

CASE ME/6963/21

**DYE & DURHAM (UK) LIMITED / TM GROUP (UK) LIMITED**

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**RESPONSE TO THE CMA ISSUES STATEMENT  
DATED 21 JANUARY 2022**

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SUBMISSION DATED  
11 February 2022

## 1. INTRODUCTION

- 1.1 This submission is made on behalf of Dye & Durham Limited ("**D&D**"), Dye & Durham (UK) Limited ("**D&D UK**"), and TM Group (UK) Ltd ("**TMG**", together with D&D and D&D UK, the "**Parties**") in response to the Issues Statement published by the CMA on 21 January 2022 (the "**Issues Statement**") and the CMA's Phase 1 decision dated 9 December 2021 (the "**Decision**") concerning the completed acquisition by D&D of TMG (the "**Merger**").
- 1.2 The contents of this Response are confidential to the Parties and include information, the disclosure of which would harm the Parties' legitimate business interests.

## 2. EXECUTIVE SUMMARY

- 2.1 The Merger does not rise to a substantial lessening of competition ("**SLC**") in the supply of Property Search Report Bundles. Instead of the static market contemplated in the Issues Statement, in which just four main national suppliers are predominant, the Parties compete with seven or more credible competitors in all regions of England and Wales ("**E&W**"). This is especially the case in residential conveyancing where national suppliers, franchise operations and regional suppliers all compete strongly for the business of mid-sized and small conveyancers in the main area of overlap between the Parties' otherwise complementary businesses.
- 2.2 The Parties' market position is overstated by the Issues Statement and competition is dynamic and complex. The market is already characterised by low barriers to entry and easy expansion, with clear examples of rapid organic growth. New digital solutions are likely to provide even greater entry and growth opportunities for smaller retailers including start-up companies.
- 2.3 There will be no ability for the merged entity to increase prices or degrade the quality of service as a result of the Merger. In particular:
- 2.3.1 The Parties are not particularly close competitors. Loss data analysis shows that only [*confidential*] of each Party's losses goes to the other which is comparable to the customers lost by D&D to franchisees. Accordingly, there is no reasonable expectation that the merged entity would recoup sufficient revenue to make a price increase profitable.
- 2.3.2 Multi-sourcing is prevalent in the industry and switching between suppliers is extraordinarily easy, assisted by the relative absence of contractual volume commitments, the similarity of user-interfaces, and the fact that the reports comprising the bundle are essentially commodity products.
- 2.3.3 Conveyancers are price sensitive, and terms are negotiated individually. Large law firms and conveyancers have the ability to exercise buyer power while smaller conveyancers are also motivated to reduce search costs in order to keep down the total cost of the conveyancing service to the end consumer (thereby avoiding pressure on their own fees).
- 2.3.4 The increasing power of intermediaries in the area of residential conveyancing provides a significant additional pricing constraint. Intermediaries operate as gatekeepers to the conveyancer and the end consumer, enabling them to aggregate demand and extract significant discounts from search pack retailers.

2.3.5 While industry price increases occurred in the past, these were largely associated with cost increases and should not be considered indicative of a lack of customer price sensitivity. In developing the economic rationale for the transaction, D&D contemplated the possibility of a standard industry price increase but this was relatively insignificant as against the revenue gains expected by way of synergies and the cross-selling opportunities arising through the expansion in scope of the combined business.

2.3.6 Product and service quality, e.g., the content, reliability and consistency of the searches, and speed of delivery, consistency of delivery and customer support, is fundamental to a search pack retailers in terms of their offering to a customer. It is inconceivable that D&D would compromise or seek to degrade the quality of service given the significant impact that would result for the underlying property transactions and the corresponding catastrophic impact on its ability to win and retain customers.

### **3. DYNAMIC AND COMPETITIVE MARKET**

3.1 The Parties provide an overview below of the competitors and trends that guarantee ongoing and effective rivalry in the sector before addressing particular deficiencies in the CMA's analysis.

