

# Acquisition by Dye & Durham (UK) Limited of TM Group (UK) Limited

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

**ME/6963/21**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 9 December 2021. Full text of the decision published on 1 March 2022.

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

### **SUMMARY**

1. On 8 July 2021, Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**), acquired TM Group (UK) Limited (**TMG**) from TMG's former shareholders, Countrywide Group Holdings Limited (**Countrywide**), Connells Limited (**Connells**), and LSL Property Services plc (**LSL**) (together, the **Sellers**) (the **Merger**). D&D and TMG are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of D&D and TMG 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, as extended under sections 25(1) and 25(2) of the Enterprise Act 2002 (the **Act**), 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 property search reports as part of single 'search packs' (**Property Search Report Bundles**) in England and Wales (**E&W**). Property Search Report Bundles are ordered by conveyancers (eg law firms and licensed conveyancers) and intermediaries (eg panel managers that arrange for property transactions and typically refer a consumer to a conveyancer, estate agents,

lenders, and mortgage brokers) during the due diligence process in property transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties in E&W.

4. The CMA considered evidence relating to current market structure, closeness of competition between the Parties, and competitive constraints imposed on the Parties from other suppliers of Property Search Report Bundles in E&W. The CMA found the Merger raises significant competition concerns as a result of horizontal unilateral effects in the supply of Property Search Report Bundles in E&W because:
  - (a) The supply of Property Search Report Bundles in E&W is becoming more concentrated, with only four main suppliers (the Parties, Landmark Information Group (**Landmark**) and Australian Technology Innovators (**ATI**)). There is also a tail of smaller, often regional suppliers. The Merger would create a clear market leader and reduce from four to three the number of large national suppliers of Property Search Report Bundles in E&W.
  - (b) The Parties compete closely with each other for a significant volume of sales. The Parties are also expected to compete even more closely in the future.
  - (c) Customers are insensitive to price increases and the CMA has seen evidence of D&D's intention to raise prices post-Merger.
  - (d) ATI and Landmark compete closely with the Parties and are expected to continue to compete closely with the Merged Entity after the Merger. However, the constraints from ATI and Landmark are unlikely to be sufficient to prevent a significant reduction in competition.
  - (e) Smaller competitors constitute only a limited constraint on the Parties and there is no evidence that they would act as a more significant constraint on the Merged Entity in the future.
5. The CMA also believes that there are material barriers to entry and expansion and that entry of new suppliers or expansion by smaller suppliers would not be timely, likely and sufficient in response to the Merger. As such, the CMA believes that entry or expansion in E&W would not be sufficient to prevent competition concerns as a result of the Merger.
6. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of Property Search Report Bundles in E&W.

7. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. D&D has until 16 December 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

# ASSESSMENT

## PARTIES

8. D&D provides cloud-based software and technology solutions for legal and business professionals in the UK, Canada, Australia, and Ireland. Its UK offering includes technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Northern Ireland.<sup>1</sup> D&D is headquartered in Canada and listed on the Toronto Stock Exchange. D&D had £[X] of UK turnover in the financial year ending 30 June 2021.<sup>2</sup>
9. TMG also provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Scotland.<sup>3</sup> TMG is headquartered in England and had UK turnover of £57,098,000 in 2020.<sup>4</sup>
10. Pre-Merger, TMG's majority shareholders were three UK-based estate agents, namely Countrywide, Connells,<sup>5</sup> and LSL.<sup>6</sup>

## TRANSACTION

11. D&D's wholly-owned subsidiary, D&D UK, acquired the entire allotted and issued share capital of TMG for approximately £91.5 million<sup>7</sup> pursuant to a share purchase agreement dated and effective on 8 July 2021 (**SPA**).<sup>8</sup>
12. In connection with the SPA, TMG and [X] entered into agreements for the [X] supply of Property Search Report Bundles, including property search reports

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<sup>1</sup> As noted in Table 1, D&D entered the UK property search industry with the acquisition of a majority interest in Easy Convey in 2016. Since then, D&D has acquired various other businesses active at different levels of the property search supply industry in E&W and one supplier of Property Search Report Bundles in Northern Ireland. In E&W, D&D is active through Easy Convey Limited (**Easy Convey**); Index Property Information Limited (**Index PI**); Stanley Davis Group Limited (**SDG**); Property Information Exchange Limited (**PIE**); PSG Connect Limited (**PSG**); Terrafirma IDC Limited (**Terrafirma**); Future Climate Info Limited (**FCI**); certain assets of CLS Property Insight Limited (**CLS**); Lawyer Checker Limited (**Lawyer Checker**); and GlobalX (UK) Limited (**GlobalX UK**). In Northern Ireland, D&D is active through LawLink (UK) Ltd (**LawLink NI**).

<sup>2</sup> Response submitted by D&D on 17 September 2021 to the section 109 notice issued by the CMA on 25 August 2021 (**Response to the Enquiry Letter**), Annex 14.01.

<sup>3</sup> TMG was established in 1999. In E&W, TMG is active through tmConvey/tmConnect; Conveyancing Data Services (**CDS**); and Mio. In Scotland, TMG is active through Property Searches Scotland (**PSS**).

<sup>4</sup> Response to the Enquiry Letter, paragraph 9.1.

<sup>5</sup> Connells acquired Countrywide on 8 March 2021. See [Connells Group completes acquisition of Countrywide](#).

<sup>6</sup> Joseph Pepper (TMG's Chief Executive Officer) and Paul Albone (TMG's Chief Operating Officer) were also shareholders of TMG pre-Merger. Response to the Enquiry Letter, Annex 03.01, Schedule 1.

<sup>7</sup> Response to the Enquiry Letter, Annex 06.01.

<sup>8</sup> Response to the Enquiry Letter, Annex 03.01.

supplied by [X].<sup>9</sup> Under TMG's [X] agreed to purchase [X] property search requirements from TMG.<sup>10</sup> D&D's internal documents discussing the Merger indicate that these [X] supply agreements were sought to [X] purchase volumes from [X] to TMG post-Merger.<sup>11</sup>

## Transaction rationale

13. D&D submitted that the Merger will enhance its offering in the UK property search industry, specifically its supply of Property Search Report Bundles to conveyancers and intermediaries. According to D&D, the Merger will allow it to expand into Scotland and in areas that were not previously a focus, including commercial properties, social housing, and estate agents.<sup>12</sup>
14. D&D's internal documents discussing the Merger are consistent with its stated rationale for the Merger,<sup>13</sup> but also indicate that the Merger is part of a broader strategy [X] in the UK via inorganic growth.<sup>14</sup> D&D entered the UK property search industry with the acquisition of 51% in Easy Convey in 2016.<sup>15</sup> Since then, D&D purchased the remaining 49% interest in Easy Convey in 2017, and acquired many other businesses active at different levels of the property search supply industry in E&W, and one supplier of Property Search Report Bundles in Northern Ireland (see Table 1).

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<sup>9</sup> Response to the Enquiry Letter, Annex 03.02 (clauses 2.1, 2.6-2.7, 12 and Schedule 1) and Annex 03.03 (clauses 2.1, 2.6-2.7, 12 and Schedule 1). TMG also signed [X] with [X] in relation to the provision of [X] to TMG's Mio for a period of [X]. Response to the Enquiry Letter, Annex 03.04. Mio is a sales progression platform for residential property transactions primarily designed for estate agents to help them keep track of the status of each property transaction on which they are currently instructed. The platform is also integrated with a consumer application for home-movers. Response submitted by D&D on 18 October 2021 to the section 109 notice issued by the CMA on 11 October 2021 (**Response to the section 109 notice of 11 October 2021**), paragraph 9.1.

<sup>10</sup> Response submitted by D&D on to questions 12(a) and 12(c) of the section 109 notice issued by the CMA on 27 September 2021, paragraph 12.4.

<sup>11</sup> Response to the Enquiry Letter, Annex 21.01; Annex 21.04 (pages 13 and 16), Annex 21.05 (page 5).

<sup>12</sup> Response submitted by D&D on 18 August 2021 to the request for information issued by the CMA's merger intelligence committee on 10 August 2021 (**Response to MIC RFI**) paragraph 2.2. D&D slide deck for meeting with the CMA on 27 October 2021, page 3.

<sup>13</sup> Response to the Enquiry Letter, Annex 21.04 (page 5) and Annex 21.05 (page 5).

<sup>14</sup> Response to the Enquiry Letter, Annex 20.03 (page 16), Annex 21.08 (pages 25, 27-28), Annex 21.11 (pages 4-5).

<sup>15</sup> Response to the Enquiry Letter, paragraphs 11.5 and 11.5.4.

**Table 1: D&D's acquisitions in the property search industry, UK<sup>16</sup>**

| <i>Business acquired</i>        | <i>Region</i>                              | <i>Year</i> | <i>Shareholding</i> |
|---------------------------------|--|-------------|---------------------|
| Easy Convey                     | E&W  | 2016/2017   | 100%                |
| Finlay Associates <sup>17</sup> | E&W  | 2018        | 100%                |
| Index PI                        | E&W  | 2019        | 100%                |
| SDG                             | E&W  | 2020        | 100%                |
| PIE                             | E&W  | 2020        | 100%                |
| PSG                             | E&W  | 2020        | 100%                |
| Terrafirma                      | E&W  | 2021        | 100%                |
| FCI (and certain assets of CLS) | E&W  | 2021        | 100%                |
| Lawyer Checker                  | E&W  | 2021        | 100%                |
| GlobalX UK                      | E&W  | 2021        | 100%                |
| LawLink NI                      | Northern Ireland                           | 2021        | 100%                |
| <b>TM Group</b>                 | <b>E&amp;W, Northern Ireland, Scotland</b> | <b>2021</b> | <b>100%</b>         |

15. D&D's internal documents [redacted] consider [redacted] options for [redacted] from increases in TMG's prices [redacted].<sup>18</sup> The internal documents in question indicate that an increase of [redacted] in TMG's prices post-Merger was part of [redacted] of the TMG business discussed by [redacted].<sup>19</sup> D&D submitted that the price rise contemplated in those internal documents was an illustrative assumption [redacted] and that the Merger would have been implemented even where no price increase was assumed.<sup>20</sup> The CMA has seen no further documentary evidence to support the submission that the proposed price rise was not [redacted]. The increase in TMG's prices contemplated in D&D's internal documents is further discussed in the **Competitive Assessment** (see from paragraph 114).

16. D&D's internal documents discussing the Merger further indicate that D&D expects the Merger to generate [redacted] to some of D&D's [redacted] businesses which are used by TMG in supplying Property Search Report Bundles.<sup>21</sup> [redacted].<sup>22</sup>

<sup>16</sup> Response to the Enquiry Letter, paragraphs 8.2-8.3, 11.5 and 11.5.4, Annex 20.03 (pages 3, 17-18), Annex 21.04 (page 4), Annex 21.05 (page 4). See also, [press release – D&D's acquisition of Easy Convey Ltd](#); [press release – D&D's acquisition of Finlay Associates](#); [press release – D&D's acquisition of Index PI](#); [press release – D&D's acquisition of SDG](#); [press release – D&D's acquisition of PIE and PSG](#); [press release – D&D's acquisition of Terrafirma](#); [press release – D&D's acquisition of FCI and assets of CLS](#); [Lawyer Checker filing history](#); [press release – D&D's acquisition of GlobalX](#); [LawLink NI filing history](#); [D&D's acquisition of TMG](#).

<sup>17</sup> Finlay Associates was dissolved in 2020. See [Finlay Associates filing history](#).

<sup>18</sup> Response to the Enquiry Letter, Annex 21.03 (pages 3-4); Annex 21.04 (pages 18, 20); Annex 21.05 (pages 9, 16).

<sup>19</sup> For instance, a D&D internal document of 2 June 2021 [redacted] indicate that D&D had [redacted] (Response to the section 109 notice of 11 October 2021, Annex 12.02). A D&D internal document of 3 June 2021 [redacted] refers to [redacted] price increase [redacted] (Response to the Enquiry Letter, Annex 21.03, pages 3-4). Certain D&D's internal documents of 24 and 30 June 2021 [redacted] refer to [redacted] price increase and consider such price increase within the [redacted] (Response to the Enquiry Letter, Annex 21.04, pages 5, 18 and 20; Annex 21.05, pages 9 and 16). These internal documents were considered by [redacted] the Merger (Response to the Enquiry Letter, Annex 21.06, item 4; Annex 21.07; items 3-4 and Schedule A).

<sup>20</sup> Response submitted by D&D to the Issues Paper issued by the CMA on 10 December 2021 (**Response to the Issues Paper**), paragraph 6.9.

<sup>21</sup> Response to the Enquiry Letter, Annex 21.04 (pages 5, 18 and 20), Annex 21.05 (pages 5, 9 and 16). Response to the section 109 notice of 11 October 2021, Annex 12.02.

<sup>22</sup> Lawyer Checker's main product is Account & Entity Screen, which provides real-time reporting on the legitimacy of conveyancers acting on a real estate transaction and their back accounts. Response to the Enquiry Letter, paragraph 11.5.8. See also [Lawyer Checker](#).

17. TMG submitted that the Merger represents an exit opportunity for the Sellers who have made efforts to sell TMG [X],<sup>23</sup> [X].<sup>24</sup> TMG's internal documents are broadly consistent with the stated rationale for the Merger from the perspective of the Sellers.<sup>25</sup>

## PROCEDURE

18. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>26</sup>
19. The CMA provided the Parties with an Issues Paper setting out its concerns around the Merger. After hearing the Parties at an Issues Meeting and reviewing their additional written submissions, the Merger was considered at a Case Review Meeting.<sup>27</sup>

## JURISDICTION

20. Each of D&D and TMG is an enterprise under section 129 of the Act. As a result of the Merger, these enterprises have ceased to be distinct for the purposes of sections 23(2)(a) and 26 of the Act.
21. The CMA believes that the share of supply test in section 23(2)(b) of the Act is met. The Parties overlap in the supply of Property Search Report Bundles in E&W, where the estimated combined share of supply was approximately [40-50]% in 2020, with an increment of approximately [20-30]% brought about by the Merger (see Table 3).<sup>28</sup>
22. The Merger was completed and made public on 8 July 2021.<sup>29</sup> The four-month deadline for a decision under section 24 of the Act is 31 December 2021, following extensions under sections 25(1) and 25(2) of the Act.
23. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

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<sup>23</sup> Response submitted by D&D on 4 October to the section 109 notice issued by the CMA on 27 September 2021 (**Response to the section 109 notice of 27 September 2021**), paragraph 5.2. Response to the Issues Paper, footnote 18 to paragraph 7.6.

<sup>24</sup> Response to the Enquiry Letter, paragraph 18.3. Response to the Issues Paper, paragraphs 7.6-7.10

<sup>25</sup> Response to the Enquiry Letter, Annex 21.09, Annex 21.10.

<sup>26</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraphs 6.4-6.6.

<sup>27</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, page 46.

<sup>28</sup> Based on the CMA's own market size and share of supply estimates. The CMA notes that the share of supply test in section 23(2)(b) of the Act would in any event be met by the Parties' own market size and share of supply estimates, where they had a combined share of approximately [20-30]% in the supply of Property Search Report Bundles in E&W in 2020, with an increment of approximately [10-20]% brought about by the Merger.

<sup>29</sup> Response to MIC RFI, paragraph 2.1. See also [D&D Acquires TMG](#) and [tm blog | tmgroup welcomes D&D acquisition](#).

24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 14 October 2021 and the statutory 40 working day deadline for a decision is therefore 9 December 2021.

## COUNTERFACTUAL

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>30</sup> 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.<sup>31</sup> The counterfactual for completed mergers may, where appropriate, also consist of conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition,<sup>32</sup> but the CMA will often focus on significant changes affecting competition between the merger firms<sup>33</sup> that would also make a material difference to its competitive assessment.<sup>34</sup>
26. In its assessment, the CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.<sup>35</sup> Accordingly, the CMA will not have as counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth investigation, given the uncertainty over whether such an acquisition would, ultimately, be cleared or subject to subsequent remedial action.<sup>36</sup> In addition, if the CMA must consider multiple potential counterfactual scenarios where each of those scenarios is a realistic prospect, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.<sup>37</sup>
27. The Parties submitted that the Sellers have made efforts to sell the TMG business [X].<sup>38</sup> The Parties also submitted that more recently, [X], TMG's senior

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<sup>30</sup> [Merger Assessment Guidelines](#) (CMA 129), March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

<sup>31</sup> [Merger Assessment Guidelines](#), paragraph 3.1.

