reflected in their internal documents which consider non-DCT switching routes, such as direct product providers, resellers, cashback sites or offline switching, as some of the relevant competitor set (of varying strengths) faced by DCTs.

99. The CMA considered the evidence for such a constraint from both a provider and consumer perspective based on its DCT market study, third party responses to the CMA's market testing in its current investigation, and any internal documents submitted by the Parties. The CMA notes that given the two-sided nature of the market, evidence of consumers' habits and preferences for a wider set of channels may also be relevant for assessing constraint from other channels for providers.

100. In terms of evidence on consumer preferences, the Parties estimated that 85% of consumers switch their home communications and mobile using services other than DCTs such as bricks and mortar stores, call centres and product providers' websites.

101. In its DCT market study, the CMA found that DCTs were a less significant sales channel in broadband[31] than they are for the other selected products in the study (such as credit cards, home insurance and motor

[31] While the DCTs market study focused on broadband, the CMA considers this is nonetheless informative, given that broadband is a significant part of the home communications segment.

insurance), accounting for about 10% of broadband sales between 2013 and 2015.[32] The CMA also found that just over 60% of people who used one or more DCTs used other sales channels too. In this study, the CMA also found that 75% of broadband sales were made directly with providers.[33] Taken together, this indicates that alternative non-DCT channels are used by a sizeable portion of consumers looking to switch home communications products – more so than in other product segments.

102. From a provider perspective, the CMA's DCTs market study also found that, of the products that were analysed, providers had the most negotiating power in the broadband segment.[34] This indicates that providers have more alternative routes to market than for other products. These alternative routes include those direct channels that about 75% of switching broadband consumers used (compared to 10% using DCTs) between 2013 and 2015.

103. In addition, while noting that DCTs represented a particularly important sales channel for reaching consumers, providers told the CMA that indirect online sales channels are generally important to them (either as a blended sales strategy or as their primary route to market).

104. While this provides evidence of some additional constraint from other channels, the CMA does not consider that this provides evidence that all channels are equally or sufficiently significant on a standalone basis to constrain the merged entity post-Merger. In particular, the CMA considers that, consistent with its approach to frame of reference, DCTs will face their primary constraint from other DCTs.

105. The CMA also considers that the Parties experience some indirect constraint from the availability of other online sales channels and in particular providers' direct sales channels and will continue to do so post-Merger.

Conclusion on horizontal unilateral effects in the supply of DCT services for home communications switching

106. While the CMA has seen some evidence to indicate that there is some competitive constraint between the Parties, they do not appear to compete particularly closely. Based on the evidence above, sufficient

[32] CMA DCTs market study, final report, paragraph 3.7 and figure 3.2
[33] CMA DCTs market study, final report, paper E, figure 2.14
[34] CMA DCTs market study, final report, paper E, figure 2.17

constraint will continue to be exerted by other DCTs in the market, and other home communications online sales channels, including providers' direct offerings (which appear to be more important in this product segment than in other segments), will also constrain the Parties.

107. Therefore, the CMA believes that the merged entity will face sufficient competitive constraint post-Merger. 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 the supply of DCT services for home communications switching in the UK.

Horizontal unilateral effects in the supply of DCT services for mobile switching

108. The concern under this theory of harm is that the removal of one party as a competitor could lead to increased prices (CPAs) to communications providers; lower quality of the comparison product to consumers (eg by reducing the range of deals included on their DCTs, or the number of exclusive deals, or the number/value of inducements), and/or reduce innovation.

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

(a) The Parties' shares of supply;

(b) Closeness of competition;

(c) Competitive constraints from other DCTs; and

(d) The strength of constraint from non-DCTs.

Shares of supply

110. The Parties submitted that they had relatively low shares of supply of DCT services in mobile switching – an estimated [20-25]% combined share of supply with an increment of [0-5]%, based on revenue earned in 2017. The Parties in particular noted the presence of uSwitch as the market leader.

111. Through its third party market testing, the CMA was able to refine market share estimates based on 2017 revenue, and estimate that the Parties have a combined share of supply of [20-25]%, with an increment of [0-5]%:

Table 2: Market shares in the supply of DCT services for mobile switching, 2017

Company	Market share (%)
uSwitch	[65-70]
MSM	[15-20]
Broadband Choices	[5-10]
Compare the Market	[0-5]
Gocompare	[0-5]
Other DTL clients	[0-5]
Other	[5-10]

Source: DCTs

112. Based on evidence provided by the Parties, the CMA found that these market shares have remained relatively stable over time.