#### National suppliers

3.2 In its Decision, the CMA focused on the fact that ATI and Landmark are the only two other "national" suppliers of Property Search Report Bundles. While both companies are formidable competitors, national coverage is not a significant consideration outside of the supply of services for the largest law firms, conveyancers and intermediaries (who are the customers with the highest levels of purchasing power and in relation to which the activities of the Parties overlap the least).<sup>1</sup> Indeed, for residential conveyancing, as explained below, regional suppliers often have a distinct advantage over the national providers providers (for example, as a result of their local bespoke knowledge).

3.3 Moreover, "national coverage" as a separate characteristic of a retailer is somewhat misleading insofar as smaller retailers can replicate national coverage either through the Association of Independent Personal Search Agents ("IPSA"), which was established precisely to facilitate interaction between retailers and search providers or through the development of a franchise network or relationships with independent search agents. There is no material advantage that is gained by national suppliers purely as a result of their size. Moreover, the widespread availability of technology facilitates competition from all suppliers irrespective of their specific geographic footprint.

#### Regional suppliers

3.4 The Issues Statement asserts that 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. This conclusion takes no account of the fact that (a) most competition for residential conveyancing transactions and for small and medium customers

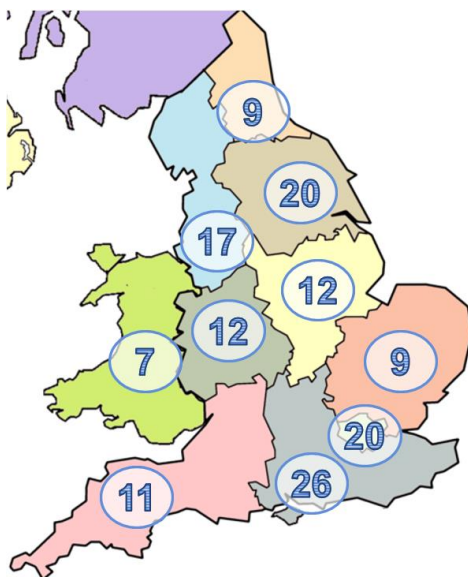
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<sup>1</sup> For this purpose, intermediaries include TMG's former shareholders, for which the Parties did not compete pre-Merger.

(where the activities of the Parties mostly overlap) takes place on a local or regional basis; and (b) at the local or regional level, the Merged Entity will face competition from a significant number of strong regional competitors.

- 3.5 Most residential conveyancing is undertaken for individual property purchasers who choose their conveyancer (and often thereby their retailer of Property Search Report Bundles) based on a number of factors: prior dealing with the conveyancer, recommendations from friends or family, their estate agent or other intermediary such as a mortgage broker or panel manager. They will usually choose a conveyancer who is local to the property being acquired and most such conveyancers are small or medium-sized conveyancers. These conveyancers, in turn, tend to value the regional expertise and relationships they have with regional providers of Property Search Report Bundles (including their often close relationships with the local authorities who provide the information for the searches which can be invaluable to speeding up the process).
- 3.6 It follows that the Parties face competition from significantly higher numbers of retailers of Property Search Report Bundles than just ATI and Landmark. The map below shows, for each region, the number of the Parties’ competitors that have at least one office in that region (including both regional experts and ATI and Landmark). A complete list of regional experts that have offices in each region of E&W is provided in **Annex 1**.

**Figure 1: Regional competitors plus ATI and Landmark, by E&W region<sup>2</sup>**



- 3.7 As can be seen from the above, within each region in E&W, the Parties face competition from no fewer than seven competitors (including ATI and Landmark) and sometimes as many as 26. It is difficult to see how the CMA can reach a conclusion that the Merged Entity will not face sufficient competitive pressure when customers have so many alternative sources for the supply of Property Search Report Bundles.

<sup>2</sup> It does not include D&D or TMG but does include D&D’s independent franchisees. It also includes ATI and Landmark as competitors in every region in E&W.