<sup>32</sup> [Merger Assessment Guidelines](#), paragraph 3.2.

<sup>33</sup> [Merger Assessment Guidelines](#), paragraph 3.8.

<sup>34</sup> [Merger Assessment Guidelines](#), paragraph 3.9.

<sup>35</sup> [Merger Assessment Guidelines](#), paragraph 3.11.

<sup>36</sup> [Merger Assessment Guidelines](#), paragraph 3.11.

<sup>37</sup> [Merger Assessment Guidelines](#), paragraph 3.12.

<sup>38</sup> Response to the section 109 notice of 27 September 2021, paragraph 5.2. Response submitted by D&D on 4 November 2021 to the request for documents issued by the CMA on 29 October 2021 (**Response to the Request for Documents of 29 October 2021**), question 1. Response to the Issues Paper, footnote 18 to paragraph 7.6.



management advised the Sellers that there were [X] options going forward [X]<sup>39</sup> sell TMG.<sup>40</sup>

28. According to the Parties, the Sellers [X] resolved to sell TMG [X].<sup>41</sup> The Parties further submitted that [X] TMG had [X] been approached by D&D, but also considered whether other trade buyers or private equity firms might be suitable acquirers.<sup>42</sup> Prior to completing the Merger, TMG was approached by [X], a competitor [X], and also held discussions with private equity firms.<sup>43</sup>
29. The Parties submitted that [X] disputed the feasibility of a non-trade sale.<sup>44</sup> In response to the CMA's Issues Paper, the Parties also submitted that absent the Merger or another trade sale, the Sellers would have gradually [X] in the business, decreasing TMG's competitive strength over time.<sup>45</sup> According to the Parties, although TMG did receive [X] enquiries from private equity firms and other financial investors, this interest was [X].<sup>46</sup>
30. TMG's internal documents and evidence from third parties corroborate the Parties' submissions that the Sellers have made efforts to sell TMG [X].<sup>47</sup> TMG's internal documents further indicate that senior management and the Sellers discussed the sale of the TMG business,<sup>48</sup> with D&D's internal documents showing that [X] TMG would likely engage in discussions with alternative buyers [X].<sup>49</sup>
31. In relation to the sale of TMG to other potential trade buyers, the CMA has only seen evidence that [X].<sup>50</sup> As discussed in the **Competitive Assessment** (see from paragraph 52), these are [X] suppliers of Property Search Report Bundles in E&W [X]. Given that the CMA will not have as its counterfactual a sale of the TMG

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<sup>39</sup> As noted in footnote 9, Mio is a sales progression platform for residential property transactions primarily designed for estate agents to help them keep track of the status of each property transaction on which they are currently instructed. The platform is also integrated with a consumer application for home-movers. Response to the section 109 notice of 11 October 2021, paragraph 9.1.

<sup>40</sup> Response to the Enquiry Letter, paragraph 18.3. Response to the Request for Documents of 29 October 2021 question 3. Response to the Issues Paper, paragraph 7.6.

<sup>41</sup> Response to the Enquiry Letter, paragraph 18.3. Response to the Request for Documents of 29 October 2021 question 3. Response to the Issues Paper, paragraph 7.7.

<sup>42</sup> Response to the Enquiry Letter, paragraph 18.3.

<sup>43</sup> Response to the Enquiry Letter, paragraph 18.3. Response to the section 109 notice of 27 September 2021, paragraph 5.4.

<sup>44</sup> Response to the Enquiry Letter, paragraph 18.4. Response to the section 109 notice of 27 September 2021, paragraph 5.1. Response to the Request for Documents of 29 October 2021 question 3. Response to the Issues Paper, paragraph 7.2.

<sup>45</sup> Response to the Issues Paper, paragraphs 7.2 and 7.9-7.10.

<sup>46</sup> Response to the section 109 notice of 27 September 2021, paragraph 5.2. Response to the Request for Documents of 29 October 2021 question 3. Response to the Issues Paper, paragraphs 7.3-7.4.

<sup>47</sup> Response to the Enquiry Letter, Annex 21.10. See also, [X].

<sup>48</sup> Response to the Enquiry Letter, Annex 21.09 and Annex 21.10. Response to the Request for Documents of 29 October 2021, Annex 02.02.

<sup>49</sup> Response to the Enquiry Letter, Annex 21.04 (page 2),

<sup>50</sup> As noted at paragraph 28, the Parties submitted that prior to completing the Merger TMG was approached by [X]. A TMG internal document also indicate that D&D and [X] expressed an interest in the TMG business in the recent or near-recent past. Evidence from third parties also indicate that large competitors would be interested in and have the resources to acquire TMG. See [X].

business to an alternative trade buyer that is likely to result in a referral for an in-depth investigation, the CMA has not given any further consideration to a counterfactual involving an acquisition of TMG by a main competitor of the Parties.

32. Regarding the Parties' submissions that the Sellers would have [redacted] in TMG, the Parties have not provided evidence that TMG's competitive strength would have decreased over time.<sup>51</sup> As discussed in the **Competitive Assessment** (see from paragraph 52), the evidence suggests that TMG is one of the established main suppliers of Property Search Report Bundles in E&W and is an important constraint on D&D and other competitors. In addition, the CMA has not seen evidence that TMG's position in the supply of Property Search Report Bundles in E&W would have materially changed absent the Merger. As such, given that the counterfactual focuses only on significant changes affecting competition between the merger parties,<sup>52</sup> the CMA has not given further consideration to a counterfactual involving weaker competition between the Parties compared to the pre-Merger conditions of competition.
33. Regarding the sale to non-trade buyers, the Parties' submissions and internal documents demonstrate that the Sellers considered selling the TMG business to private equity firms and other financial investors not currently involved in the UK property search industry. For instance, [redacted] attracted interest from a number of private equity and venture capital firms, such as [redacted].<sup>53</sup> Since then, TMG's senior management has continued to be proactively approached by [redacted], other private equity and venture capital firms, and financial advisors.<sup>54</sup> In addition, TMG and [redacted] held further discussions [redacted].<sup>55</sup> The CMA has not seen evidence to suggest that interest from private equity firms and other financial investors was [redacted].<sup>56</sup>
34. The CMA accepts that [redacted] in light of the Seller's interest in disposing of TMG and evidence of interest from non-trade buyers, the CMA believes that absent a sale to a trade buyer, the Sellers would sell TMG to a non-trade buyer. As such, given that the sale of the TMG business to non-trade buyers is an alternative realistic counterfactual scenario where D&D and TMG exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive

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<sup>51</sup> Response to the Issues Paper, paragraphs 7.2 and 7.9-7.10.

<sup>52</sup> [Merger Assessment Guidelines](#), paragraph 3.8.

<sup>53</sup> Response to the section 109 notice of 27 September 2021, paragraph 5.2.1.

<sup>54</sup> Response to the section 109 notice of 27 September 2021, paragraphs 5.2.2-5.2.3. Response to the Request for Documents of 29 October 2021, Annex 02.01; Annex 03.01, Annex 03.03, Annex 03.04, Annex 03.05, Annex 03.06, Annex 03.07, Annex 03.09.

<sup>55</sup> Response to the section 109 notice of 27 September 2021, paragraph 5.2.3. Response to the Request for Documents of 29 October 2021, question 2 and Annex 02.01 and Annex 02.02.

<sup>56</sup> A number of TMG's internal documents rather show private equity and other financial investors and advisers attempting to contact TMG, [redacted] (Response to the Request for Documents of 29 October 2021, Annex 03.01, Annex 03.03, Annex 03.04, Annex 03.05, Annex 03.06, Annex 03.07, Annex 03.09). In addition, a TMG internal document of 8 October 2020 shows [redacted] that a sale to a private equity firm was also feasible [redacted].

constraints on D&D and TMG, the CMA believes that this represents the most competitive realistic counterfactual. This counterfactual is akin to the prevailing conditions of competition pre-Merger.

35. The CMA therefore believes the pre-Merger conditions of competition to be the relevant counterfactual, but with TMG under different control and ownership from the Sellers.

## BACKGROUND

### The property search industry in E&W<sup>57</sup>

36. Property Search Report Bundles are packages of separate property search reports that inform the value, risk, and general context of the real estate and its surroundings.
37. There are several different types of property search reports that may be combined into Property Search Report Bundles. These are compiled and supplied by different upstream suppliers of property search reports<sup>58</sup> and include in E&W:
- (a) Local Authority (**LA**) searches, which provide information on a piece of property held by the local government authority in whose area the property is based (eg building status, conservation areas, outstanding charges on property, planning information, local infrastructure etc);<sup>59</sup>
  - (b) Drainage and Water (**DW**) searches, which identify a property's water supply, drainage and sewer access, water quality, etc;<sup>60</sup>
  - (c) environmental and flood reports, which inform a property's risk of flooding and other environmental concerns; and
  - (d) other property search reports, which may contain information on a variety of other risks and features of specific properties, including ground quality, mining-related information, chancel liability, etc.

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<sup>57</sup> D&D also supplies Property Search Report Bundles in Northern Ireland through LawLink NI. TMG also supplies Property Search Report Bundles in Scotland through PSS. For the purposes of this decision, the CMA did not consider it necessary to assess these businesses any further for the reasons set out in the **Frame of Reference** assessment below.

<sup>58</sup> For example, official information holders (eg Local Authorities and water companies) and commercial suppliers.

<sup>59</sup> LA searches are and have historically been compiled by LAs, and in this case are known as 'official' LA searches. However, LA searches are increasingly compiled by commercial suppliers, which offer faster turn-around times to gather information. In this case, LA searches are known as 'regulated' or 'personal' LA searches.

<sup>60</sup> DW searches can be compiled by either [official information holders](#), and in this case are known as 'official' DW searches, or by commercial suppliers, and in this case are known as 'regulated' or 'personal' DW.

38. A typical Property Search Report Bundle in E&W will contain (at a minimum) a LA search, a DW search and (in most cases) an environmental report.<sup>61</sup>
39. Property Search Report Bundles are supplied to conveyancers, including large to small law firms and licensed conveyancers, for the ultimate benefit of buyers and sellers of residential and commercial property in E&W. According to the Parties, Property Search Report Bundles are also increasingly supplied through intermediaries, including panel managers,<sup>62</sup> estate agents, lenders, and mortgage brokers.<sup>63</sup> The Parties explained that intermediaries may recommend a conveyancer to property purchasers they are dealing with, and where this recommendation is accepted, will typically arrange the supply of Property Search Report Bundles.<sup>64</sup>
40. Conveyancing risk management reports may also be included in Property Search Report Bundles. These are compiled and supplied by different upstream providers and include, for example, reports to check the legitimacy of conveyancers acting on a real estate transaction (and their back accounts) and anti-money laundering reports.
41. The supply of Property Search Report Bundles may also include the provision of various ancillary services. These are designed to provide a one-stop-shop to support conveyancers and intermediaries with property transactions, reducing transaction costs and improving the efficiency and quality of service provided.<sup>65</sup> Ancillary services may include the provision of transaction workflow platforms, document sharing tools (which allow conveyancers and intermediaries to share transaction documents), mapping tools, conveyancing quotation tools (which provide conveyancing fee estimates), HM Land Registry completion tools, conveyancing insurance products.
42. According to the Parties, while Property Search Report Bundles will typically comprise the same essential components (ie a LA search, a DW search and an environmental report), the associated service offerings, including the speed to produce Property Search Report Bundles and the ease of use of the systems to place and manage orders for the conveyancer and intermediary, is different across

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<sup>61</sup> Response to the Enquiry Letter, paragraph 11.3.3

<sup>62</sup> These manage and provide access to panels of conveyancing firms.

<sup>63</sup> Response to the Issues Paper, paragraph 2.4.

<sup>64</sup> For example, an estate agent may introduce a house buyer/seller to a conveyancer through a panel manager. The panel manager will generally have an arrangement with a preferred supplier of Property Search Report Bundles. The panel manager will charge a referral fee to the supplier of Property Search Report Bundles for introducing/intermediating the business. This fee will typically be added to the cost of the Property Search Report Bundle charged to the conveyancer, who in turn will charge the cost as a disbursement to the house buyer/seller. The panel manager will also generally charge a similar referral fee to the conveyancer. This is referred to as 'panelling'. Response to the Issues Paper, paragraphs 2.2 and 2.4.

<sup>65</sup> Response to the Enquiry Letter, paragraph 11.17.

suppliers.<sup>66</sup> Accordingly, suppliers of Property Search Report Bundles compete within two main parameters of competition: price and quality of service.<sup>67</sup>

43. Some suppliers of Property Search Report Bundles are vertically integrated with upstream suppliers of property search reports (and conveyancing risk management reports) and can source all or some of the reports they need from within their own business.<sup>68</sup> Other suppliers of Property Search Report Bundles are not vertically integrated and source property search reports (and conveyancing risk management reports) from third party upstream suppliers, including suppliers that are vertically integrated.<sup>69</sup>
44. The Parties' businesses with activities in the supply of Property Search Report Bundles, the upstream property search reports, and the upstream conveyancing risk management reports are summarised in Table 2 for E&W.

**Table 2: Parties' activities in the property search industry, E&W<sup>70</sup>**

|   | <i>D&amp;D</i>   | <i>TMG</i>  |
|---|--|---|
| Upstream supply of LA and DW searches   | <ul style="list-style-type: none"> <li>• PIE</li> <li>• PSG</li> <li>• Index PI</li> <li>• GlobalX UK</li> </ul>                                     | <ul style="list-style-type: none"> <li>• CDS</li> </ul>                               |
| Upstream supply of environmental and flood reports                                    | <ul style="list-style-type: none"> <li>• FCI</li> </ul>  |   |
| Upstream supply of other property search reports (eg ground and mining, chancel, etc) | <ul style="list-style-type: none"> <li>• FCI</li> <li>• Terrafirma</li> </ul>  |   |
| Upstream supply of conveyancing risk management reports                               | <ul style="list-style-type: none"> <li>• Lawyer Checker</li> </ul>   |   |
| Supply of Property Search Report Bundles  | <ul style="list-style-type: none"> <li>• PIE<sup>71</sup></li> <li>• PSG</li> <li>• Index PI</li> <li>• GlobalX UK</li> <li>• Easy Convey</li> </ul> | <ul style="list-style-type: none"> <li>• tmConvey/tmConnect</li> <li>• CDS</li> </ul> |

### ***Supply of Property Search Report Bundles***

45. As regards the supply of Property Search Report Bundles, which forms the principal overlap between the Parties, D&D began its activities in E&W with the acquisition of 51% of Easy Convey in 2016. Since then, D&D purchased the remaining 49%

<sup>66</sup> Response to the Issues Paper, paragraphs 2.3.1-2.3.2.

<sup>67</sup> Response to the Issues Paper, paragraph 2.3.2.

<sup>68</sup> Response to the Enquiry Letter, paragraph 11.3.3.

<sup>69</sup> Response to the Enquiry Letter, paragraph 11.3.3.

<sup>70</sup> Response to the Enquiry Letter, paragraphs 11.5.1-11.5.8, paragraphs 11.7.1-11.7.4, tables 1 and 2, table at paragraph 11.8.

<sup>71</sup> D&D explained that SDG owned and operated York Place, a supplier of Property Search Report Bundles in E&W. D&D consolidated York Place into the PIE business after its acquisition of SDG in 2020 (Response to the section 109 notice of 27 September 2021, paragraph 3.1). D&D also explained that as part of its acquisition of FCI in 2021, it acquired assets of CLS' property search business [X] (Response to the Enquiry Letter, note 1 to the table at paragraph 11.8).

interest in Easy Convey in 2017, and acquired several other businesses engaged with the supply of Property Search Report Bundles in E&W (see Table 1). D&D therefore supplies Property Search Report Bundles in E&W through two supply models and different brands:

- (a) Direct sales: D&D supplies Property Search Bundles directly to conveyancers and intermediaries through PIE,<sup>72</sup> GlobalX UK, Easy Convey, some franchisees of the Index PI franchise system, and some franchisees of the PSG franchise system.<sup>73</sup> As noted in Tables 1 and 2, D&D owns Index PI and PSG, the respective operators of the Index PI franchise system and the PSG franchise system. Index PI franchisees and PSG franchisees owned and operated by D&D are referred to as, respectively, **Index PI Direct** and **PSG Direct**.
- (b) Indirect sales: D&D supplies Property Search Report Bundles indirectly to conveyancers and intermediaries through franchisees of the Index PI franchise system and of the PSG franchise system that are not owned and operated by D&D. Index PI franchisees owned and operated by third parties are referred to as **Index PI Indirect** and together with Index PI Direct, the **Index PI Franchisees**. PSG franchisees owned and operated by third parties are referred to as **PSG Indirect** and together with PSG Direct, the **PSG Franchisees**.