Closeness of competition

113. The CMA considers that the above analysis of closeness of competition in the supply of DCT services for home communications switching[35] also applies to the supply of DCT services for mobile switching; namely that MSM's market share in spite of a lack of marketing activity indicates its brand power nonetheless makes it a significant supplier both from the perspectives of providers and consumers, and that it is not meaningful to draw analogies as regards closeness of competition from the Parties' differing marketing strategies.

114. Where mobile was specifically considered by third party competitors, they noted that the Parties were close competitors of those third parties due to similarities in their services. However, providers noted differences in the Parties' service propositions and listed a number of other suppliers which were rated similarly to the Parties.

115. Indicative of the even lower priority placed by MSM on mobile (compared to home communications), MSM had not produced a written review of the competitive dynamics in the supply of DCT services for mobile switching, and as described in paragraph 89 above, most of the Parties' internal documents had been prepared in anticipation of the Merger – meaning that the CMA was unable to place weight on internal documents as part of its analysis of closeness of competition for this product.

[35] Paragraphs 84 to 90

116. Therefore, on the basis of the evidence above, the CMA considers that the Parties compete relatively closely with each other, but the CMA has not seen evidence to suggest that they compete particularly closely.

Competitive constraints from other DCTs

117. uSwitch has an even larger share of supply of DCT services for mobile switching than it does for home communications switching, which suggests that it exerts a more significant constraint on the Parties in this product segment. This is echoed in third party responses, where product providers generally rated uSwitch most highly of the provider's DCT partners. For these reasons, the CMA considers that uSwitch is likely to exert the most significant constraint on the Parties and will continue to do so post-Merger.

118. While Compare the Market's share of supply is lower for mobile than it is for home communications, its latest revenues indicate that it is growing its presence in mobile switching too and is therefore exerting an increasing constraint on the Parties.

119. The CMA also notes that other multi-product, well-known, DCTs have a presence in this space, alongside the small but specialist mobile DCTs. Through third party testing the CMA found that these large DCT brands are generally considered to be significant competitors to each other, with providers generally using these larger DCTs, and DCTs acknowledging these types of large DCT as close competitors.

120. As with home communications, the Parties noted the presence of growing, smaller, players in the market, which are considered within the market share table above.[36] However, few of these smaller competitors were regularly acknowledged by competitor DCTs. The CMA also notes that there are fewer alternatives in this market than there are for home communications. As such, the CMA believes that these suppliers will provide some constraint but may not impose sufficient standalone constraint on the Parties post-Merger.

121. The CMA considers that the merged entity will therefore face sufficient constraint from other DCTs (particularly uSwitch) in order to prevent an SLC in this frame of reference. However, taking a cautious approach (given the Parties' shares of supply in the structure of this market) the

[36] Paragraph 111

CMA also considered other constraints that the Parties may face post-Merger.

Competitive constraints from other routes to market

122. As set out in paragraph 96 above, the Parties submitted that they are constrained by a number of alternative routes to switching.

123. The Parties noted in particular the presence of Carphone Warehouse, a mobile reseller, as a constraint on their DCTs. The Parties explained that DCTs have features in common with resellers, including price comparison and provision of information across a range of products, being free for consumers to use, and operating a commercial model based on generating revenue from suppliers of products or services. The Parties submitted that, from a consumer's point of view, resellers are likely to be functionally highly substitutable for DCTs.

124. While resellers in general may not exert a significant constraint on DCTs, there is evidence to indicate that Carphone Warehouse in particular is a competitive constraint on the Parties in the supply of DCT services for mobile switching:

(a) Evidence available to the CMA indicates that Carphone Warehouse has a significant online presence selling mobiles and its online sales are greater than the volume generated through all DCTs combined.

(b) Carphone Warehouse offers a service which, from a consumer perspective, functions in a similar way to a DCT, which may make them a meaningful constraint from another route to market. The Parties and a third party particularly noted Carphone Warehouse's marketing activity which positions it in a similar light to DCTs, using a "compare and save" strapline.

(c) Third party DCTs generally acknowledged that such online resellers posed some competitive constraint. A competitor DCT considered that Carphone Warehouse's online offering exerted a relatively strong competitive constraint.

125. From a provider perspective, as set out at paragraphs 102 and 103 above, providers also appear to place importance on indirect online sales channels generally, within which DCTs appear to be an important indirect route.