*New entry and expansion*

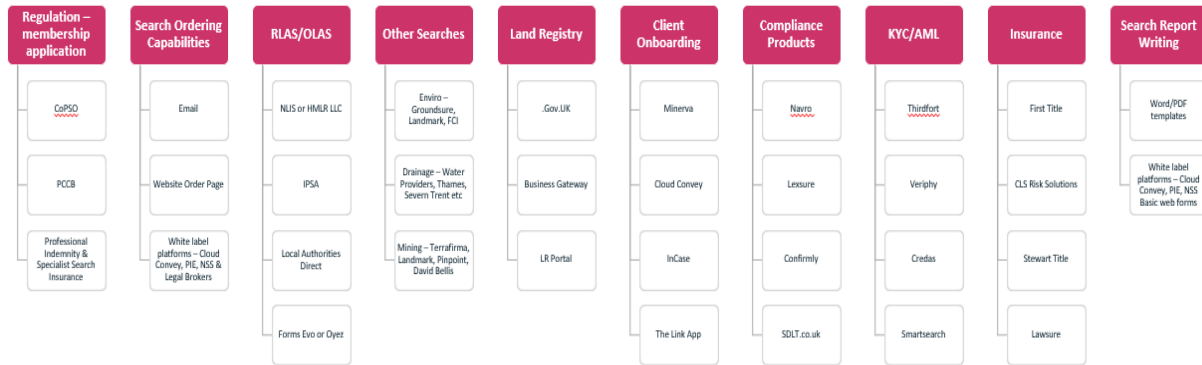
- 3.8 The Issues Statement incorrectly claims that barriers to entry and expansion "seem high". The experience of the Parties themselves as well as many other retailers that have grown rapidly in recent years provides compelling contrary evidence. The emergence of Index franchise group, InfoTrack, CDS, Search Acumen, Legal Bricks, Legal Brokers, Move Reports UK, and The Search Bureau show that entry and growth is remarkably easy. While the Parties do not have access to data on the growth rates of all of these suppliers, those for which they do, show substantial growth rates. For instance,<sup>3</sup>
- 3.8.1 Index volumes grew 98% year-on-year from 2010 to 2015.
- 3.8.2 InfoTrack revenues grew 60% year-on-year from 2018 to 2020.
- 3.8.3 CDS volumes grew 34% year-on-year in the five years prior to its acquisition by TMG in 2018.
- 3.9 Expansion can be facilitated by the larger customers, including panels. For example, across the period 2014-2017, over 40% of CDS's growth can be attributed to increases in sales to one panel, CAL.<sup>4</sup>
- 3.10 Moreover, increased digitisation of the conveyancing process and the widespread availability of technology is forcing the pace of change, increasing access to information and providing opportunities for new entrants in the market. A key feature of the new environment is the proliferation of "PropTech" companies. These are often small companies, backed by venture capital, offering technology solutions to improve different aspects of the property transaction workflow, including the way in which Property Search Bundles are ordered. Many of these companies focus on creating white label products which may be licensed to new and smaller retailers.
- 3.11 PropTech companies offer retailers the opportunity to partner and expand their business into other areas of the property transaction environment. For example, Access Group (which owns Legal Bricks), ATI (which owns InfoTrack and Search Acumen), and Advance Legal (which is expected to enter the search market) are all promoting digitisation of the case management piece of the property transaction workflow with expected associated benefits in the supply of Property Search Bundles to increase efficiency of the process.
- 3.12 The figure below sets out the range of inputs a new or expanding company may source from a range of providers in the sector.

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<sup>3</sup> See the Response to the Issues Paper, paragraph 4.10 for further details.

<sup>4</sup> See the Response to the RFI of 17 November 2021, Question 3(c).

**Figure 2: Technology required to enter and expand**



Specific significant errors in the CMA analysis

3.13 As explored further below, there are three major errors in both the Decision and the Issues Statement that have led to a material distortion of the CMA's analysis, namely:

- (a) The incorrect assessment of the total size of the market for Property Search Report Bundles in E&W;
- (b) The disregard of significant competitors who exert competitive pressure on the Parties; and
- (c) The overestimation of D&D's presence in the market by the incorrect attribution of the sales of its franchisees to D&D.