46. Regarding the Index PI franchise system and the PSG franchise system, the CMA notes that D&D, through Index PI and PSG, provides Index PI Franchisees and PSG Franchisees with the brand, bespoke ordering platform and case management software, [redacted]<sup>74</sup> to supply Property Search Report Bundles to customers in specific territories across E&W.<sup>75</sup> In return, Index PI Franchisees and PSG Franchisees pay Index PI and PSG, respectively, [redacted] royalties [redacted].<sup>76</sup> D&D also enters into supply agreements with certain customers [redacted] for the benefit of Index PI Franchisees and PSG Franchisees.<sup>77</sup> In addition, D&D supplies certain upstream property search reports to the Index PI Franchisees and the PSG Franchisees.<sup>78</sup>

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<sup>72</sup> Includes SDG and certain assets of CLS. See footnote 71.

<sup>73</sup> Response to the Enquiry Letter, paragraph 11.5.2. Response to the Issues Paper, paragraphs 3.4-3.5 and table 2.

<sup>74</sup> Franchise agreement between Index PI and Index PI Franchisees ([redacted]) and franchise agreement between PSG and PSG Franchisees ([redacted]). See Response to the Issues Paper, Annex 03.01 and Annex 03.02. See also, Response submitted by D&D on 19 November 2021 to the request for information issued by the CMA on Response to RFI of 17 November 2021 (Response to the RFI of 17 November 2021), paragraph 5.2.

<sup>75</sup> Pursuant to the franchise agreements between Index PI and Index PI Franchisees, Index PI Franchisees are not [redacted]. The same provision is found in the franchise agreements between PSG and PSG Franchisees. Response to the Issues Paper, Annex 03.01 (clause 2.2) and Annex 03.02 (clause 2.2).

<sup>76</sup> Response to the Issues Paper, Annex 03.01 (clauses 9.1-9.2) and Annex 03.02 (clauses 9.1-9.2).

<sup>77</sup> Response to the Issues Paper, Annex 03.01 (clause 10.8) and Annex 03.02 (clause 10.8).

<sup>78</sup> Response to the Issues Paper, paragraphs 3.6, 3.10-3.11, table 3.

47. D&D's businesses engaged with the supply of Property Search Report Bundles in E&W are able to offer different types of property search reports and conveyancing risk management reports (paragraphs 37 and 40). Their service offerings also include many ancillary services (paragraph 41). For instance, Easy Convey provides mapping tools and post-completion submission forms.<sup>79</sup> PIE provides conveyancing quotation and document sharing tools.<sup>80</sup> GlobalX UK also provides a workflow solution.<sup>81</sup>
48. TMG was established in England in 1999. It supplies Property Search Report Bundles in E&W through tmConvey/tmConnect and CDS. TMG acquired CDS in April 2018.<sup>82</sup>
49. TMG's businesses engaged with the supply of Property Search Report Bundles in E&W are also able to offer different types of property search reports and conveyancing risk management reports (paragraphs 37 and 40). Their service offerings also include a number of ancillary services (paragraph 41), such as mapping tools, HM Land Registry extract tools, post-completion submission forms, and conveyancing insurance products.<sup>83</sup>

#### ***Upstream supply of property search reports and related conveyancing risk reports***

50. D&D also compiles and supplies certain types of upstream reports both to its own businesses active in the supply of Property Search Report Bundles (see paragraph 45) and to third party Property Search Report Bundles providers in E&W. These upstream reports include:<sup>84</sup>
- (a) LA search reports and DW search reports through PIE, PSG, Index PI, and GlobalX UK;
  - (b) environmental and flood reports through FCI;
  - (c) other property search reports (eg ground and mining reports and chancel reports) through FCI and Terrafirma; and
  - (d) conveyancing risk management reports through Lawyer Checker.
51. TMG is less vertically integrated as compared to D&D. Upstream, TMG only compiles and supplies LA and DW search reports through CDS<sup>85</sup> both to its own

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<sup>79</sup> Response to the Enquiry Letter, paragraph 11.5.4.

<sup>80</sup> Response to the Enquiry Letter, paragraph 11.5.1.

<sup>81</sup> Response to the Enquiry Letter, paragraph 11.5.3.

<sup>82</sup> See [tm blog | tmgroup \(UK\) Ltd acquires majority share in Conveyancing Data Services Ltd \(CDS\)](#).

<sup>83</sup> Response to the Enquiry Letter, paragraphs 11.7.1-11.7.2.

<sup>84</sup> Response to the Enquiry Letter, table to paragraphs 11.5.8 and 11.8.

<sup>85</sup> Response to the Enquiry Letter, table to paragraph 11.8.

businesses active in the supply of Property Search Report Bundles (see paragraph 48) and to a [~~X~~] extent to third party Property Search Report Bundles providers in E&W.

## COMPETITIVE ASSESSMENT

### Horizontal unilateral effects

52. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to, on its own and without needing to coordinate with its rivals, raise prices or degrade non-price aspects of its competitive offering such as quality, range, service and innovation.<sup>86</sup> Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.<sup>87</sup>
53. Horizontal unilateral effects are also more likely when the merger firms are close competitors.<sup>88</sup> This is because the merged entity will recapture a more significant share of the sales to customers who would have switched to the products of the other merger firm in response to a price increase (or another worsening in the offering), making the price rise more profitable.<sup>89</sup> The merger firms need not be each other's closest competitors for unilateral effects to arise.<sup>90</sup> It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.<sup>91</sup>
54. The Parties overlap in the retail supply of Property Search Report Bundles to conveyancers and intermediaries in E&W. The CMA therefore 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 Property Search Report Bundles to conveyancers and intermediaries in E&W.<sup>92</sup> To this end, the CMA has considered:

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<sup>86</sup> [Merger Assessment Guidelines](#), paragraph 4.1.

<sup>87</sup> [Merger Assessment Guidelines](#), paragraph 4.3.

<sup>88</sup> [Merger Assessment Guidelines](#), paragraphs 4.7-4.8.

<sup>89</sup> [Merger Assessment Guidelines](#), paragraph 4.8.

<sup>90</sup> [Merger Assessment Guidelines](#), paragraph 4.8.

<sup>91</sup> [Merger Assessment Guidelines](#), paragraph 4.8.

<sup>92</sup> As noted at paragraphs 50-51, the Parties both compile and supply certain types of upstream reports to third party suppliers of Property Search Report Bundles in E&W. D&D and TMG only overlap in relation to the upstream supply of LA and DW searches in E&W. In addition, D&D (through Terrafirma, FCI, and Lawyer Checker) supplies other property search reports and conveyancing risk management reports to TMG and other third party suppliers of Property Search Report Bundles in E&W. Regarding the overlap in the upstream supply of LA and DW searches, the Parties submitted that their combined sales (in terms of volume) to suppliers of Property Search Report Bundles accounted for less than [5-



- (a) frame of reference;
- (b) market structure;
- (c) closeness of competition between the Parties; and
- (d) competitive constraints to the Merged Entity.

### ***Frame of reference***

55. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the Merger and should not be viewed as a separate exercise.<sup>93</sup> It involves identifying the most significant competitive alternatives available to customers of the Parties and includes the sources of competition to the Parties that are the immediate determinants of the effects of the Merger.<sup>94</sup> However, the CMA's assessment of competitive effects of the Merger does not need to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it).<sup>95</sup> In this context, the CMA has identified below the appropriate frame of reference for its assessment of the competitive effects of the Merger.

### ***Product scope***

56. The Parties submitted that the retail supply of property search reports to conveyancers and intermediaries could be segmented by different types of property search reports, and as between reports for residential versus commercial property.<sup>96</sup> In this regard, the Parties have not proposed any exact product frame of reference.
57. Regarding the search packs, the Parties noted that in E&W historically conveyancers would order property search reports from the supplier of each report, but this is no longer the case and most customers purchase 'search packs' comprising different property search reports.<sup>97</sup> They also noted that almost all search packs include LA and DW search reports as well as HM Land Registry

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10]% of all LA searches and less than [0-5]% of all DW searches supplied in E&W in 2020. They also submitted that suppliers of Property Search Report Bundles have a range of options to meet their needs, including compile LA and DW searches themselves. Given the presence of alternative sources of LA and DW searches, the relatively small volume of LA and DW searches supplied by the Parties to third parties, and the lack of third party concerns, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the upstream supply of LA and DW searches and has therefore not found it necessary to consider this further in this decision.

<sup>93</sup> [Merger Assessment Guidelines](#), paragraph 9.1.

<sup>94</sup> [Merger Assessment Guidelines](#), paragraph 9.2.

<sup>95</sup> [Merger Assessment Guidelines](#), paragraph 9.5.

<sup>96</sup> Response to the Enquiry Letter, paragraph 10.2.

<sup>97</sup> Response to the Enquiry Letter, paragraph 11.14.

reports; around 80% of all search packs also contain environmental and flood reports; and around 25% of all search packs contain ground and mining search reports.<sup>98</sup> The Parties further noted that various other ancillary search reports may also be ordered and included as part of a search pack, but these are rarely supplied on a standalone basis.<sup>99</sup> Similarly, the supply of search packs may also include the provision of various ancillary services.<sup>100</sup> In addition, the Parties noted that suppliers of search packs offer different types of property search reports which are typically procured by suppliers of search packs from different upstream suppliers.<sup>101</sup>

58. In relation to the different types of properties, the Parties noted that demand and supply for search packs for residential and commercial properties typically occur through the same customers and suppliers.<sup>102</sup> They also noted that the vast majority (approximately 90% in E&W) of LA and DW property search reports are for residential properties.<sup>103</sup>
59. Regarding the different types of property search reports, in *Landmark/DIIG*, the Office of Fair Trading (**OFT**) found that conveyancers typically source different property search reports from resellers and as part of a bundle.<sup>104</sup> The evidence received by the CMA during its merger investigation is consistent with the Parties' submissions and the OFT's findings in *Landmark/DIIG*, showing that only a limited number of discrete property search reports are purchased directly from upstream suppliers of reports.
60. From a demand standpoint, evidence from the Parties and third parties indicated that conveyancers and intermediaries typically order reports in a bundle from suppliers of search packs, with only a small proportion of discrete reports being acquired individually, either from suppliers of search packs or directly from the upstream supplier of a given report.<sup>105</sup>

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<sup>98</sup> Response to the Enquiry Letter, paragraphs 11.14-11.15.

<sup>99</sup> Response to the Enquiry Letter, paragraph 11.16.

<sup>100</sup> Response to the Enquiry Letter, paragraph 11.17.

<sup>101</sup> Response to the Enquiry Letter, paragraph 11.3.3.

<sup>102</sup> Response to the Enquiry Letter, paragraph 11.9.

<sup>103</sup> Response to the Enquiry Letter, paragraph 11.9.

<sup>104</sup> [OFT, ME/6272/13 – Completed acquisition by Landmark Information Group of Decision Insight Information Group \(Europe\), decision on reference under section 22\(1\) given on 24 January 2014 \(Landmark/DIIG\)](#) paragraph 11.

<sup>105</sup> The Parties' internal documents indicate that property transactions usually require more than one property search report, including due to requirements by lenders and recommendations by The Law Society of E&W (Response to the Enquiry Letter, Annex 20.7, page 9; Annex 21.04, page 4; Annex 21.05, page 4; Annex 23.06, page 6; Annex 23.07, page 5). The Parties' internal documents also indicate that conveyancers and intermediaries typically purchase multiple property search reports in bundles and from downstream suppliers (Response to the Enquiry Letter, Annex 21.04, page 3; Annex 21.05, page 3; Annex 22.01, page 68; Annex 23.04, page 4; Annex 23.05, page 4; Annex 23.07, page 4). In addition, most customers that responded to the CMA's merger investigation submitted that they typically purchase property search report in bundles from suppliers of search packs [3<]. See also [3<]. Moreover, most suppliers of search packs that responded to the CMA's merger investigation submitted that they typically sell property search reports in bundles to conveyancers and intermediaries [3<].

61. From a supply standpoint, the Parties' internal documents<sup>106</sup> and all competitors that responded to the CMA's merger investigation indicated that suppliers of search packs provide a wide range of property search reports obtained from upstream suppliers of discrete property search reports.
62. Regarding any distinction between residential and commercial properties, evidence from the Parties and third parties received by the CMA is also consistent with the Parties' submissions.
63. From a demand standpoint, third party evidence indicated that there is a continuum of customers for residential and commercial Property Search Report Bundles, with smaller conveyancers and intermediaries tending to focus on residential properties and larger conveyancers tending to deal with both residential and commercial properties.<sup>107</sup>
64. From a supply standpoint, evidence from the Parties and third parties indicated that suppliers of Property Search Report Bundles appear able to offer reports in relation to both residential and commercial properties, although their competitive strengths may vary across the spectrum of customers ordering residential and commercial property reports.<sup>108</sup> The evidence therefore confirms that firms compete for the supply of Property Search Report Bundles for all types of properties. In any event, Property Search Report Bundles concerning commercial properties currently account for a very small proportion of all Property Search Report Bundles provided, and no supplier appears to focus only on Property Search Report Bundles to commercial properties.<sup>109</sup>
65. For the reasons set out above, the CMA has considered the impact of the Merger in relation to the supply of Property Search Report Bundles, taking into account in its assessment the different competitive strengths of each supplier across the spectrum of residential and commercial properties, if appropriate.

### *Geographic scope*

66. The Parties' activities only overlap in E&W.<sup>110</sup> The Parties referred to *MDA/Richard Gray*, where the OFT considered that due to differences in property law, there are

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<sup>106</sup> Response to the Enquiry Letter, Annex 21.04 (page 4), Annex 21.05 (page 4), Annex 23.06 (page 6), Annex 23.07 (page 5).

<sup>107</sup> Out of the 11 customers that responded to the CMA's merger investigation and indicated the type of conveyancing work they provide, 8 submitted they undertake conveyancing work for both residential and commercial properties [redacted]. See also [redacted].

<sup>108</sup> Response to the Enquiry Letter, Annex 21.11 (page 4), Annex 24.01 (page 6). Response to the section 109 notice of 27 September 2021, for example, Annex 01.08 (pages 6, 28). See also, [redacted].

<sup>109</sup> Response to the Enquiry Letter, Annex 23.04 (page 15). See also, [redacted].

<sup>110</sup> D&D also supplies Property Search Report Bundles in Northern Ireland, but TMG does not. TMG supplies Property Search Report Bundles in Scotland, but D&D does not. Response to the Enquiry Letter, paragraph 17.1.

differences between property search reports for use in E&W as compared to Scotland and separately Northern Ireland.<sup>111</sup> The Parties further submitted that the geographic frame of reference should not be narrower than E&W. This is because they offer property search services across the whole of E&W – this being the coverage required by customers – and their customers are generally across E&W.<sup>112</sup>

67. In *MDA/PropertyFlow*, the OFT also noted that due to differences in property law between jurisdictions, certain property search reports used in E&W are not available in Scotland and Northern Ireland.<sup>113</sup> In *Landmark/DIIG*, the OFT also noted that the competitive environment may vary between E&W and, for example, Scotland.<sup>114</sup>
68. The Parties' internal documents and third party evidence received by the CMA confirm that property search reports used in E&W are different from those used in other parts of the UK.<sup>115</sup> The Parties' internal documents also confirm that they assess competition using separate geographic markets for, for example, E&W and Scotland.<sup>116</sup> Third party evidence further indicated that, while there is a continuum of national and regional suppliers of Property Search Report Bundles in E&W, those regional suppliers can supply Property Search Report Bundles across all E&W.<sup>117</sup>
69. For the reasons set out above, the CMA has considered the impact of the Merger in E&W, taking into account in its assessment the different competitive strength of suppliers of Property Search Report Bundles across E&W, if appropriate.

#### *Conclusion on frame of reference*

70. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of Property Search Report Bundles in E&W.

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<sup>111</sup> Response to the Enquiry Letter, paragraph 17.2. See also [OFT, ME/3568/08 – Completed acquisition by MacDonald Dettwiler and Associated Ltd of Richards Gray Holdings Limited, decision on reference under section 22\(1\) given on 30 April 2008 \(MDA/Richard Gray\)](#), paragraph 18 and related footnote 5.

<sup>112</sup> Response to the Enquiry Letter, paragraph 17.3.