Conclusion on horizontal unilateral effects in the supply of DCT services for mobile switching

126. While the CMA has seen some evidence to indicate that there is some competitive constraint between the Parties, they do not appear to compete particularly closely. Based on the evidence received, the CMA considers that significant constraint from other DCTs will remain post-Merger. In addition, the CMA has received evidence to indicate that one online non-DCT option (ie Carphone Warehouse) is an additional, albeit differentiated, constraint.

127. Therefore, the CMA believes that the merged entity will face sufficient competitive constraint post-Merger. 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 the supply of DCT services for mobile switching in the UK.

Vertical effects

128. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer.

129. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[37]

130. Each Party is active in a market that supplies DCTs in mobile and home communications. DTL also supplies white label or API services and MSM, through MSE, also markets deals available on a range of DCTs.

131. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[38]

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[37] In relation to this theory of harm 'foreclosure' means either causing exit of a downstream rival or to substantially competitively weaken a downstream rival.

[38] Merger Assessment Guidelines, paragraph 5.6.6.

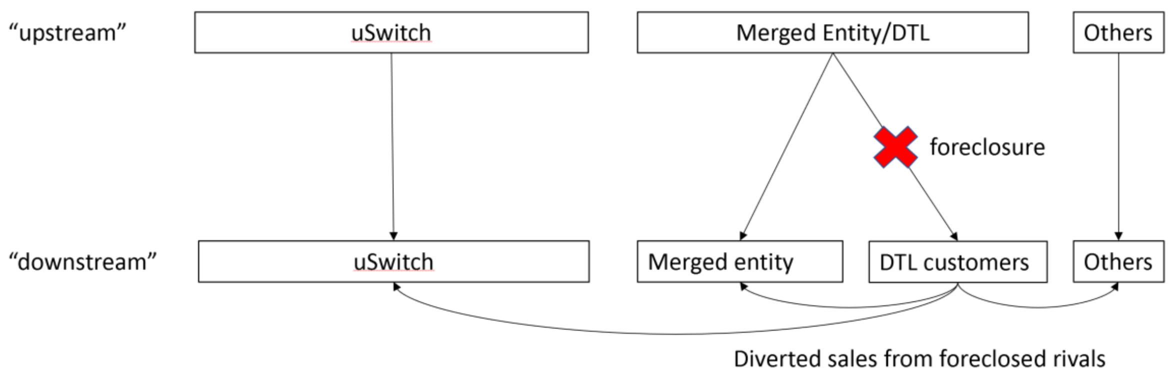
Vertical effects: input foreclosure in DCT services for mobile and home communications switching

132. As noted above, the CMA considered an input foreclosure theory of harm in relation to the Merger.

133. The CMA considered whether the merged entity would restrict an important input – namely the provision of white label services – to downstream DCT rivals, making it harder for those downstream rivals to compete with the Parties due to higher costs or a lower quality service. This restriction could be a result of either refusing to supply or lowering the quality/increasing the price of the white label service.

134. Any such strategy may cause the affected DCTs' customers to switch to other DCTs, including the merged entity's DCTs. If the merged entity were to carry out such a foreclosure strategy, it would lose its share of revenues on lost referrals made through its white label services (lost either because the DCT switches away from DTL or because the DCT stays with DTL but makes fewer referrals), but would gain revenues on all sales which switch to the merged entity's own DCTs. This is illustrated in the figure below. The Merger could therefore increase DTL's incentives to foreclose because post-Merger DTL would also benefit from sales which switch to MSM.

135. While the Merger does not bring about any change in the Parties' upstream positions because MSM does not currently supply white label services, the Merger changes the Parties' position in the downstream DCTs market and therefore could change the Parties' incentive to pursue a foreclosure strategy.



136. The Parties submitted that while the Parties do operate at different levels of the supply chain, the Merger would not give rise to any potential vertical effects which could lead to a substantial lessening of competition.

137. Third parties voiced concerns that the merged entity may give preferential treatment to its own DCTs over their non-MSM DCT clients in terms of rates, partners or services, which would disadvantage those DCTs.

138. In line with its guidance, the CMA assessed the evidence in relation to the following three questions:

(a) Ability: Would the merged entity have the ability to harm DCT rivals, by refusing to supply or increasing the price/lowering the quality of white label services?

(b) Incentive: Would the merged entity find it profitable to do so?

(c) Effect: Would the effect of any action by the merged entity be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to an SLC?

Ability

139. The Parties submitted that the merged entity would not be able to foreclose rivals because DCTs have access to other competing white label suppliers, and could switch suppliers with little cost.