(a) Market share data understates total market size

3.14 In the Decision, the CMA grossly understated the total size of the market for Property Search Report Bundles supplied in E&W. The CMA based its estimate of the size of the market on the total volume of Property Search Report Bundles sold to conveyancers and intermediaries in 2020 by just 15 retailers. These retailers account for only approximately 10% of the total number of retailers of Property Search Report Bundles in E&W.<sup>5</sup> Further, as explained below, there are a significant number of additional smaller retailers of Property Search Report Bundles in the UK who exert competitive pressure on the Parties that were not included in the CMA's calculations. As a result, the total size of the market in the Decision is significantly underestimated and the market shares of the Parties have been overstated by a large margin.

3.15 To estimate the total size of the market, the Parties have considered the number of property transactions completed as published by HMRC and have presented robust economic analysis supporting the contention that for every transaction, on average 1.7 search packs are sold (the “**multiplier**”).

<sup>5</sup> CoPSO has about 150 members that accounts for almost 80% by volume of all searches.

- 3.16 The Parties have provided detailed and compelling evidence to demonstrate that 1.7 is a reasonable and relevant multiplier estimate:<sup>6</sup>
- 3.16.1 Most property transactions are part of a "chain" that can consist of as few as three property transactions or as many as ten. Chains are fragile and it only takes one of the transactions in the chain to fall apart to disrupt the whole chain. Third party analysis estimates that approximately 1 in 3 transactions are aborted due to breaks in the 'chain' for reasons such as delays, mortgage failure, etc.<sup>7</sup> Property purchasers are advised to run searches early in the process, so a significant number of search packs are necessarily purchased for transactions that subsequently abort. Moreover, search packs may need to be refreshed after 3 to 6 months. Therefore, even if a particular property transaction then becomes part of a new chain, a new search pack may need to be ordered if it has expired before the transaction proceeds. If search packs are ordered in only 70% of aborted transactions, the total number of search pack orders must be 35% higher than the total number of transactions.<sup>8</sup>
- 3.16.2 Additionally, search packs are not only ordered in the context of property transactions. Total demand for search packs for social housing groups could be in excess of 200,000 packs per year.<sup>9</sup> Private landlords with more than five properties are likely to order search packs (e.g., for refinancing) outside transactions. D&D estimates that such landlords own 1.9 million properties. Therefore, if on average, 10% of these are refinanced each year, then 190,000 searches, not reflected in the transaction figures, would be required.<sup>10</sup>
- 3.16.3 There were just over 1,000,000 completed transactions in 2020 for which search packs would have been ordered. It is estimated that an additional c. 350,000 would have been ordered for aborted transactions with a further c. 390,000 ordered for social housing and by private landlords. This implies c.1,740,000 search packs per c. 1,000,000 completed transactions – a multiplier of 1.7.
- 3.16.4 Finally, the CMA in its Decision, considered that it could not exclude that a significant number of cash purchasers would dispense with the need for a property search in order to speed up their acquisitions.<sup>11</sup> The Parties deem it highly unlikely that material numbers of cash buyers would elect not to purchase a search pack due to the high risk they would be undertaking in doing so and the importance of a search pack relative to a property. Therefore, no distinction should be made between a cash buyer and a buyer via mortgage, as the due diligence in buying a property is the same; the buyer would carry out a search to protect its own cash investment and a lender would do the same, in line with its lending criteria. The search pack is always a

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<sup>6</sup> The Parties had provided supporting evidence to complement the evidence: the RBB Paper of 21 October 2021 and slide 10 of the Parties' IM presentation (see Annex 03.05 – RBB Annex on multiplier).

<sup>7</sup> From the Advisory, a website advising home purchasers, here: "Given that 1 in 3 purchases fail to complete". A recent article from 15 November 2021, by Boomin, a property portal, states that 32% of transactions collapse: see here. (2) (3)

<sup>8</sup> If one in three transactions about, there must be 1.5 transactions attempted for each that complete. If 70% of the aborted transactions require a search, 1.35 search packs will be ordered per completed transaction.