<sup>113</sup> [OFT, anticipated acquisition by MacDonald, Dettwiler and Associated Limited of the Property Flow Group, decision on reference under section 33\(1\) given on 30 March 2006 \(MDA/PropertyFlow\)](#), paragraph 23 and related footnote 5.

<sup>114</sup> *Landmark/DIIG*, paragraph 32.

<sup>115</sup> Response to the Enquiry Letter, Annex 22.01, (pages 24-25). [§<].

<sup>116</sup> Response to the Enquiry Letter, for example, Annex 22.01, (page 27).

<sup>117</sup> [§<].

## **Market structure**

### *Parties' submissions*

#### *Market players*

71. The Parties submitted that the combined D&D and TMG business does not hold any significant market position, based on their combined shares of supply.<sup>118</sup> They further submitted that there are a number of suppliers of Property Search Report Bundles in E&W, including Landmark (supplying Property Search Report Bundles through SearchFlow and OneSearch Direct), ATI (supplying Property Search Report Bundles through InfoTrack and Search Acumen), Searches UK, X-Press Legal Services, Legal Bricks, National Search Service (**NSS**), Move Reports UK, Quantus, and The Search Bureau.<sup>119</sup>
72. The Parties also submitted that the Council of Property Search Organisations (**CoPSO**)<sup>120</sup> lists over 150 suppliers in E&W and that there is an important long 'tail' of smaller competitors that together comprise a significant share of supply.<sup>121</sup> The Parties added that the Association of Independent Personal Search Agents (**IPSA**)<sup>122</sup> also lists many other smaller competitors.<sup>123</sup>
73. In response to the CMA's Issues Paper, the Parties also submitted that franchise groups other than X-Press Legal Services and NSS, would also operate as credible alternative providers with national coverage and significant shares of supply.<sup>124</sup> These would include the franchisees of Index PI and PSG that are owned and operated by third parties (ie Index PI Indirect and PSG Indirect) and LawFirm Services.<sup>125</sup>
74. In relation to the franchisees of Index PI and PSG that are owned and operated by third parties, the Parties submitted that D&D would have no ability to materially influence Index PI Indirect and PSG Indirect;<sup>126</sup> that D&D supplies upstream property search reports to Index PI Indirect and PSG Indirect at [~~low~~] rates;<sup>127</sup> and that Index PI Indirect and PSG Indirect have an incentive to win customers from D&D in the same way as would any other competitor.<sup>128</sup>

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<sup>118</sup> Response to the Enquiry Letter, paragraph 30.26.

<sup>119</sup> Response to the Enquiry Letter, paragraph 30.27.

<sup>120</sup> See [CoPSO ||| The Council of Property Search Organisations](#).

<sup>121</sup> Response to the Enquiry Letter, paragraph 30.28. Response to the Issues Paper, paragraph 3.2.

<sup>122</sup> See [HOME | IPSA \(ipsa-online.org.uk\)](#).

<sup>123</sup> Response to the Enquiry Letter, paragraph 30.28.

<sup>124</sup> Response to the Issues Paper, paragraphs 3.1, 3.12. See also, slide deck for Issues Meeting, page 9.

<sup>125</sup> Response to the Issues Paper, paragraphs 3.1, 3.12. See also, slide deck for Issues Meeting, page 9.

<sup>126</sup> Response to the Issues Paper, paragraphs 3.7-3.9.

<sup>127</sup> Response to the Issues Paper, paragraphs 3.10-3.11.

<sup>128</sup> Response to the Issues Paper, paragraph 3.12.

### *Market size and shares of supply*

75. The Parties submitted share of supply estimates based on an estimated total market size of 1,738,454 Property Search Report Bundles (residential and commercial combined) in E&W.<sup>129</sup> This estimate is based on HM Revenue and Customs (**HMRC**) data recording a total 1,023,190 completed residential and commercial property transactions in E&W in 2020,<sup>130</sup> to which the Parties applied a 1.7 multiplier that includes:
- (a) a 35% factor to reflect the Parties' understanding that over a third of property transactions abort;<sup>131</sup> and
  - (b) another 35% factor to reflect the fact that not all Property Search Report Bundles ordered will relate to a property transaction, with some searches undertaken in relation to the management of social housing or in relation to property refinancing not involving the transfer of land.<sup>132</sup>
76. The Parties also submitted a paper prepared by [X] that suggests that a conservative multiplier of 1.5 (rather than the 1.7 originally proposed by the Parties) can be estimated by comparing the number of property transactions carried out by some individual conveyancers against their purchases of Property Search Report Bundles from the Parties, and that on the basis that this is a conservative estimate, the estimated multiplier of 1.7 is reasonable.<sup>133</sup> The Parties further submitted that this analysis is representative of the market as a whole, as adjusting the multiplier estimates to reflect the distribution of HM Land Registry 'Transaction Scores' (**LR scores**)<sup>134</sup> in the market gives substantially the same results.<sup>135</sup>

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<sup>129</sup> Response to the Enquiry Letter, paragraph 30.3. Response to the Issues Paper, paragraph 3.13.

<sup>130</sup> See <https://www.gov.uk/government/statistics/monthly-property-transactions-completed-in-the-uk-with-value-4000-or-above>.

<sup>131</sup> The Parties referenced online guidance for home buyers and recent online trade articles suggesting that one in three attempted transactions abort, as well as online guidance for home buyers suggesting that searches should be ordered as soon as an offer for a property is accepted. Response to the section 109 notice of 27 September 2021, paragraph 9.3. Response to the Issues Paper, paragraph 3.17.2 and Annex 03.05.

<sup>132</sup> In relation to social housing, the Parties estimated that a recent tender for a four year contract to sell search packs to CHIC (a social housing group) implies that CHIC's demand is 75,000 search packs per year and that, given that the Parties consider that CHIC represents much less than half of social housing providers, the total demand for search packs for social housing groups could be in excess of 200,000 per year. In relation to property refinancing, the Parties estimated that 190,000 searches are ordered per year based on the following assumptions: (a) private landlords with five or more properties are likely to order search packs even when they are not buying/selling property (eg for refinancing); (b) there are 1.9 million properties owned by landlords with five or more properties; and (c) 10% of these properties are refinanced each year. Response to the section 109 Notice of 27 September 2021, paragraph 9.5. Response to the Issues Paper, paragraph 3.18 and Annex 03.05.

<sup>133</sup> [X], Evidence on market size and multi-sourcing, 28 October 2021 ([X] Paper), pages 1-4 and 7-8.

<sup>134</sup> The Parties explained that the HM Land Registry holds a monthly record of how many transactions every conveyancer has completed, known as the LR score. Response to questions 12(a) and 12(c) of the section 109 notice of 27 September 2021, paragraph 12.3.

<sup>135</sup> Response to the Issues Paper, paragraph 3.16 and Annex 03.05.

77. According to the Parties' estimates, D&D and TMG had a combined share of [20-30]% in the supply of Property Search Report Bundles in E&W in 2020, with D&D representing a [10-20]% increment. The Parties' main competitors, Landmark and ATI, had each [×] [10-20]% share of supply. All other suppliers, including the franchise groups X-Press Legal Services and NSS, had shares of supply below [0-5]%.<sup>136</sup> The Parties have not provided an estimate for LawFirm Services' share of supply, albeit they consider it to be another franchise group exerting material competitive constraint over the Parties.<sup>137</sup>
78. Regarding D&D's franchise groups (ie Index PI and PSG), the Parties included the sales of the franchisees owned and operated by D&D (ie Index PI Direct and PSG Direct) within D&D's share of supply but treated Index PI Indirect and PSG Indirect as independent competitors of the Parties. Similar to all other smaller suppliers, Index PI Indirect and PSG Indirect had shares of supply below [0-5]%.<sup>138</sup>

### *CMA's assessment*

#### *Market players*

79. The evidence received from the Parties and third parties indicated that the supply of Property Search Report Bundles in E&W is becoming an increasingly concentrated market with only four main players, namely D&D, TMG, ATI,<sup>139</sup> and Landmark.<sup>140</sup> This is mostly due to consolidation resulting from several acquisitions undertaken by the Parties and their main competitors over the last few years.<sup>141</sup> For example:
- (a) D&D entered the supply of Property Search Report Bundles in E&W with the acquisition of a majority interest in Easy Convey in 2016. Since then, it has acquired many other suppliers of Property Search Report Bundles in E&W, including the remaining shares of Easy Convey in 2017; Index PI in 2019; SDG, PIE and PSG in 2020; certain assets of CLS, GlobalX UK and TMG in 2021 (see Table 1).
  - (b) TMG, which was already active in the supply of Property Search Report Bundles in E&W through tmConvey/tmConnect, acquired CDS in April 2018.<sup>142</sup>

<sup>136</sup> Response to the Issues Paper, table 5.

<sup>137</sup> Slide deck for Issues Meeting, page 9

<sup>138</sup> Response to the Issues Paper, table 5.

<sup>139</sup> ATI is also active upstream in the supply of environmental risk reports and other reports.

<sup>140</sup> Landmark is also active upstream in the supply of environmental risk reports and other property search reports.

<sup>141</sup> Response to the Enquiry Letter, Annex 20.7 (page 21), Annex 20.8, Annex 21.04 (pages 2-4), Annex 21.05 (pages 2-4), Annex 21.09, Annex 21.10, Annex 21.11 (pages 4-5), Annex 23.05 (page 4), Annex 23.07 (pages 4-5), Annex 24.18 (page 2). See also, [×]. See also, [×]; See also, [×].

<sup>142</sup> See [tm blog | tmgroup \(UK\) Ltd acquires majority share in Conveyancing Data Services Ltd \(CDS\)](#).

- (c) Landmark, which was already active in the supply of Property Search Report Bundles in E&W through SearchFlow, acquired OneSearch Direct in December 2019.<sup>143</sup>
- (d) ATI, which was already active in the supply of Property Search Report Bundles in E&W through InfoTrack, acquired Search Acumen in March 2021.<sup>144</sup>

80. The evidence received from the Parties and third parties further indicated that apart from D&D, TMG, Landmark and ATI, there is a tail of smaller, often regional, suppliers of Property Search Report Bundles, including the franchise groups X-Press Legal Services and NSS.<sup>145</sup>

81. Regarding the franchise groups identified by the Parties in response to the CMA's Issues Paper (paragraph 73), third party evidence received by the CMA indicate that LawFirm Services is a software provider, not a search company or franchise group.<sup>146</sup> In relation to Index PI Indirect and PSG Indirect as competitors, the CMA notes that:

- (a) The CMA has received no evidence to suggest that customers (ie conveyancers and intermediaries) and end consumers (ie buyers and sellers of residential and commercial real estate) are aware of whether Index PI Franchisees and PSG Franchisees are owned and operated by D&D or by third parties. For instance, all Index PI Franchisees and PSG Franchisees operate under the same brand, including D&D's directly-owned and operated franchisees.<sup>147</sup> In addition, all Index PI Franchisees and all PSG Franchisees also supply Property Search Bundles through the same website, ordering platform and case management software (ie the Index PI website, ordering platform and case management software<sup>148</sup> and the PSG website, ordering platform and case management software<sup>149</sup>), which are controlled by D&D. Moreover, D&D provides all Index PI Franchisees and PSG Franchises with [redacted].<sup>150</sup> D&D also presents Index PI and PSG amongst its 'Solutions in the UK', directing potential customers visiting its website to the Index PI and PSG

<sup>143</sup> See [Landmark strengthens business with conveyancing data acquisition - Landmark Information Group](#).

<sup>144</sup> See [Search Acumen launches new digital onboarding solution eCOS following its acquisition by InfoTrack | Today's Conveyancer](#).

<sup>145</sup> Response to the Enquiry Letter, Annex 21.04 (page 4), Annex 21.05 (page 4), Annex 21.10, Annex 23.05 (page 4). See also, [redacted]. See also, [redacted]; See also, [redacted].

<sup>146</sup> [redacted].

<sup>147</sup> Response to RFI of 17 November 2021, Annex 03.01 (clause 6.1) and Annex 03.02 (clause 6.1).

<sup>148</sup> Response to RFI of 17 November 2021, Annex 03.01 (clauses 4.1 and 10.9). See also [Index Property Information – but we are different \(indexpi.co.uk\)](#).

<sup>149</sup> Response to RFI of 17 November 2021, Annex 03.02 (clauses 4.1 and 10.9). See also [Welcome to PSG | PSG Connect](#).

<sup>150</sup> Response to RFI of 17 November 2021, Annex 03.01 (clauses 11.1-11.2) and Annex 03.02 (clause, 11.1).



websites, without distinction as to whether franchisees are owned and operated by D&D or by third parties.<sup>151</sup>

- (b) While the Parties submitted that suppliers of Property Search Report Bundles compete over two main parameters, price and quality of service (including on speed and ease of use of the service),<sup>152</sup> the CMA has found that Index PI Indirect and PSG Indirect do not set [redacted] independently from D&D. [redacted] is determined by D&D, with Index PI Franchisees and PSG Franchisees relying on D&D for [redacted].<sup>153</sup> Service level is also common across Index PI Franchisees and PSG Franchisees, [redacted] use the [redacted] bespoke ordering platform and case management software, to meet common [redacted], and to undertake the same [redacted].<sup>154</sup> Moreover, although Index PI Franchisees and PSG Franchisees can to some extent set prices to customers, D&D determines [redacted] and may also recommend [redacted].<sup>155</sup> D&D also enters into supply agreements with certain customers [redacted] on behalf of Index PI Franchisees and PSG Franchisees, [redacted].<sup>156</sup>
- (c) The CMA has not seen any internal documents from D&D referring to Index PI Indirect and PSG Indirect [redacted]. TMG's internal documents refer to Index PI and PSG [redacted].<sup>157</sup>

82. For the reasons set out above, the CMA believes that D&D's ownership of the underlying Index PI and PSG franchise system and bespoke websites, ordering platforms and case management software, combined with the [redacted] D&D has over Index PI Franchisees' and PSG Franchisees' ability to [redacted] Property Search Report Bundles, strongly suggests that Index PI Indirect and PSG Indirect are not independent competitors to D&D and that their sales volumes should be included within D&D's.<sup>158</sup>

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<sup>151</sup> See [Solutions in the UK & Ireland - Dye and Durham \(dyedurham.com\)](#).

<sup>152</sup> Response to the Issues Paper, paragraph 2.3.2.

<sup>153</sup> Response to the Issues Letter, Annex 03.01 (recital F and clauses 6.5 and 10.1) and Annex 03.02 (recital F and clauses 6.5 and 10.1).

<sup>154</sup> Response to RFI of 17 November 2021, Annex 03.01 (clauses 4.1, 5.1-5.3, 10.1-10.2, 10.4, 10.7, 16.4-16.5) and Annex 03.02 (clauses 4.1, 5.1-5.3, 10.1-10.2, 10.4, 10.7, 16.4-16.5).

<sup>155</sup> Response to RFI of 17 November 2021, Annex 03.01 (clause 10.2(E)) and Annex 03.02 (clause 10.2(H)).

<sup>156</sup> Response to RFI of 17 November 2021, Annex 03.01 (clauses 10.2(E) and 10.8) and Annex 03.02 (clauses 10.2(H) and 10.8).

<sup>157</sup> For example, Response to the Enquiry Letter, Annex 21.10.

<sup>158</sup> The CMA does not exclude that Index PI Indirect and PSG Indirect may be materially influenced by D&D. The CMA has not taken a view on this, as the lack of material influence by D&D over these businesses were brought to the CMA's attention only at a late stage of the investigation to allow for a thorough assessment of the structural and commercial links between them and D&D. [redacted].

### *Market size and shares of supply*

83. The CMA notes that there is no publicly available information on the shares of supply or the total size of the market for the supply of Property Search Report Bundles in E&W.<sup>159</sup> While data received by the Parties and third parties shows that the total number of Property Search Report Bundles supplied in E&W in 2020 exceeded the number of completed property transactions recorded by HMRC<sup>160</sup> (see Table 3), the exact number of Property Search Report Bundles supplied in E&W in 2020 is unknown.
84. In particular, the CMA notes the following:
- (a) The Parties' estimate of the 35% factor applied to account for the number of transactions that fall through relies on assumptions that are hard to verify, including on the proportion of attempted transactions that fell through in 2020 and on the proportion of these failed transactions for which a Property Search Report Bundle was ordered.<sup>161</sup> The Parties' 35% factor is significantly higher than the factor referred to in D&D's internal documents and the factors applied by other players in the market. The CMA found evidence in D&D's internal documents that [redacted] used a [redacted] factor in its market size estimates.<sup>162</sup> In addition, one supplier of Property Search Report Bundles that responded to the CMA's merger investigation used a 3% factor,<sup>163</sup> and another supplier of Property Search Report Bundles that responded to the CMA's merger investigation submitted that around 200,000 searches a year are ordered for transactions that fall through, suggesting a factor of approximately 20% would be appropriate.<sup>164</sup>
  - (b) The Parties' estimation of the additional 35% factor applied to account for the number of property search reports that may have been ordered outside of the conveyances recorded by HMRC also relies on several assumptions that are hard to verify, including on the total demand of Property Search Report Bundles for social housing and on the proportion of private landlords and their

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<sup>159</sup> Response to the Enquiry Letter, paragraph 30.1. See also [redacted].