140. As mentioned in the background section, some DCTs use white label services for industry sectors that are not their core industry areas. Third parties explained that they use white labels to reduce the necessary investment in a non-core sector and to utilise the white label provider's better knowledge of that non-core sector.

141. The merged entity can only harm other DCTs if (a) there are no alternative suppliers available to them, or (b) any alternative suppliers have lower quality or worse terms. Therefore, in this section the CMA will discuss the relative competitive strength of DTL as a white label supplier and potential alternatives, including self-supply and the possibility of entry by new white label suppliers.

Relative competitive strength of DTL

142. The Parties said that DCTs have alternative white label suppliers available to them, such as Stickee, Simplify Digital, and UK Web Media (now Comparison Technologies), or alternative service types such as affiliate links. They further submitted that:

(a) [✂][39]

(b) [✂] were all considered potential candidates and all met the pre-qualification criteria in MSM's recent procurement process for the supply of white label services.

(c) MSM used Stickee for 10 years and only ended its agreement after a careful consideration of alternative options, indicating that Stickee is a credible and effective alternative to DTL.[40]

(d) There are more white label service providers in the home communications market than in other sectors such as energy.

(e) In Google/BTQ[41] the OFT found that DCTs in the UK had "several alternative suppliers from which they could easily procure" and "would be able to resist price rises as they could and would look for alternative suppliers if any price rises or quality decline occurred".

(f) There is easy and frequent switching between white label suppliers including MSM in 2018, [✂] and [✂].[42]

143. The CMA considered evidence from recent tender history/evidence of growth, internal documents and third parties for the purposes of assessing alternatives and the relative strength of DTL. These all indicate that a number of alternatives operate in the supply of white label services including Stickee, UK Web Media and Simplify Digital.

144. In addition, responses from the Parties and third parties indicate that customers can switch suppliers relatively quickly. The CMA found that the process of switching was feasible within a reasonably short period, ie 3-6 months. While one DCT noted that it would take longer than 6 months to switch if any complexities were encountered, MSM switched more quickly than that and another DCT expected it could do so within 3 months.

145. However, evidence from MSM's internal documents (including procurement documents and other analysis created both pre- and post-Merger contemplation) and third parties indicates that, even pre-Merger, DTL may be better placed to supply white label services than rivals as a result of its scale and service offering.

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39 Merger Notice, Annex 44, page 46.

40 Response to Issues Letter, Annex 2, paragraph 2.9

41 Google/BTQ, OFT, 11 August 2011, paragraph 65

42 Response to Issues Letter, paragraph 3.2.4

146. When it starts supplying MSM, DTL will be significantly larger (in terms of the number of consumers using DCTs supplied by DTL) than its rival white label suppliers. The CMA understands that this scale may give it better CPAs and better access to exclusive offers than its rivals, which in turn will make DTL more attractive to DCTs using white label services.

147. DTL has recently had significantly more success than rivals in winning and retaining DCTs:

(a) DTL's tender information demonstrates that it has won [✂] of the [✂] formal tender processes that it has entered since April 2016.

(b) DTL supplies home communications and mobile white label services to several large multi-sector DCTs – namely Confused, Go Compare, and Compare the Market – and other smaller DCTs.

(c) Based on third party evidence, the CMA estimates that DTL's cited white label competitors account for less than 5% of the downstream DCT market in either home communications or mobile.[43]

148. Internal documents from MSE's and MSM's recent procurement processes indicate that DTL is a strong provider compared to alternative providers. Specifically:

(a) In both tenders DTL was rated very highly across a range of criteria.

(b) In contrast, MSM assessed that [✂].

(c) Similarly, MSE did not select a bid made by [✂].

149. Third party procurement documents and commentary further show that DTL is widely regarded as the strongest white label provider for home communications and mobile. In particular:

(a) DTL was selected by DCT clients because [✂].

(b) Alternatives were generally not rated as highly because they were smaller players and so third parties were sceptical that these would be viable alternatives in terms of scale and ability to provide an effective service.

[43] This is after MSM's move to DTL. The CMA was unable to estimate shares of supply for white label services but, since uSwitch self-supplies and serves over half the retail market, the competitors' share of white label services would be at least twice as large as this downstream figure.

(c) One DCT noted that while it would consider switching, switching away from DTL could put the DCT at a disadvantage given DTL's current ability to secure deals and revenue.