<sup>9</sup> See RBB's estimates in its 16 November presentation entitled "Issues meeting follow up – Technical annex – Market size multiplier", slide 14.

<sup>10</sup> See RBB's estimates in its 16 November presentation entitled "Issues meeting follow up – Technical annex – Market size multiplier", slide 15.

<sup>11</sup> The Decision, paragraph 84(c).

recommended part of a conveyancing process. In fact, as the CMA acknowledged, the Ministry of Housing, Communities & Local Government guideline recommends property searches for all transactions. The CMA was therefore wrong in its assessment that this is a factor that would cast doubt on the Parties' market size estimate.

*(b) The CMA underestimates the number of providers*

- 3.17 In taking account of only the 15 largest suppliers of Property Search Report Bundles in E&W, the CMA significantly underestimated the number of retailers of Property Search Report Bundles in the UK and the extent to which they exert competitive pressure on the Parties. The Council of Property Search Organisations ("CoPSO"), a trade organisation of private companies producing property search reports, estimates that there are over 150 retailers that provide Property Search Report Bundles in E&W with CoPSO members accounting for almost 80% by volume of all searches produced in the market.<sup>12</sup> IPSA lists a total of 55 members.<sup>13</sup> A brief look at the list of members of these trade associations makes it evident that the CMA has failed to take into account a large number of other suppliers.
- 3.18 The CMA has not provided any reasonable justification for disregarding important market participants but claimed that the inclusion of the remaining smaller retailers would not materially alter the analysis and that there is no evidence to suggest that the smaller retailers have material shares of supply.<sup>14</sup> The Parties note that the CMA has not substantiated this claim with any verifiable evidence. While it may be true that smaller retailers at an individual level may not have significant shares of supply, at an aggregate level, such retailers still constitute a substantial part of the market and should be considered. As demonstrated by an analysis of loss data, smaller retailers do exert competitive pressure on the Parties. This is likely to be particularly true in relation to Property Search Report Bundles purchased for residential transactions where small and medium-sized conveyancers may prefer to rely on smaller regional retailers with whom they have personal relationships and who have regional expertise and connections that give them a competitive advantage vis- à-vis larger retailers that lack similar expertise.
- 3.19 The Parties note that even by the CMA's own calculations, the market size estimate in the Decision was above the figures for property transactions published in the UK by the HMRC which was the starting point for the RBB analysis. Had the CMA included more than a very small minority of the total number of retailers active in the UK in its calculations, it would likely have arrived at a volume figure for the total market size that (a) represented a more robust measure of the total market size and (b) was more reflective of the estimates presented by the Parties.

*(c) Independent franchisees are credible competitors*

- 3.20 The Parties' share of supply is materially overstated in the Decision by the erroneous inclusion of shares attributable to D&D UK's franchisees. There is no basis for combining the businesses in this way. Index and PSG franchisees operate independently from D&D and have every

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<sup>12</sup> A complete list of all CoPSO members is available [here](#).

<sup>13</sup> For a list of these members, please see the Response to Question 5 of the S109 Notice of 23 December 2021.

<sup>14</sup> The Decision, paragraph 86.



incentive to win customers from D&D in the same way as any other supplier, because they hold no stake in D&D and gain nothing from D&D's sales.

- 3.21 Moreover, D&D has no contractual right to influence the commercial strategy or objectives of the franchisees<sup>15</sup>. Franchisees are at liberty to decide how they conduct themselves vis-à-vis third parties. Franchisees are also economically independent of D&D, and D&D has no equity interest or seat on any executive committee or board of any franchisee. Independent Index franchisees have their own representative association namely, Index Association, operating under the terms of an agreement drawn up between the franchisees entirely independently of D&D. Index Association has an independent Chair and Board together with independent legal support.
- 3.22 Importantly, while D&D provides a recommended maximum price, franchisees determine their own prices. Franchisees are ultimately concerned with their own performance and may be motivated to reduce prices below the maximum recommended in order to attract customers. In fact, as shown below in Table 1, D&D has lost a significant number of customers to Index over the years which is conclusive evidence that the franchisees compete vigorously with D&D and have incentive to do so. These customers have switched to Index in many cases due to better service levels and software integration.<sup>16</sup> The following examples from PIE's CRM dataset show this in more detail.<sup>17</sup>
- 3.22.1 [confidential].<sup>18</sup>
- 3.22.2 [confidential].<sup>19</sup>
- 3.22.3 [confidential].<sup>20</sup>
- 3.22.4 [confidential].<sup>21</sup>
- 3.23 Likewise, D&D's incentives to compete against the independent franchisees are not materially different from its incentives to compete against its other rivals. If D&D loses business to an independent franchisee, it loses [confidential] of its revenues, which is not materially different from what it would lose to any other rival.