<sup>160</sup> As noted above, there were 1,023,190 completed property transactions with value above £40,000 in E&W in 2020 – see [Monthly property transactions completed in the UK with value of £40,000 or above - GOV.UK \(www.gov.uk\)](https://www.gov.uk). The CMA notes that there is a lag between when property searches are instructed after a property transaction is agreed and the completion and record of the property transaction. For example, a supplier of Property Search Report Bundles that responded to the CMA's merger investigation submitted that the average length of a property transaction is around five months [redacted].

<sup>161</sup> Response to the Issues Paper, Annex 03.05.

<sup>162</sup> Response to the Enquiry Letter, Annex 23.03 (tab 'Notes').

<sup>163</sup> This is based on data from [redacted]. The CMA notes that the Parties and FCI do not appear to consider that a proportion of the transactions that fell through will have fallen through before property search reports are purchased. [redacted].

<sup>164</sup> [redacted].

estate that is refinanced each year.<sup>165</sup> The Parties' 35% factor is significantly higher than third party estimates. A supplier of Property Search Report Bundles that responded to the CMA's merger investigation used a much lower 1% factor in its market size estimates.<sup>166</sup>

- (c) Two suppliers of Property Search Report Bundles that responded to the CMA's merger investigation noted that while property searches are mandatory for transactions involving a mortgage, cash purchasers are not required to carry out equivalent searches and some of these purchasers choose to avoid the cost of a search.<sup>167</sup> A significant number of property transactions appear to be cash-only.<sup>168</sup> While websites for home purchasers (including the UK Government's) advise cash buyers to order Property Search Report Bundles,<sup>169</sup> the CMA cannot rule out that a number of cash buyers may choose not to order them (eg to shorten the process of buying a property), which may reduce the total market size relative to the number of completed transactions.
- (d) The total market size estimates submitted by two suppliers of Property Search Report Bundles that responded to the CMA's merger investigation are materially lower than the Parties' estimate.<sup>170</sup>
- (e) In relation to the 1.5 multiplier estimated by [redacted], the CMA considers that the sample of customers used may not be representative of the entire market. In particular, while the adjusting exercise to reflect the distribution of LR scores in the market (see paragraph 76) indicates that [redacted]'s estimates are not biased due to the size/LR scores of the Parties' customers, the CMA notes that the estimates are based on the analysis of the Parties' sales to a specific subset of the Parties' customers that purchased a number of Property Search Report Bundles from the Parties that was greater than the number of property transactions they completed.<sup>171</sup>

85. For these reasons, instead of relying on the total market size estimates submitted by the Parties or by third parties, the CMA sought to estimate the size of the Parties, ATI, Landmark, franchise groups and other smaller competitors by verifying the volume of Property Search Report Bundles that these suppliers sold to

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<sup>165</sup> Response to the Issues Paper, Annex 03.05.

<sup>166</sup> This is based on [redacted].

<sup>167</sup> [redacted].

<sup>168</sup> A third party estimated that around a quarter of all residential sales in Great Britain were made with cash rather than a mortgage. See [Share of cash buyers falls post pandemic \(hamptons.co.uk\)](https://www.hamptons.co.uk).

<sup>169</sup> Response to the Issues Paper, paragraph 3.17.1 and Annex 03.05.

<sup>170</sup> [redacted].

<sup>171</sup> [redacted] Paper, page 3.

conveyancers and intermediaries in E&W in 2020 and used the total as a proxy for the actual total market size.

86. The CMA's estimates are reported in Table 3. While it was not possible to include all the smaller suppliers of Property Search Report Bundles active in E&W, the CMA considers that the inclusion of the remaining smaller suppliers would not materially alter the analysis (see paragraphs 88-91). Additionally, the CMA has seen no evidence to suggest that the remaining smaller suppliers have material shares of supply.

**Table 3: Shares of supply of Property Search Report Bundles (E&W, residential and commercial, 2020)**

| <i>Supplier</i>  | <i>Volume</i>    | <i>Share</i> <sup>172</sup> |
|--|------------------|-----------------------------|
| D&D direct sales (PIE, <sup>173</sup> Index PI Direct, PSG Direct, <sup>174</sup> Easy Convey, and GlobalX UK) | [X]              | [10-20]%                    |
| D&D indirect sales (Index PI Indirect and PSG Indirect)  | [X]              | [5-10]%                     |
| TMG (tmConvey/tmConnect and CDS)   | [X]              | [20-30]%                    |
| <i>Combined</i>  | [X]              | <i>[40-50]%</i>             |
| ATI (InfoTrack and Search Acumen)  | [X]              | [10-20]%                    |
| Landmark (SearchFlow and OneSearch Direct)   | [X]              | [10-20]%                    |
| Geodesys   | [X]              | [0-5]%                      |
| HW Conveyancing Searches   | [X]              | [0-5]%                      |
| Legal Bricks   | [X]              | [0-5]%                      |
| NSS  | [X]              | [0-5]%                      |
| North Yorkshire Legal Services   | [X]              | [0-5]%                      |
| Pali   | [X]              | [0-5]%                      |
| Quantus  | [X]              | [0-5]%                      |
| SafeMove   | [X]              | [0-5]%                      |
| Searches UK  | [X]              | [0-5]%                      |
| Thames Water   | [X]              | [0-5]%                      |
| X-Press Legal Services   | [X]              | [0-5]%                      |
| <i>Total</i>   | <i>1,199,517</i> | <i>100%</i>                 |

Source: CMA's estimates based on Parties' and competitors' sales volume data.

87. The CMA notes that the share of supply estimates in Table 3 are broadly consistent with market share estimates included in the Parties' internal documents. For example:

- (a) A D&D internal document of February 2021 [X] indicates that the five main suppliers of Property Search Report Bundles would account for approximately [80-90]% of the market, being D&D, TMG, [X] four of such five main suppliers.<sup>175</sup>

<sup>172</sup> Suppliers with shares belonging to the same ranges are listed in alphabetical order.

<sup>173</sup> Includes SDG and certain assets of CLS. See footnote 71.

<sup>174</sup> Includes SDG and certain assets of CLA. See footnote 71.

<sup>175</sup> Response to the Enquiry Letter, Annex 23.05.

(b) A TMG internal document of August 2020 [redacted]<sup>176</sup> indicates that TMG would have a [20-30]% market share.<sup>177</sup>

(c) A TMG internal document of October 2020 [redacted] indicates that TMG, D&D, Landmark and InfoTrack/ATI would have a [80-90]% market share and other competitors (including Search Acumen before its acquisition by ATI) would collectively have a [20-30]% market share.<sup>178</sup>

88. In response to the CMA's request that the Parties explain why the share of supply estimates provided during the course of the merger investigation differed from those in their internal documents, D&D explained that the market share estimates included in D&D's internal document was just a "guesstimate" based on anecdotal "tittle tattle"'.<sup>179</sup> Similarly, TMG explained that these TMG internal documents were 'not based on any underlying market data or analysis.'<sup>180</sup> The Parties more generally submitted that 'the Parties' internal documents need to be considered in context. The documents here were all prepared in the context of presenting the strength of the business, [redacted]. They should not be seen as in any way reliable in terms the CMA's assessment of market shares.'<sup>181</sup>

89. The CMA would typically expect that merging parties' [redacted] will have a good understanding of the merger firms and their main competitors' market positioning and would rely on accurate market information, reflected in their internal documents, in order to take business decisions, [redacted]. In particular, the CMA does not consider it tenable that market analyses prepared by D&D's and TMG's [redacted] would overstate or attempt to mislead [redacted], or that they 'should not be seen as in any way reliable'.<sup>182</sup> The CMA therefore considers that market share estimates included in the Parties' internal documents further corroborate the CMA's share of supply estimates in Table 3.

90. As shown by Table 3, the Merger would reduce the number of main suppliers of Property Search Report Bundles in E&W from four to three. The Merged Entity would become the market leader by a considerable margin and would be substantially larger than ATI or Landmark. There is also a large number of small competitors, including franchise groups independent of D&D (ie NSS and X-Press Legal Services), with none of them having an individual share in excess of 5%.

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<sup>176</sup> Strengths, Weaknesses, Opportunities, and Threats.

<sup>177</sup> Response to the Enquiry Letter, Annex 20.08.

<sup>178</sup> Response to the Enquiry Letter, Annex 21.10.

<sup>179</sup> Response submitted on 17 November 2021 to the CMA's follow-up questions of 15 November 2021.

<sup>180</sup> Response submitted on 17 November 2021 to the CMA's follow-up questions of 15 November 2021.

<sup>181</sup> Response submitted on 17 November 2021 to the CMA's follow-up questions of 15 November 2021.

<sup>182</sup> Response submitted on 17 November 2021 to the CMA's follow-up questions of 15 November 2021.

91. The CMA also notes that, although there is some uncertainty about the market size, this does not affect the broad market structure, which consists of four main suppliers pre-Merger and a number of very small suppliers.

### ***Closeness of competition***

92. As already noted, the Parties represent two of the four main suppliers of Property Search Report Bundles in E&W. Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.<sup>183</sup> The smaller the number of significant players, the stronger the *prima facie* expectation that any of the two firms are close competitors.<sup>184</sup> In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.<sup>185</sup>
93. In this context, the CMA has examined the closeness of competition between the Parties by considering within its assessment:
- (a) the Parties' submissions;
  - (b) the Parties' internal documents; and
  - (c) third party views.

### ***Parties' submissions***

#### ***Customer focus***

94. The Parties submitted that they do not compete particularly closely with each other, as D&D generally focuses on smaller conveyancers who focus on residential transactions, whereas TMG's main customers are the Sellers and large city law firms, the latter focusing more on commercial property transactions.<sup>186</sup>
95. The Parties also submitted that further differentiation between them is evident in each Party's retail volumes and revenues from sales of Property Search Report Bundles to small, medium, large and other customers (including mainly panel managers and other intermediaries, but also in-house counsel for commercial clients, and law firms that carry out property transactions occasionally).<sup>187</sup>

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<sup>183</sup> [Merger Assessment Guidelines](#), paragraph 4.10.

<sup>184</sup> [Merger Assessment Guidelines](#), paragraph 4.10.

<sup>185</sup> [Merger Assessment Guidelines](#), paragraph 4.10.

<sup>186</sup> Response to the Enquiry Letter, paragraph 30.30.

<sup>187</sup> Response to questions 12(a) and 12(c) of the section 109 notice of 27 September 2021, paragraphs 12.1-12.2.

96. However, as shown in Table 4, the CMA considers that the retail revenue data submitted by the Parties rather confirms that both Parties target and serve all customer groups,<sup>188</sup> reflecting the fact that both D&D and TMG supply Property Search Report Bundles in E&W through more than one brand and business. Although these businesses may have historically focused their efforts on differing customer groups (eg large or small conveyancers) or products (eg residential or commercial Property Search Report Bundles), in the aggregate the Parties' retail revenue data shows that D&D and TMG are able to target and serve all types of customer group and product types through their different businesses.
97. Table 4 also shows that both D&D and TMG generate a substantial proportion of their revenues from small and medium conveyancers and from intermediaries (included in other customers), ie customers typically engaged in residential property transactions. The CMA believes that this reflects the fact that commercial properties account for a small proportion of all Property Search Report Bundles provided in E&W, and that no supplier appears to focus on providing only Property Search Report Bundles to commercial properties (see paragraph 64).

**Table 4: Parties' revenues by customer group (E&W, residential and commercial, 2020)**

| Party              | Small customers<br>that carried out less than<br>[redacted] transactions in 2020 |            | Medium customers<br>that carried out more<br>than [redacted] transactions<br>but are not large<br>customers |            | Large customers<br>City law firms that<br>appear on the [redacted] UK<br>law firms identified by<br><i>The Lawyer</i> |            | Other customers<br>mainly panel managers<br>and other intermediaries,<br>but also including in-<br>house counsel for<br>commercial clients and<br>law firms that carry out<br>property transactions<br>occasionally |            |
|--------------------|--|------------|---|------------|---|------------|---|------------|
|                    | Sales (£m)   | Share (%)  | Sales (£m)  | Share (%)  | Sales (£m)  | Share (%)  | Sales (£m)  | Share (%)  |
| D&D <sup>189</sup> | [redacted]   | [redacted] | [redacted]  | [redacted] | [redacted]  | [redacted] | [redacted]  | [redacted] |
| TMG                | [redacted]   | [redacted] | [redacted]  | [redacted] | [redacted]  | [redacted] | [redacted]  | [redacted] |

Source: Response to the Issues Paper, table 1; Response to the RFI of 17 November 2021, table 1.

98. The Parties further submitted that they hardly overlap to supply large customers (ie large law firms) and so no concern arises in relation to these customers.<sup>190</sup> The CMA recognises that D&D's supply to large customers is relatively small (see Table 4). However, one of D&D's internal documents suggest that [redacted] may expand in the larger customer segment (see paragraph 111(a)), and overall Table 4 shows substantial overlap in the customer segments covered by the Parties.

<sup>188</sup> Response to the Issues Paper, table 1. Response to the RFI of 17 November 2021, table 1.

<sup>189</sup> Does not include sales by Index PI Indirect and PSG Indirect.

<sup>190</sup> Response to the Issues Paper, paragraph 4.2.

### *Loss data*

99. The Parties submitted that their customer loss data indicates that they do not compete particularly closely.<sup>191</sup> In particular, [X] estimated the extent to which each Party lost retail customers in 2021 Q3, and then the extent to which a lost customer is likely to have switched to the other Party.<sup>192</sup> [X] estimated that [X] of TMG losses were to D&D and [X] of D&D losses were to TMG (depending on whether losses are measured in terms of volumes or customers).<sup>193</sup>
100. The Parties further submitted that this degree of switching is low in absolute terms and relative to what would arise in the case of a '4 to 3' scenario, as in a scenario with four equally competitive suppliers, 33% of each Party's lost customers would be expected to switch to the other Party.<sup>194</sup>
101. The CMA considers that there are factors that may limit the weight that can be attached to this analysis. In particular, the CMA notes that:
- (a) The analysis is based on a low number of customers lost by each Party ([X] for D&D and [X] for TMG),<sup>195</sup> relative to each of the Parties' hundreds of customers.<sup>196</sup>
  - (b) The switching estimates are not based on a contemporaneous record of lost and won customers by each Party but instead by comparing overall number of customers across time periods. The estimates may therefore be affected by a number of factors, including the growth or decline of the Parties' customers' client base and transactions, as well as customer switching to and from other competitors.
  - (c) The analysis only captures switching of customers that are lost outright by each Party, without capturing instances where customers reduce volumes bought from one Party and increase volumes bought from the other Party.
102. In any event, notwithstanding these potential limitations, the CMA considers that the levels of switching estimated by the Parties (see paragraph 99) are material and consistent with the rest of the evidence that indicates that each Party is a significant constraint on the other Party.

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<sup>191</sup> Response to the Issues Paper, paragraphs 5.3-5.9.

<sup>192</sup> Response to the Issues Paper, paragraphs 5.3-5.9 and Annex 05.01.

<sup>193</sup> Response to the Issues Paper, paragraphs 5.3-5.9.

<sup>194</sup> Response to the Issues Paper, paragraphs 5.3-5.9.

<sup>195</sup> Response to the Issues Paper, Annex 05.01.

<sup>196</sup> Response to the Issues Paper, paragraph 6.11.