150. The CMA further notes that [✂],[44] [✂].

Conclusion on current alternatives

151. On the basis of this evidence, the CMA found that while a number of white label supplier alternatives exist and currently supply DCTs, DTL is the market leader such that other DCTs, while willing to consider alternative white label suppliers, may have a preference for being supplied by DTL. DCTs are able to switch white label supplier relatively quickly and have done so in the past, however given the strength of DTL's offering there is insufficient evidence to indicate that these alternatives are likely to become comparable to and as attractive as DTL.

Self-supply

152. The Parties said that DCTs could self-supply by developing their own in-house solution as a number of DCTs already have, including uSwitch, cable.co.uk, broadband-finder and Broadband Genie. The Parties estimate that this would take around 3-6 months and cost approximately £100,000.

153. The CMA notes that many third parties did not consider self-supply to be a commercially viable alternative. As noted above, third parties tend to source the provision of DCT services through a white label provider when the third party does not find it commercially viable to build its own platform, for example where the industry sector is not of sufficient importance to the DCT to merit bespoke investment, but the DCT still wants to provide a competitive offering in that area.

154. In that context, third party views confirmed that:

(a) Self-supply would be costly and take a significant period of time. In addition to the technological requirements it would be necessary to build relationships with multiple providers; and

(b) Self-supply might not be able to replicate the terms that could be achieved from a third party white label provider.

[44] [✂].

155. Based on the evidence above, the CMA considered that for many customers self-supply of white label is likely to be an inferior solution to that available from DTL and other external suppliers.

Entry

156. Alternatively, the Parties submitted that DCT customers could obtain white label services from a provider that is active in other sectors but not yet active in the home communications and mobile sectors. On this note, the Parties said that the provision of white label services in home communications and mobile is significantly less complex than for other sectors such as energy, and the key requirement would be for that provider to build the necessary commercial relationships with product providers.

157. The CMA has insufficient evidence to indicate that any entry would be timely, likely or sufficient to prevent or limit DTL's ability to foreclose.

Conclusion on ability

158. On the basis of the evidence above, the CMA believes that there are a number of alternatives to DTL that rival DCTs have previously used and could switch to. However, given DTL's current position and the strength of its offering, the merged entity may have some ability, post-Merger, to worsen the competitive offering of DCT rivals who rely on white label services.

Incentive

159. The CMA went on to consider whether a foreclosure strategy would be profitable for the Parties, ie whether the profit gained in the downstream DCT market would outweigh the lost profit in the supply of white label services.

160. The Parties submitted that they would not have the incentive to engage in a foreclosure strategy, in particular because:

(a) input foreclosure would contradict the publicly stated aims of the Merger to expand DTL's white label offering into additional areas, such as energy and personal finance. These other areas are a far more important source of revenue to MSM than home communications and banking, which make up less than 5% of MSM's revenue. Foreclosing existing customers in home communications and mobile would undermine attempts to acquire more DCT clients;

(b) it would damage MSM's reputation with consumers in a market which is focused on consumers' interests;

(c) were the merged entity to attempt to foreclose downstream rivals, it is likely that those rivals would nonetheless continue to compete with the merged entity using an alternative supplier; and

(d) if the merged entity ceased its relationship with its downstream rivals, this could reduce access to exclusive deals or decrease the level of CPAs that the merged entity could achieve.

161. The profitability of an input foreclosure strategy depends on the size of the profit gained in the downstream market (from increased sales diverted from rivals) compared with the lost profit on the upstream market (from a reduction of input sales).

162. The CMA believes that a number of factors limit the Parties' incentive to foreclose:

(a) the Parties' market shares downstream are relatively low, suggesting that they would not recapture a large proportion of sales lost by foreclosed DCTs (with the majority of the benefit likely to accrue to uSwitch, which cannot be foreclosed);

(b) the extent of recapture would be to some extent further limited by constraints from other ways in which customers compare products, such as the use of providers' direct sales channels for home communications products or Carphone Warehouse for mobile products (as discussed in paragraphs 96 to 105 and 122 to 125 respectively);

(c) as highlighted by the Parties (see paragraph 160(d)), losing white label sales would lead to a loss of scale as well as profit. As scale may benefit the Parties' own DCTs by allowing DTL to negotiate a better CPA, exclusive deals and inducements from providers (see paragraph 146), this would increase the downside of losing these sales and thus reduce the incentive to foreclose; and

163. The CMA's analysis of plausible recapture rates (based on downstream shares of supply) and available data on profit margins upstream for the supply of white label services and downstream for DCTs[45] confirmed that any foreclosure strategy would not be profitable, when accounting for the

[45] The CMA found that the profit margin downstream was greater than the profit margin upstream. However, the difference in profit margins was not sufficient to give the Parties an incentive to foreclose given the other factors discussed.

factors outlined above. This is particularly the case given the ability of DCTs to switch to one of the other available white label suppliers, which would limit their loss of customers but cause the merged entity to lose all wholesale revenue from that DCT.