#### **4. THE PARTIES ARE NOT PARTICULARLY CLOSE COMPETITORS**

- 4.1 The Issues Statement asserts that the Parties compete closely with each other for a significant volume of sales and that the Parties are also expected to compete even more closely in the

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<sup>15</sup> Although the franchise agreements in theory require that the franchisees refer "national" clients to D&D, this has never been implemented in practice. D&D has never required this as it would act as too much of a dis-incentive for franchisees to compete for business.

<sup>16</sup> For example, [confidential] switched to Index from PIE in February 2020,

<sup>17</sup> While many of these examples are before the period during which PIE was owned by D&D, they do continue after this period. D&D considers that these examples are still indicative of the constraint that independent Index franchisees place on D&D today.

<sup>18</sup> PIE's CRM dataset states (emphasis added): "[confidential]"

<sup>19</sup> PIE's CRM dataset states (emphasis added): "[confidential]"

<sup>20</sup> PIE's CRM dataset states (emphasis added): "[confidential]"

<sup>21</sup> PIE's CRM dataset states (emphasis added): "[confidential]"

future. An examination of the Parties' respective product offering and customer data, and the economic evidence supplied by way of a loss analysis, shows that this is manifestly incorrect.

*Parties have limited overlap and the Merger is largely complementary*

- 4.2 As previously demonstrated to the CMA, there is very limited overlap between the Parties' customers. D&D's business is mainly the supply of regulated searches to small and medium-sized conveyancers, who tend to focus on residential transactions. In contrast, TMG's main business is the supply of official searches to large city law firms, focusing more on commercial property transactions. Based on data for the period from January to August 2021, D&D derived only [confidential] of its revenue from large customers whereas such customers accounted for approximately [confidential] of TMG's revenue. Indeed, the complementary nature of the two businesses was fundamental to the deal rationale, allowing D&D to expand its offering to large law firms and conveyancers with services related to commercial properties and social housing, as well as estate agents.
- 4.3 The above also reflects the natural progression of the Parties' respective businesses:
- 4.3.1 D&D entered the UK market through a series of acquisitions focussed on residential conveyancing. In particular, it acquired PIE/PSG in 2020 which is a compiler and retailer, principally active in retailing residential property to smaller conveyancers via "poweredbypie". Similarly, GlobalX is a compiler and retailer of residential and (to a small degree) commercial property searches.
- 4.3.2 TMG's business originated in the provision of official searches. Its core brand, tmConvey, focuses on retailing property search report bundles to large law firms and conveyancers. These clients tend to work on commercial real estate transactions and have a smaller presence in the residential segment. It is only through the relatively recent acquisition of CDS that TMG's business has expanded to include regulated searches for residential sales.

*D&D loses significant numbers of customers to other competitors*

- 4.4 Evidence on switching does not indicate that the Parties are particularly close competitors. The available evidence suggests that only a relatively small proportion of customers lost from one Party goes to the other Party, i.e. [confidential] (depending on the measure).
- 4.5 This low level of switching is not consistent with the "4 to 3" claim made in the Phase 1 Decision. If there were only four equally strong suppliers in the market, it would be expected that 33% of one supplier's lost customers would switch to a given alternative supplier.<sup>22</sup> In other words, if the Merger could be characterised as a "4 to 3", switching from one Party to the other would be at 33%. The substantially lower rates of switching observed between both Parties suggest that the Parties are relatively distant competitors, and is in line with the Parties' view that there are significantly more than four credible competitors in the market.
- 4.6 Several pieces of evidence demonstrate the low degree of switching between the Parties:

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<sup>22</sup> In this scenario, for a given existing supplier, there would be three potential alternative suppliers that a customer could switch to. If there were no differentiating qualities between these suppliers, it would be expected that customers would switch in equal proportion to each one, i.e. switching to each one 33% of the time.