### *Multi-sourcing*

103. The Parties submitted that multi-sourcing is commonplace in the market, with ‘triple plus sourcing’ (purchasing from three or more suppliers) frequent.<sup>197</sup> In particular, [X] estimated that:<sup>198</sup>
- (a) Over [X] of the Parties’ customers multi-source and at least [X] of the Parties’ common customers ‘triple plus source’, and these results are consistent across customer groups (although with medium and large customers multi-sourcing on average more than small customers).
  - (b) The Parties’ customers purchase significant volumes of Property Search Report Bundles from competitors. For example, the Parties’ common customers purchase at least [X] of their Property Search Report Bundles from competitors.
104. The CMA considers that the analysis shows that a substantial proportion of the Parties’ customers multi-source. However, customer feedback collected by the CMA indicates that there is also a material proportion of the Parties’ customers that uses only one supplier or mainly one supplier.<sup>199</sup> Moreover, customer feedback collected by the CMA indicates that in some cases while a conveyancing firm may use more than one supplier of Property Search Report Bundles, different individuals or teams within the same conveyancing firm may each use only one supplier.<sup>200</sup> Firm-level multi-sourcing may therefore in some cases reflect two or more single-sourcing relationships.
105. In any event, the CMA does not consider the mere fact that customers multi-source Property Search Report Bundles as materially impacting its competitive assessment, as even customers that multi-source would see a reduction in the number of potential suppliers. As explained in detail below, the CMA considers that this reduction would result in competitive concerns.
106. The Parties also submitted that the overlap between their customer bases is relatively limited and indicative that the Merger is not a ‘4 to 3’ and that the Parties are not particularly close competitors.<sup>201</sup> In particular, [X] estimated that the proportion of D&D’s sales volumes supplied to customers that were also served by TMG in 2019-2020 was [X], and the proportion of TMG’s sales volumes supplied to

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<sup>197</sup> Response to the Issues Paper, paragraph 5.10.

<sup>198</sup> Response to the Issues Paper, Annex 05.02.

<sup>199</sup> [X].

<sup>200</sup> [X].

<sup>201</sup> Response to the Issues Paper, paragraphs 5.10-5.13 and Annex 05.01.

customers that were also served by D&D in 2019-2020 was [redacted].<sup>202</sup> The Parties inferred that in a '4 to 3' scenario with triple-sourcing customers the expected proportion of volumes from common customers would be instead around 67%.<sup>203</sup> The CMA notes that this inference rests on a number of assumptions including that all customers triple-source, purchasing equally from three of the firms in the market.

107. The CMA considered it was difficult to draw conclusions about closeness of competition from this analysis of multi-sourcing between the Parties because it does not reflect the actual competitive dynamics in the marketplace, for example, as noted at paragraph 104, different individuals or teams within the same conveyancing firm may each use only one supplier, such that firm-level multi-sourcing may in some cases reflect two or more single-sourcing relationships.
108. Overall, therefore, the CMA believes it is difficult to make inferences from the evidence on multi-sourcing. In particular, the CMA does not believe the evidence on multi-sourcing is inconsistent with other evidence showing that the Parties are close competitors.

#### *Internal documents*

##### *Main competitors and current and future customer focus*

109. Several of the Parties' internal documents indicate that they view each other as among their closest competitors. For example:
- (a) D&D's document [redacted] dated June 2021 describes TMG as 'a direct competitor to D&D in the UK market'.<sup>204</sup>
  - (b) D&D's document [redacted] dated April 2021 explains that the largest search platforms include D&D, TMG, Landmark, and ATI.<sup>205</sup>
  - (c) D&D's document [redacted] dated February 2021 lists D&D, TMG, Landmark, and ATI as 'Key Players' among search platforms.<sup>206</sup>
  - (d) D&D's document [redacted] dated August 2020 includes a 'Competitive Landscape' analysis [redacted] of ATI, TMG and Landmark's property search businesses.<sup>207</sup>

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<sup>202</sup> Response to the Issues Paper, paragraphs 5.10-5.13 and Annex 05.01.

<sup>203</sup> Response to the Issues Paper, paragraphs 5.10-5.13 and Annex 05.01.

<sup>204</sup> Response to the Enquiry Letter, Annex 21.03 (page 2).

<sup>205</sup> Response to the Enquiry Letter, Annex 23.07 (page 4).

<sup>206</sup> Response to the Enquiry Letter, Annex 23.05 (page 4).

<sup>207</sup> Response to the section 109 notice of 27 September 2021, Annex 01.08 (page 28).

(e) TMG's document [REDACTED] dated May 2021 lists D&D, Landmark, ATI, and 'Small independent search companies' as CDS' competitors.<sup>208</sup>

(f) TMG's document [REDACTED] dated June 2018 lists D&D, ATI, and Landmark as TMG's '[REDACTED] Market Competitors'.<sup>209</sup>

110. In relation to the Parties' submissions on their focus on different customer groups (see paragraph 94), the CMA believes that, while some of the Parties' internal documents indicate that the Merger would allow D&D to expand its customer base (see paragraphs 13-14), they also indicate that there are significant overlaps between the customer groups served by the Parties. In particular:

(a) TMG's document [REDACTED] dated May 2021 [REDACTED].<sup>210</sup> This indicates that TMG competes for customer groups that D&D competes also for.

(b) D&D's document [REDACTED] dated June 2021 [REDACTED].<sup>211</sup> This indicates that D&D competes for customer groups that TMG also competes for.

111. The Parties' internal documents further indicate that the Parties will compete even more closely with each other in the future. In particular:

(a) D&D's document [REDACTED] dated June 2021 [REDACTED].<sup>212</sup> [REDACTED].

(b) TMG's document [REDACTED] dated May 2021 [REDACTED].<sup>213</sup> This suggests that TMG may become an even closer competitor of D&D in the future, including in relation to smaller, regional conveyancers focusing on residential property transactions.

112. The Parties submitted that the above internal documents did not contain evidence that the Parties would become even closer competitors in the future. Specifically, D&D submitted that D&D's document [REDACTED] was prepared by the previous owners of [REDACTED] as part of their strategy.<sup>214</sup> TMG submitted that [REDACTED] increasing market share in TMG's document [REDACTED] do not relate to any substantive plans and that the objective on [REDACTED] relates to its growth strategy through [REDACTED], which is [REDACTED].<sup>215</sup>

113. Although D&D's document [REDACTED] was prepared by [REDACTED]'s former shareholders, the CMA has not seen evidence that [REDACTED]'s marketing strategy has materially changed since its acquisition by D&D. As regards TMG's document [REDACTED], the CMA notes that

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<sup>208</sup> Response to the Enquiry Letter, Annex 22.01 (page 40).

<sup>209</sup> Response to the Enquiry Letter, Annex 20.07 (page 19).

<sup>210</sup> Response to the Enquiry Letter, Annex 22.01 (pages 40, 71, 75-76 and 79).

<sup>211</sup> Response to the Enquiry Letter, Annex 24.14 (pages 4-5).

<sup>212</sup> Response to the Enquiry Letter, Annex 24.14 (page 4).

<sup>213</sup> Response to the Enquiry Letter, Annex 24.19 (page 7).

<sup>214</sup> Response to the Issues Paper, paragraph 5.15.

<sup>215</sup> Response to the Issues Paper, paragraph 5.15.

it was produced by [X] and, as explained by TMG, sets out the marketing strategy of the TMG business prior to the Merger.<sup>216</sup> The CMA has also not seen evidence that the objective on market share growth in [X] only relates to a growth strategy focused on the supply of Property Search Report Bundles [X] through Mio and excludes [X].

### *Merged Entity's business strategy post-Merger*

114. As noted at paragraph 15, the CMA found that D&D's internal documents discussing the Merger contemplate increases of [X] in TMG's prices [X] post-Merger.<sup>217</sup>
115. D&D explained that such internal documents would not relate to any plan to increase TMG's prices due to the Merger, [X].<sup>218</sup> [X].<sup>219</sup> D&D further explained that it therefore included a price increase assumption [X], reflecting [X] annual price increase rates based on its experience of the UK market and what TMG would reasonably apply on a 'business as usual' basis.<sup>220</sup> On this last point, D&D explained that [X] it was aware that TMG had last increased [X] in [X] 2020 and had not yet implemented its usual annual increase for 2021.<sup>221</sup>
116. D&D also submitted that the wording of these D&D's internal documents would indicate that D&D had not factored in a price increase [X] on the basis that the loss of competition from TMG would give D&D the ability to increase prices.<sup>222</sup>
117. In relation to the [X] increases referenced in these internal documents, D&D explained that [X] increase rates were included in 'in-draft' documents [X].<sup>223</sup> Following this early stage [X], D&D's [X] would have discussed a more realistic price increase assumption for the UK marketplace.<sup>224</sup> D&D's [X] would have also tried to better understand the timing and rate of TMG's earlier price increases, [X].<sup>225</sup> D&D's [X] would have ultimately drafted documents [X] which included an

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<sup>216</sup> Response to the Enquiry Letter, paragraph 24.2.

<sup>217</sup> A D&D internal document of 2 June 2021 [X] in relation to the Merger indicated that there was [X] potential [X] from price increases (Response to the section 109 notice of 11 October 2021, Annex 12.02). A D&D internal document of 3 June 2021 [X] refers to [X] increase in TMG's prices [X] (Response to the Enquiry Letter, Annex 21.03, pages 3-4). A D&D internal document of 8 June 2021 [X] refers to [X] increase in TMG's prices [X] (Response to the section 109 notice of 11 October 2021, Annex 12.03). Two D&D internal documents of 24 and 30 June 2021 [X] refer to [X] increase in TMG's prices [X] (Response to the Enquiry Letter, Annex 21.04, pages 5, 18 and 20; Annex 21.05, pages 9 and 16). These internal documents were taken into account by [X] (Response to the Enquiry Letter, Annex 21.06, item 4; Annex 21.07; items 3-4 and Schedule A).

<sup>218</sup> Response to the Issues Paper, paragraphs 6.2-6.3.

<sup>219</sup> Response to the Issues Paper, paragraph 6.3.

<sup>220</sup> Response to the Issues Paper, paragraph 6.5.

<sup>221</sup> Response to the Issues Paper, paragraph 6.5.

<sup>222</sup> Response to the Issues Paper, paragraph 6.4.

<sup>223</sup> Response to the Issues Paper, paragraphs 6.4, 6.6.

<sup>224</sup> Response to the Issues Paper, paragraph 6.7.

<sup>225</sup> Response to the Issues Paper, paragraph 6.7. Response to the section 109 notice of 11 October 2021, Annex 12.04.

‘illustrative’, ‘market standard’ increase [X] in TMG’s prices.<sup>226</sup> According to D&D, TMG would have implemented fairly regular price increases [X] at the average of [X],<sup>227</sup> and a [X] price increase would be within competitive levels.<sup>228</sup>

118. The CMA believes that D&D’s internal documents contemplating an increase in TMG’s prices post-Merger are evidence of D&D’s awareness that the Parties exercise a material competitive constraint on one another and that this constraint will be removed by the Merger. The CMA also believes that D&D’s internal documents contemplating increases in TMG’s prices post-Merger further indicate that the Merged Entity would likely already have increased prices by at least [X] in the absence of the CMA’s Initial Enforcement Order.<sup>229</sup> The CMA has based its assessment on the following:
- (a) As discussed at paragraph 15, the D&D’s internal documents in question indicate that [X] increase in TMG’s prices was a relevant part [X] of the TMG business discussed by D&D’s [X] and considered by D&D’s [X] when approving the Merger.
  - (b) The wording in D&D’s internal documents in question indicates that the envisaged increase in TMG’s prices would likely be a consequence of the Merger. D&D referred to increases in TGM’s prices as [X] of the Merger, and not an inevitable or even anticipated action that would have taken place in its absence.
  - (c) The increased rates in the D&D’s internal documents in question also indicate that D&D was not likely considering a ‘market standard’ or ‘business as usual’ increase in TMG’s prices. First, the CMA has seen no evidence of the alleged discussions [X] around what would be considered a more realistic price increase assumption for the UK marketplace, despite requesting such evidence from the Parties.<sup>230</sup> Second, contrary to the Parties submission that any price increase would be ‘market standard’, an increase of even 5% in TMG’s overall prices is much larger than TMG’s earlier changes in prices for Property Search Report Bundles, [X].<sup>231</sup> In fact, the evidence available to the

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<sup>226</sup> Response to the Issues Paper, paragraph 6.8.

<sup>227</sup> Response to the Issues Paper, paragraph footnote 13 to paragraph 6.8.

<sup>228</sup> Response to the Issues Paper, paragraph 6.11.

<sup>229</sup> Initial Enforcement Order made by the CMA pursuant to section 72(2) of the Act on 27 August 2021, as varied on 30 September 2021. See [Dye & Durham \(UK\) Limited / TM Group \(UK\) Limited merger inquiry - GOV.UK](#).

<sup>230</sup> The CMA requested evidence of such discussion, as it expected that at least some of the discussions around the level of any price increase to have taken place in writing. In response, D&D explained that it had already submitted all relevant documents relating to the price increase discussed in the relevant documents cited by the CMA, and that any further discussions would have taken place orally.

<sup>231</sup> The CMA believes that the D&D’s internal documents discussing increases in TMG’s prices refer to the prices for Property Search Report Bundles. This is mostly because those documents apply the increase rate of at least [X] to

CMA indicates that TMG's past price increases did not exceed [X]. For instance, TMG increased [X]'s overall prices for residential and commercial Property Search Report Bundles by just [X] and [X], respectively, in October 2021.<sup>232</sup> Similarly, TMG increased CDS' overall prices for regulated and official residential Property Search Report Bundles<sup>233</sup> by just [X] and [X], respectively, in October 2021.<sup>234</sup> Moreover, [X], TMG noted that while it increased its [X] by around [X] in [X] 2020, this represented an increase of only [X] in overall prices for Property Search Report Bundles.<sup>235</sup> Moreover, the average TMG's past price increases of [X] alleged by D&D do not refer to prices for Property Search Report Bundles but to TMG's [X] fees.<sup>236</sup>

119. The CMA believes that D&D's internal documents contemplating an increase in TMG's prices post-Merger must be read together with materials and statements made by D&D to its investors about its overall M&A strategy. These materials and statements indicate that D&D's strategy of acquiring competitors to increase market share, together with the fact that conveyancers are highly dependent on D&D's services and pass on the costs to the end consumer (ie buyers and sellers of properties), provides for low customer churn following acquisitions and price increases.<sup>237</sup> This is consistent with third party evidence received by the CMA. For instance, several of D&D's<sup>238</sup> and TMG's<sup>239</sup> customers that responded to the CMA's merger investigation submitted that they would accept or may accept a price increase (see paragraph 124).<sup>240</sup>

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TMG's [X]. Accordingly, the CMA does not believe that the D&D's internal documents discussing increases in TMG's prices refer to [X] TMG's prices for Property Search Bundles such as the [X] fees charged by TMG [X].

<sup>232</sup> Response to the RFI of 17 November 2021, tables 3 and 4.

<sup>233</sup> As discussed in footnote 59, LA searches compiled by LAs are known as 'official' LA searchers and LA searches compiled by commercial suppliers are known as 'regulated' or 'personal' LA searches. Similarly, as discussed in footnote 60, DW searches compiled by official information holders are known as 'official' DW searches and DW searches compiled by commercial suppliers are known as 'regulated' or 'personal' searches. CDS' regulated residential Property Search Report Bundles include official LA and DW searches, whereas CDS' official residential Property Search Report Bundles include 'regulated' or 'personal' LA and DW searches.

<sup>234</sup> Response to the RFI of 17 November 2021, table 5. See also D&D's email to the CMA on 24 November 2021.

<sup>235</sup> Response to the section 109 notice of 11 October 2021, Annex 12.04.

<sup>236</sup> Response to the section 109 notice of 11 October 2021, tables 5 and 6.

<sup>237</sup> [Slide deck for D&D Investor Day on 20 April 2021](#) (eg slides 13, 17, 26-28, 32, 36-37) and [Recording of Investor Day presentation on 20 April 2021](#) (eg John Robinson's statements starting at min. 26:43 and min. 27:30; Avjit Kamboj's statements starting at min. 51:03). The CMA considers that the slide deck and statements made by D&D during its Investor Day apply to the UK. For instance, D&D's senior management explained during the Investor Day that market dynamics are very similar across the three jurisdictions where D&D is active, including the UK. D&D's senior management also noted that D&D has been replicating its M&A strategy across all jurisdictions where D&D is active. Moreover, the CMA considers that at least Dentons, Taylor Walton, bird & co, and Norton Rose Fulbright are D&D's customers of Property Search Report Bundles in E&W.

<sup>238</sup> [X]. The CMA asked D&D customers: 'If the price of the property search reports sold by D&D (including poweredbyPie, PSG Connect, Index Direct, GlobalX, Easy Convey and York Place) rose 5%, would you accept the price increase or switch to one of the above alternatives?'