164. The CMA first considered a strategy where the merged entity might refuse to supply downstream DCT rivals. Under such a strategy the merged entity would lose all of its upstream wholesale profit margin and, in order to make such a refusal to supply profitable, would need to gain sufficient downstream profit margin from recaptured sales lost by its DCT rivals. It is not at all clear that the merged entity would regain sufficient downstream sales even if rival DCTs lost all of their sales, which the CMA considers would be implausible. As discussed above, the CMA believes that rival DCTs could move to an alternative, white label provider, and therefore would remain in the market, which would allow those rival DCTs to retain at least some sales. Given also the Parties' relatively limited shares of supply in the DCT markets, they could be expected gain at most only a small proportion of sales lost by DCT rivals through such a strategy. Therefore this strategy would cause the Parties to lose all of their upstream wholesale profit margin, while recapturing only a small proportion of the displaced downstream DCT sales. On this basis, the CMA believes that this strategy would clearly not be profitable.

165. The CMA also considered an alternative strategy where the merged entity might offer worse terms to rival DCTs or otherwise degrade the quality of white label service provided, hoping to keep the DCT client but gain some of its end customers to its own DCTs (such as MSM). This strategy could be profitable if the merged entity lost none of its upstream wholesale profit margin, DCT rivals lost all of their sales (but did not switch away) and the merged entity recaptured the proportion of downstream sales currently represented by the Parties' share of supply. Again, it is not plausible to assume that rival DCTs would lose all sales as a result of such a strategy and given the Parties' shares of supply in DCT markets, they would only be expected to capture a relatively small proportion of any lost DCT sales. In addition, given the concerns expressed by some DCTs supplied by DTL, it may make it difficult for the merged entity to degrade the service without this being observed by their DCT clients. Any degradation of service by DTL may therefore cause the loss of the DCT client, leading to reputational harm as well as loss of profit margin upstream. On this basis, the CMA believes that this strategy would clearly not be profitable.

166. On the basis of the evidence set out above, the CMA believes that post-Merger the merged entity would not have the incentive to foreclose the supply of white label services to home communication or mobile DCTs.

Given this conclusion, the CMA has not assessed the effect on competition of a foreclosure strategy.

Conclusion

167. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in the supply of DCT services for home communications or mobile switching.

Vertical effects: input foreclosure of DCTs not supplied by DTL for mobile and home communications

168. The CMA received concerns that the Merger could give rise to input foreclosure of DCTs not supplied by DTL (particularly smaller DCTs) that currently list their deals through MSE, through the MSM Group choosing to only publish links produced by the merged entity or the merged entity's other DCT clients.[46]

169. While the Merger does not bring about any change in the Parties' upstream positions, the Merger changes the Parties' position in the downstream DCTs market (increasing the share of customers that might be recaptured) and therefore could change the Parties' incentive to pursue a foreclosure strategy.

Ability

170. The CMA found that DCTs, including DCTs not supplied by DTL, are not particularly reliant on MSE as a source of visits, referrals or revenue with it accounting for, at most, just a few percent of each. On the basis of this evidence, the CMA considers that the merged entity would not have the ability, post-Merger, to harm rival DCTs' ability to compete. Given this conclusion, the CMA did not find it necessary to consider the merged entity's incentive to engage in such a strategy or its effect.

Conclusion

171. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to

[46] The Parties submitted that the merged entity would not have the ability or incentive to do this because MSE's links and recommendations are driven by the MSE Editorial Code which requires editorial decisions, such as highlighting the best available deals, to be independent from commercial objectives. The CMA did not find it necessary to consider this given its conclusion below.

input foreclosure of DCTs not supplied by DTL for mobile and home communications in relation to MoneySavingExpert.

Barriers to entry and expansion

172. 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.[47]

173. 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

174. The CMA contacted competitors of the Parties, DCT clients and product providers. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

175. 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 United Kingdom.

176. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sheldon Mills
Senior Director
Competition and Markets Authority
7 August 2018

[47] *Merger Assessment Guidelines*, from paragraph 5.8.1.