<sup>239</sup> [X]. The CMA asked TMG's customers: 'If the price of the property search reports sold by TMG (including tmConvey, tmConnect and Conveyancing Data Services) rose 5%, would you accept the price increase or switch to one of the above alternatives?'

<sup>240</sup> The CMA notes that several other TMG's and D&D's customers indicated that they would consider switching to alternative suppliers if prices rose by 5%. [X].

## Third party views

### Customers

120. As part of its investigation, the CMA contacted several of the Parties' customers including intermediaries;<sup>241</sup> large conveyancers;<sup>242</sup> and medium and small conveyancers.<sup>243</sup> In response to the Issues Paper, the Parties submitted that they assumed from certain references made in the Issues Paper that a limited number of customers had responded to the CMA's merger investigation and that this would not be representative of the Parties' hundreds of customers.<sup>244</sup> The Parties also submitted that the CMA should not draw conclusions from comments from individual customers.<sup>245</sup> The CMA considers that the number of responses received from customers is sufficient for it to draw conclusions from their input,<sup>246</sup> and is consistent with similar Phase 1 investigations.<sup>247</sup> The CMA also notes that it has assessed customer feedback alongside other evidence to reach the findings outlined in this decision. The CMA further notes that in its assessment of the Merger it has considered all the available evidence and no findings were drawn exclusively on the basis of customer evidence alone.
121. Some D&D customers submitted that TMG is one of the closest alternatives to D&D.<sup>248</sup> Among points made were that D&D and TMG 'work in the same market and offer a similar service.'<sup>249</sup> However, some other D&D customers did not consider TMG as one of the closest alternatives to D&D.<sup>250</sup> In addition, some D&D customers listed ATI as one of its closest alternatives,<sup>251</sup> one customer listed Landmark,<sup>252</sup> and one customer listed Quantus, Searches UK, and Severn Trent Searches.<sup>253</sup>

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<sup>241</sup> [REDACTED]. Based on the Parties' proposed customer segmentation which considers 'intermediaries' to be panel managers and other intermediaries. Response to the Issues Paper, table 1.

<sup>242</sup> [REDACTED]. Based on the Parties' proposed customer segmentation which considers 'large conveyancers' to be city law firms that appear in the top 100 UK law firms identified by *The Lawyer*. See Response to the Issues Paper, table 1.

<sup>243</sup> [REDACTED]. Based on the Parties' proposed customer segmentation which considers (a) 'medium conveyancers' to be law firms and licensed conveyancers that carried out more than 240 property transactions in E&W 2020 but are not 'large conveyancers', and (b) 'small conveyancers' to be law firms and licensed conveyancers that carried out less than 240 property transactions in E&W 2020. Response to the Issues Paper, table 1.

<sup>244</sup> Response to the Issues Paper, paragraph 6.10.

<sup>245</sup> Response to the Issues Paper, paragraph 6.12.

<sup>246</sup> In this regard, the CMA notes that the Parties relied on input from an identical number of competitors to make certain representations during their response to the CMA's Issues Paper.

<sup>247</sup> [REDACTED].

<sup>248</sup> [REDACTED].

<sup>249</sup> [REDACTED].

<sup>250</sup> [REDACTED].

<sup>251</sup> [REDACTED].

<sup>252</sup> [REDACTED].

<sup>253</sup> [REDACTED].

122. Some TMG customers submitted that D&D is one of the closest alternatives to TMG.<sup>254</sup> One customer explained that the Parties provide a similar service in the residential sector.<sup>255</sup> Another TMG customer explained that the Parties provide the same searches.<sup>256</sup> However, several TMG customers, many of which provide conveyancing services in relation to commercial properties, did not consider D&D as one of the closest alternatives to TMG.<sup>257</sup> Several TMG customers listed ATI<sup>258</sup> and Landmark<sup>259</sup> among the closest alternatives, one customer listed X-Press Legal Services (although this customer did not consider X-Press Legal Services as close a competitor as ATI, Landmark and D&D),<sup>260</sup> and another customer listed eConveyancer and inCase (although this customer explained that eConveyancer and inCase are 'not market leaders').<sup>261</sup>
123. One of the Parties' customers submitted that over the last five years many smaller independent businesses in the market have either merged or been taken over, and further expressed a concern that the Merger 'would effectively lead to there being only 3 effective providers of searches.'<sup>262</sup> However, this customer also submitted that it hopes that each of these three providers would have to remain competitive given the availability of the other two. Another customer submitted that it is concerned that the market is becoming too consolidated with the bigger groups becoming too dominant.<sup>263</sup>
124. Almost all the Parties' customers that responded to the CMA's merger investigation submitted that switching Property Search Report Bundles provider is easy, citing the main barrier as training staff to use a new system to place and manage orders. However, as discussed at paragraph 119, several D&D<sup>264</sup> and TMG<sup>265</sup> customers also submitted that they would accept or may accept a price increase. One of these customers explained that, although its clients are price-sensitive overall, the cost of

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<sup>254</sup> [redacted].

<sup>255</sup> [redacted].

<sup>256</sup> [redacted].

<sup>257</sup> [redacted].

<sup>258</sup> [redacted].

<sup>259</sup> [redacted].

<sup>260</sup> [redacted].

<sup>261</sup> [redacted]. However, based on publicly available information, the CMA believes that eConveyancer and inCase are not suppliers of Property Search Report Bundles, but are rather intermediaries. See [eConveyancer | What is eConveyancer?](#) and [What Is inCase - Legal App for Law Firms - inCase™ \(in-case.co.uk\)](#).

<sup>262</sup> [redacted].

<sup>263</sup> [redacted].

<sup>264</sup> [redacted]. The CMA asked D&D customers: 'If the price of the property search reports sold by D&D (including poweredbybie, PSG Connect, Index Direct, GlobalX, Easy Convey and York Place) rose 5%, would you accept the price increase or switch to one of the above alternatives?'

<sup>265</sup> [redacted]. The CMA asked TMG's customers: 'If the price of the property search reports sold by TMG (including tmConvey, tmConnect and Conveyancing Data Services) rose 5%, would you accept the price increase or switch to one of the above alternatives?'



search fees is only a relatively small proportion of the overall cost of its services to its clients.<sup>266</sup>

125. The CMA has become aware that around the time the CMA launched its Invitation to Comment, D&D<sup>267</sup> and TMG<sup>268</sup> proactively contacted their customers and informed them that the CMA may reach out to them in relation to the Merger, inviting them to [redacted] (the **D&D Communication** and the **TMG Communication**). The CMA also became aware that the TMG Communication also proposed TMG's customers to [redacted], in the event they were approached by the CMA for information and needed any support, or had any questions.<sup>269</sup>
126. After further investigation, the CMA found that:
- (a) Most D&D customers that received the D&D Communication did not reply. A few D&D customers reacted to the D&D Communication either by confirming that they would be happy to assist D&D if contacted by the CMA,<sup>270</sup> or that they were in the process of responding to the CMA's written questions.<sup>271</sup> At least one D&D customer shared the CMA's written questions with D&D and held a telephone call with a D&D's senior account manager.<sup>272</sup> The CMA is not aware of the content of the call, [redacted].
  - (b) D&D also sent the D&D Communication to Index PI Franchisees. At least one Index PI Franchisee said it would help in any way that they can if contacted by the CMA.<sup>273</sup> Another Index PI Franchisee challenged D&D to clarify the purpose of the communication, in particular with regards to D&D's invitation to Index PI Franchisees to [redacted].<sup>274</sup> In response, D&D explained to the Index PI Franchisee that this was a generic statement which was not intended at asking Index PI Franchisees to be an advocate of the acquisition. D&D also told the Index PI Franchisee to provide its honest and considered view in case it received any questions from the CMA.<sup>275</sup> This message explaining that D&D was not in fact attempting to influence customer views was subsequently circulated to another Index PI Franchisee.<sup>276</sup>

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<sup>266</sup> [redacted].

<sup>267</sup> Response submitted by D&D on 11 November 2021 to the section 109 notice issued by the CMA on 5 November 2021 (**D&D Response to the section 109 Notice of 5 November 2021**), question 1 and Annexes 01.01-01.44.

<sup>268</sup> Response submitted by TMG on 10 November 2021 to the section 109 notice issued by the CMA on 5 November 2021 (**TMG Response to the section 109 Notice of 5 November 2021**), question 1 and Annex 01.01 and Annex 01.02.

<sup>269</sup> TMG Response to the section 109 Notice of 5 November 2021, Annex 01.01 and Annex 01.02.

<sup>270</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.01.

<sup>271</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.03.

<sup>272</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.04.

<sup>273</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.09.

<sup>274</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.05.

<sup>275</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.05.

<sup>276</sup> D&D Response to the section 109 Notice of 5 November 2021, Annex 02.06.

(c) Most of TMG's customers that received the TMG Communication did not reply and at least one TMG customer acknowledged receipt.<sup>277</sup> At least three customers contacted TMG to request expenditure data to respond to the CMA's written questions.<sup>278</sup>

127. It has not been possible for the CMA to speak to each one of the Parties' customers that received the D&D Communication, the TMG Communication, or both to ascertain the probative weight to give to their responses or to their lack of response. The CMA nonetheless cannot exclude that the D&D Communication and TMG Communication may have been interpreted as a request to support the Merger by the Parties' customers, including because at least one recipient of the D&D took that interpretation and wrote to D&D protesting the implication that customers should support the Merger as a result. Notwithstanding the CMA's concerns regarding the probative value of the evidence from customers as a result of the D&D Communication and the TMG Communication, the CMA considers that there are sufficient grounds to find a realistic prospect of an SLC in this case even if they are considered at face value.

128. More generally, the CMA considers any attempt by merging parties to solicit customers to provide a particular view to the CMA, in anticipation of or during the CMA's merger investigation, has the potential to seriously disrupt both the CMA's ability to gather reliable, objective evidence and the orderly conduct of its investigation. As such, the CMA considers it inappropriate for merger parties to approach customers with communications similar to the D&D Communication and the TMG Communication.

### *Competitors*

129. As part of its investigation, the CMA also contacted several of the Parties' competitors including the Parties' main competitors, ATI and Landmark; franchise groups, such as X-Press Legal Services and NSS; and a number of smaller, often regional, competitors.<sup>279</sup>

130. Several competitors of the Parties submitted that TMG is one of D&D's closest competitors<sup>280</sup> and/or that D&D is one of TMG's closest competitors.<sup>281</sup> One of

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<sup>277</sup> TMG Response to the section 109 Notice of 5 November 2021, Annex 02.01.

<sup>278</sup> TMG Response to the section 109 Notice of 5 November 2021, Annex 02.02, Annex 02.03, Annex 02.04.

<sup>279</sup> For example, [REDACTED].

<sup>280</sup> [REDACTED].

<sup>281</sup> [REDACTED].

these competitors submitted that D&D and TMG provide a similar range of services and hold a similar market share.<sup>282</sup>

131. All competitors that responded to the CMA's merger investigation also submitted that ATI and/or Landmark are among D&D's and TMG's closest competitors. Several competitors listed X-Press Legal Services as one of each of the Parties' competitors, although it was generally considered a less close competitor of each Party than the other Party, or ATI and Landmark. Smaller suppliers were also sometimes listed as competitors to the Parties. However, when listed, smaller suppliers were considered less close competitors to the Parties.
132. Several competitors submitted that over the last few years many small independent providers of Property Search Report Bundles have been taken over by D&D (or another large competitor). As a result of the Merger, these competitors submitted there would be no more than three main providers of Property Search Report Bundles in E&W.<sup>283</sup> Some competitors also noted that, as D&D has also acquired upstream suppliers of property search reports in E&W, there is a greater asymmetry between its offering and the offering of smaller suppliers of Property Search Report Bundles in E&W.<sup>284</sup>
133. At least two competitors considered that the Merger would lead to higher prices in the provision of Property Search Report Bundles in E&W,<sup>285</sup> with at least one of them noting that D&D has a track record of raising prices following acquisitions.<sup>286</sup> A competitor explained that one reason why D&D has been able to implement price increases is that conveyancers typically pass on the cost of carrying out property searches to their clients and as such they are unlikely to switch on the basis of cost increases.<sup>287</sup> However, a few competitors also stated that, as a vertically integrated supplier, the Merged Entity would be able to charge lower prices for Property Search Report Bundles.<sup>288</sup>
134. Apart from prices, some competitors considered that the Merger would lead to lower quality and less choice in the provision of Property Search Report Bundles in E&W.<sup>289</sup> Specifically on the concerns around reduced choice, at least one competitor raised the concern that TMG's former shareholders, ie three large estate agents, may have committed to continue inducing conveyancers to order Property

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<sup>282</sup> [redacted].

<sup>283</sup> [redacted].

<sup>284</sup> [redacted].

<sup>285</sup> [redacted].

<sup>286</sup> [redacted].

<sup>287</sup> [redacted].

<sup>288</sup> [redacted]. See also, [redacted].

<sup>289</sup> [redacted].

Search Report Bundles from TMG and other D&D businesses.<sup>290</sup> As discussed at paragraph 12, [REDACTED]. Moreover, at least one competitor expressed the concern that the Merger will reduce innovation in the provision of Property Search Report Bundles in E&W.<sup>291</sup>

135. Several smaller competitors submitted that it is difficult or very difficult for smaller suppliers to expand.<sup>292</sup> Competitors mentioned several barriers to expansion, including the need for large investments in technology and marketing and the difficulty of matching the prices of larger, vertically integrated suppliers (ie D&D, ATI and Landmark).

#### *Conclusion on closeness of competition*

136. For the reasons set out above, the CMA believes that the various strands of evidence are consistent in demonstrating that the Parties are close competitors for a significant proportion of customers and that they exercise a material competitive constraint on one another. Further the evidence demonstrates that the Merged Entity will likely increase prices in the future.

#### ***Other competitive constraints***

137. Unilateral effects are more likely where the remaining competitive constraints are not sufficient to offset the loss of competition between the merger firms resulting from the merger.<sup>293</sup> The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are a few existing suppliers, or the remaining constraints on the merger firms are weak, competition concerns are likely.<sup>294</sup> The CMA has therefore considered whether there are alternative suppliers of Property Search Report Bundles in E&W which would provide a material competitive constraint on the Merged Entity.
138. The Parties submitted that customers have significant choice as to who they purchase Property Search Reports from and that the Merged Entity will face significant competitive constraints from a large range of suppliers.<sup>295</sup> In this regard, the Parties submitted that they face competition from the following (see paragraphs 71-74):

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<sup>290</sup> [REDACTED].

<sup>291</sup> [REDACTED].

<sup>292</sup> [REDACTED].

<sup>293</sup> [Merger Assessment Guidelines](#), paragraph 4.8.

<sup>294</sup> [Merger Assessment Guidelines](#), paragraph 4.3.

<sup>295</sup> Response to the Issues Paper, paragraph 4.1.

- (a) a number of suppliers of Property Search Report Bundles, including Landmark, ATI, Searches UK, Legal Bricks, Move Reports UK, Quantus, and The Search Bureau;
- (b) franchise groups, such as X-Press Legal Services and NSS. In response to the CMA's Issues Paper, the Parties submitted that other franchise groups, such as LawFirm Services, Index PI Indirect and PSG Indirect would also operate as credible alternative providers; and
- (c) a long 'tail' of smaller suppliers listed by CoPSO<sup>296</sup> and IPSA<sup>297</sup>.

139. The Parties also submitted that competition between them and other suppliers of Property Search Report Bundles varies across three main customer groupings:<sup>298</sup>

- (a) Intermediaries: The Parties submitted that given the large volume of transactions they manage, how easy they can switch suppliers and their sensitivity to prices, intermediaries have buyer power and intensify competition between suppliers of Property Search Report Bundles.<sup>299</sup> The Parties also submitted that intermediaries can use smaller suppliers of Property Search Report Bundles, a feature which both enhances the alternative for intermediaries and provides a route to expansion for smaller suppliers.<sup>300</sup>
- (b) Large conveyancers: The Parties submitted that they hardly overlap to supply large conveyancers with commercial Property Search Report Bundles.<sup>301</sup> The Parties also submitted that although price is important, for the larger law firms and conveyancers, the attraction of the service is the ability to have a one-stop-shop and for the service to be easy to use and to help them manage their costs, efficiency and service delivery when providing conveyancing services to customers.<sup>302</sup>
- (c) Medium and small conveyancers: The Parties acknowledged that there is greater overlap between them in the supply of Property Search Report Bundles to medium and small conveyancers.<sup>303</sup> However, according to the Parties these customers would have regional demands and would be served by a broad range of suppliers, such as the Parties, ATI, Landmark, franchise groups (eg D&D-owned franchise groups, X-Press Legal Services), Searches

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<sup>296</sup> Council of Property Search Organisations.

<sup>297</sup> Association of Independent Personal Search Agents.

<sup>298</sup> Response to the Issues Paper, paragraphs 1.2(b), 4.2.

<sup>299</sup> Response to the Enquiry Letter, paragraphs 11.3.4 and 28.5. Response to the Issues Paper, paragraphs 1.2(b), 2.5-2.6, 2.8, 4.2, 5.25.1.

<sup>300</sup> Response to the Issues Paper, paragraph 5.25.1.

<sup>301</sup> Response to the Issues Paper, paragraphs 1.2(b), 4.2, 5.25.2.

<sup>302</sup> Response to the Enquiry Letter, paragraphs 28.2-28.3.

<sup>303</sup> Response to the Issues Paper, paragraphs 1.2(b).

UK, water companies, and a multitude of smaller regional players which compete alongside the national providers.<sup>304</sup> In relation to regional suppliers, the Parties submitted a list containing the office locations of regional suppliers by region in E&W.<sup>305</sup>

140. The CMA has assessed the constraints from:

- (a) the two remaining large suppliers of Property Search Report Bundles, ATI and Landmark;
- (b) the franchise groups, X-Press Legal Services and NSS; and
- (c) other suppliers of Property Search Report Bundles, including the ones listed by the Parties (see paragraph 138(a)).

#### *ATI and Landmark*

141. Aside from the Parties, ATI and Landmark are currently the remaining two of the four largest suppliers of Property Search Report Bundles in E&W (see Table 3).

142. The Parties' internal documents indicate that ATI and Landmark are two of their closest competitors without distinction by customer groupings (see paragraph 109).

143. The customer and competitor feedback received by the CMA also indicates that ATI and Landmark are two of the Parties' closest competitors (see paragraphs 121-122 and 131). Evidence received from the Parties' customers also indicate that ATI and Landmark are used across different customer groupings.<sup>306</sup>

#### *X-Press Legal Services and NSS (franchise groups)*

144. X-Press Legal Services and NSS are far smaller than the Parties, ATI and Landmark, each with a share of supply below [0-5]% (see Table 3). Apart from low shares of supply, the CMA notes that the estimates in Table 3 may overstate the competitive strength of X-Press Legal Services and NSS, as these are franchise groups with each franchisee typically being a small operator constrained to a specific territory within E&W.<sup>307</sup>

145. Evidence received from the Parties and third parties also indicates that X-Press Legal Services and NSS exert a limited constraint on the Parties. For instance, [redacted] is mentioned in three of D&D's internal documents, but as an example of '[o]ther

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<sup>304</sup> Response to the Issues Paper, paragraphs 1.2(b), 4.1, 4.3, 4.5-4.7.

<sup>305</sup> Response to the Issues Paper, paragraph 4.7 and Annex 04.01.

<sup>306</sup> [redacted].

<sup>307</sup> See, for example, [Available territories | X-Press Legal Services \(xpresslegal.co.uk\)](https://www.xpresslegal.co.uk).

small platforms' [redacted].<sup>308</sup> Similarly, [redacted] mentioned in one TMG internal document but not amongst the main suppliers of Property Search Report Bundles.<sup>309</sup> Third party feedback also indicates that X-Press Legal Services competes with the Parties, but not as close a competitor as ATI and Landmark (see paragraphs 122 and 131). The CMA has not seen reference to NSS [redacted]. NSS was listed by only one competitor as an alternative to the Parties, and yet not as close a competitor as ATI and Landmark.<sup>310</sup>

146. Based on their historic growth and third party feedback, the CMA also believes that X-Press Legal Services and NSS would not likely expand materially after the Merger. The CMA also notes that despite the fact that X-Press Legal Services<sup>311</sup> and NSS<sup>312</sup> have been supplying property search reports in E&W for approximately two decades, each still accounts for less than [0-5]% of the market. In addition, third party feedback from franchise groups and other smaller suppliers received by the CMA indicates that it is difficult for smaller suppliers to materially expand, in particular without significant investment in service, quality and marketing.<sup>313</sup> As such, the CMA believes that X-Press Legal Services and NSS would not likely expand materially after the Merger.
147. The CMA does not believe the other franchise groups mentioned by the Parties, namely Index PI, PSG, and LawFirm Services exercise any material constraint on the Parties. As discussed at paragraph 81, the CMA does not consider that Index PI Indirect and PSG Indirect are independent competitors to D&D. As discussed at paragraph 81, LawFirm Services is a software provider, not a search company or franchise group, and does not appear to offer Property Search Report Bundles.<sup>314</sup>

#### *Other suppliers of Property Search Report Bundles*

148. There are many smaller suppliers also active in the market (see paragraph 80). These businesses have individual shares of supply of less than [0-5]% (see Table 3), and the CMA has received no evidence that any of them would have shares greater than 1%. Apart from low shares of supply, the CMA notes that, similarly to franchise groups, the estimates in Table 3 may overstate the competitive strength of smaller suppliers, as these are typically regional suppliers with activities in specific regions within E&W.

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<sup>308</sup> Response to the Enquiry Letter, Annex 21.04 (pages 3-4); Annex 21.05 (pages 3-4); Annex 23.07 (page 4).

<sup>309</sup> Response to the Enquiry Letter, Annex 21.10.

<sup>310</sup> [redacted].

<sup>311</sup> See <https://xpresslegal.co.uk>.

<sup>312</sup> See <http://www.nationalsearchservice.co.uk>.

<sup>313</sup> [redacted].

<sup>314</sup> [redacted].

149. Evidence received by the Parties and third parties also indicates that smaller suppliers exert a limited constraint on the Parties. The CMA found only very limited references to smaller suppliers in the Parties' internal documents (see for example paragraph 81) and third party feedback also indicates that these smaller suppliers are not close competitors of the Parties (see paragraphs 121-122 and 131). Specifically, a rival supplier of Property Search Report Bundles told the CMA that it does not consider smaller regional suppliers as material competitors because they have not invested in technology and innovation and have only a loyal but small client base.<sup>315</sup> Another rival supplier of Property Search Report Bundles also told the CMA that there is a big difference between the top four providers and the rest of the market, which is very fragmented at the bottom end.<sup>316</sup>

#### *Conclusion on other competitive constraints*

150. For the reasons set out above, the CMA believes that ATI and Landmark compete closely with the Parties and are expected to continue to compete closely with the Merged Entity after the Merger. However, constraints from ATI and Landmark are unlikely to be sufficient to counteract the effects of the Merger. The CMA believes that given their limited size and primarily local operations, the franchise groups, X-Press Legal Services and NSS, and other smaller competitors constitute only a limited constraint on the Parties and would constitute, at most, either individually or in aggregate, a limited constraint for the Merged Entity.
151. On this basis, the CMA concludes that either individually or in aggregate there are not sufficient competitive constraints from alternative suppliers to mitigate the loss of competition brought about by the Merger.

#### *Conclusion on horizontal unilateral effects*

152. For the reasons set out above, the CMA believes that the supply of Property Search Report Bundles in E&W is becoming more concentrated, with only four main suppliers (the Parties, ATI and Landmark). The Merger would create a clear market leader and reduce the number of significant suppliers of Property Search Report Bundles in E&W.
153. The CMA also believes that the Parties compete closely with each other for a significant volume of sales. The Parties are also expected to compete even more closely in the future, with the Parties' internal documents indicating that D&D intends to target [redacted] customers with [redacted] and that one of TMG's short-term objectives is to increase its market share in [redacted].
154. The CMA further believes that the evidence indicates that many customers are insensitive to price increases. Moreover, D&D's internal documents evidence a

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<sup>315</sup> [redacted].

<sup>316</sup> [redacted].



clear intention to raise prices by at least [~~8~~] post-Merger, with no indication that they would be constrained by remaining competitors.

155. In addition, the CMA believes that while ATI and Landmark compete closely with the Parties and are expected to continue to compete closely with the Merged Entity, these competitors are unlikely to be sufficient to constrain the Merged Entity. Moreover, the constraints from the franchise groups, X-Press Legal Services and NSS, and other smaller competitors constitute a limited constraint on the Parties and would constitute even in aggregate a limited constraint for the Merged Entity.
156. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of Property Search Report Bundles in E&W.

## ENTRY AND EXPANSION

157. Entry, or expansion of existing firms, can mitigate the initial effect of an acquisition on competition, and in some cases may mean that there is no SLC. However, the CMA generally considers that entry and expansion preventing an SLC from arising would be rare.<sup>317</sup>
158. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely, and sufficient to prevent an SLC.<sup>318</sup> In terms of timeliness, the CMA's guidelines indicate that the CMA will typically look for entry to occur within two years.<sup>319</sup> In this assessment, the CMA will also seek to ensure that the evidence of entry and or expansion being timely, likely and sufficient to prevent an SLC from arising is robust.<sup>320</sup>
159. The Parties submitted that there are no significant barriers to entry or expansion in the supply of Property Search Report Bundles in E&W.<sup>321</sup> The Parties also submitted that entry or expansion can be achieved easily with investments (involving training of staff, marketing costs, software investment, PCCB<sup>322</sup> registration and insurance), and the right financial incentives.<sup>323</sup> The Parties further submitted that Property Search Report Bundles are commodity products, that customers can easily switch providers, and that smaller suppliers can grow rapidly by, for example, entering into supply arrangements with customers purchasing high volumes of Property Search Report Bundles such as intermediaries.<sup>324</sup>

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<sup>317</sup> [Merger Assessment Guidelines](#), paragraph 8.29.

<sup>318</sup> [Merger Assessment Guidelines](#), paragraph 8.31.

<sup>319</sup> [Merger Assessment Guidelines](#), paragraph 8.33.

<sup>320</sup> [Merger Assessment Guidelines](#), paragraph 8.30.

<sup>321</sup> Response to the Enquiry Letter, paragraph 32.1. Response to the Issues Paper, paragraphs 1.2(d) and 4.8.

<sup>322</sup> The Property Codes Compliance Board is an independent body that maintains a register of firms that choose to subscribe to the Search Code of Practice and independently monitors their compliance with the Code – see [PCCB - The Property Codes Compliance Board - Standards for Property Searches](#).

<sup>323</sup> Response to the Enquiry Letter, paragraphs 32.1-32.3.

<sup>324</sup> Response to the Issues Paper, paragraphs 2.5-2.6, 2.8.

160. The Parties also submitted that suppliers of Property Search Report Bundles take approximately two years to break even and more than five years to reach medium size.<sup>325</sup>
161. In addition, the Parties listed a number of suppliers which have grown significantly since their inception and over the last five years, including CDS (before TMG's acquisition in 2018), Index PI (before D&D's acquisition in 2019), Search Acumen (before ATI's acquisition in 2021), InfoTrack, Legal Bricks, Legal Brokers, Move Reports UK, and The Search Bureau.<sup>326</sup> However, the Parties submitted only high-level volume and/or turnover data to show the expansion of Index PI, CDS and InfoTrack,<sup>327</sup> told the CMA that they were unable to submit detailed growth and market share for Legal Bricks, Legal Brokers, Move Reports, and The Search Bureau,<sup>328</sup> and have not provided growth data for Search Acumen. This notwithstanding, the CMA considers that, even if some suppliers have expanded rapidly in the past; there has subsequently been significant consolidation in the market (see paragraph 79) and it is unclear whether the remaining smaller suppliers would be able to expand sufficiently to prevent a competition concern.
162. Further, the Parties submitted that Access Group (the owners of a number of legal case management software, including DPS, Eclipse and Select Legal) announced the acquisition of Legal Bricks.<sup>329</sup> According to the Parties, conveyancers that currently use one of Access Group's case management software are likely to be incentivised to switch to Legal Bricks (if not currently using them). The Parties also submitted that this transaction would demonstrate that smaller suppliers are able to grow materially in the future. The CMA notes that Access Group's acquisition of Legal Bricks does not reflect growth of an existing competitor, but rather that smaller suppliers may see no other alternative way to remain in the market other than to be acquired by another market player. The CMA also notes that it is unclear how far Access Group's acquisition of Legal Bricks will enable it to expand: currently Legal Bricks has at most a [0-5]% share based on the CMA's estimates (see Table 3).
163. The evidence received by the CMA from third parties does not corroborate the Parties' submission that there are no significant barriers to entry or expansion. In particular, third party feedback, including from smaller competitors, shows that it is difficult for smaller suppliers to expand, as there are several barriers to expansion, including the need for large investments in technology, service quality and marketing, and the difficulty of matching the prices of larger, vertically integrated

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<sup>325</sup> Response to the Enquiry Letter, paragraphs 32.4.

<sup>326</sup> Response to the Enquiry Letter, paragraphs 33.1-33.2. Response to the Issues Paper, paragraphs 4.9-4.10.

<sup>327</sup> Response to the Issues Paper, Figures 1-3. Response to the RFI of 17 November 2021, paragraphs 3.2-3.5, 6.1-6.4.

<sup>328</sup> Response to the RFI of 17 November 2021, paragraph 6.5.

<sup>329</sup> Email to the CMA on 24 November 2021. See also [Legal Bricks Acquisition | The Access Group News](#).

suppliers.<sup>330</sup> This indicates that it is unlikely that smaller suppliers would expand materially after the Merger.

164. Moreover, evidence received from at least two smaller suppliers of Property Search Report Bundles indicated that it is increasingly difficult to expand in the E&W market for smaller suppliers due to the larger players becoming much more technologically advanced and vertically integrated (eg larger suppliers of Property Search Report Bundles, such as ATI and D&D, recently acquired upstream suppliers of certain property search reports).<sup>331</sup> One of these competitors also noted that expansion is also limited by the lack of resources to invest in technology upgrades and to acquire other businesses to facilitate growth.<sup>332</sup>
165. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient, timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

### THIRD PARTY VIEWS

166. The CMA contacted customers and competitors of the Parties. A few customers and several competitors raised concerns regarding the Parties' overlap in the supply of Property Search Report Bundles in E&W. Third party comments have been taken into account where appropriate in the competitive assessment above.
167. A few competitors also raised concerns that the main suppliers of Property Search Report Bundles in E&W are increasingly vertically integrated, and that post-Merger TMG would be part of a vertically integrated group with the risk of the Merged Entity foreclosing rival suppliers of Property Search Report Bundles in E&W that may purchase reports from D&D's upstream businesses.<sup>333</sup> The CMA notes that D&D was already vertically integrated and that the change brought about by the Merger is limited to the combination of D&D's upstream supply of reports with TMG's downstream supply of Property Search Report Bundles in E&W. The CMA believes that such an input foreclosure strategy by the Merged Entity would be more likely the greater its downstream position. This has been considered above in the CMA's assessment of horizontal unilateral effects in the supply of Property Search Report Bundles in E&W. Given the competition concerns found in the assessment of horizontal unilateral effects the CMA has therefore not found it necessary to consider further in this decision whether a potential input foreclosure strategy by the Merged Entity, targeting rival downstream supplies of Property Search Report Bundles that may purchase upstream property search reports and/or conveyancing

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<sup>330</sup> [REDACTED].

<sup>331</sup> [REDACTED].

<sup>332</sup> [REDACTED].

<sup>333</sup> [REDACTED].

risk management reports from D&D in E&W, would give rise to a realistic prospect of an SLC.

## **CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION**

168. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of Property Search Report Bundles in E&W.

# DECISION

169. In light of the above, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
170. The CMA is therefore under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>334</sup> D&D has until 16 December 2021<sup>335</sup> to offer undertakings to the CMA.<sup>336</sup> The CMA will refer the Merger for an in-depth investigation<sup>337</sup> if D&D does not offer undertakings by this date; if D&D indicates before this date that it does not wish to offer an undertaking; or if the CMA decides<sup>338</sup> by 23 December 2021 that there are no reasonable grounds for believing that it might accept any undertakings offered by D&D, or a modified version of them.
171. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 31 December 2021. For the avoidance of doubt, the CMA hereby gives D&D notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by D&D and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from D&D stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

**Joel Bamford**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**9 December 2021**

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<sup>334</sup> Section 22(3)(b) of the Act.

<sup>335</sup> Section 73A(1) of the Act.

<sup>336</sup> Section 73(2) of the Act.

<sup>337</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>338</sup> Section 73A(2) of the Act.

ENDNOTE

<sup>i</sup> Table 1 should be read as follows: TM Group, E&W and Scotland, 2021, 100%.