- (a) D&D’s *contemporaneous records* show that only a small portion of lost customers from its largest business unit, PIE, go to TMG (i.e. [*confidential*]).
- (b) A loss analysis based on the Parties’ sales data shows that [*confidential*] of each Party’s lost customers appear to be won by the other Party.
- (c) An extension of this analysis shows that only [*confidential*] of customers that switched after D&D’s recent price increase appear to go to TMG.

4.7 Each point is explained in further detail below.

*D&D’s contemporaneous records show limited switching to TMG*

4.7.1 D&D’s PIE business unit keeps records of customers that it lost and the competitors that it estimated they were lost to, during the ordinary course of business.<sup>23</sup> These records show the following:

- (a) By far the most common destination for lost customers is ATI, which won [*confidential*].
- (b) TMG won [*confidential*] of customers lost. This is significantly less than the 33% that would be expected if there were only four credible competitors in the market. It may be noted that a significant number of the lost customers would be to CDS which is where the Parties’ businesses overlap.
- (c) Landmark is also an important competitor to D&D, winning [*confidential*] of lost customers. This is consistent with the CMA’s findings in Phase 1 that Landmark is a credible constraint on the Parties.<sup>24</sup>
- (d) Independent Index franchisees won a similar proportion of customers as Landmark, i.e. [*confidential*].
- (e) Regional experts, collectively, also won a similar proportion of customers as Landmark, i.e. [*confidential*].

4.8 Given that both the independent Index franchisees and the regional experts are comparable in importance to Landmark, it is not correct to view the Merger as a “4 to 3”. Rather, competition with the merged entity arises from ATI, Landmark, independent franchisees and the cumulative impact of smaller players (each of which being an important competitor in the region in which they operate).

4.9 The table below (presented during the Site Visit of 3 February 2022) shows the results of this analysis in more detail.<sup>25</sup>

**Table 1: Summary of destination of losses from PIE, 2017-2021**

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<sup>23</sup> This information is kept in a “CRM” dataset. This dataset contains [*confidential*] refer to unique customers containing PIE/PSG’s information on the competitor to which a customer switched.

<sup>24</sup> See the Decision, paragraph 155: “...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...”.

<sup>25</sup> The underlying files and a short methodology note will follow in due course.

<b>Competitor</b>	<b>Percentage Loss</b>
ATI	[confidential]
Landmark	[confidential]
<b>TMG</b>	[confidential]
Regional experts	[confidential]
Independent Index franchisees	[confidential]
<b>Total</b>	[confidential]

*Source: RBB analysis of D&D data.*

*Notes: Includes only losses where the competitor that the customer was lost to was identified (even if only suspected); i.e. 131 losses. The figures use the mid-point of a narrow range to account for losses where PIE/PSG thought the customer went to either competitor A or B. Excludes losses to Index Direct. Regional experts that Dye & Durham lost customers to consist of: Hants White Searches, X-Press Legal, Gill Halton, LSC, Local Authority Search Network, Move Reports UK, PALL, and PSNE.*

*An analysis of the Parties’ sales data shows limited switching between the Parties*

- 4.10 An analysis of the Parties’ sales data shows a similar picture. This analysis assumes that a customer is “lost” from Party A if it purchases from Party A in Q1 and Q2 2021 and not in either Q3, in one version of the analysis, or Q3 and Q4 2021, in another version of the analysis.<sup>26</sup> A customer lost from Party A would be likely to have been won by Party B if that customer’s purchases increased at Party B above their normal level after the loss from Party A.<sup>27</sup>
- 4.11 The figure below summarises the results of this analysis. It shows that only [confidential] of D&D’s losses appeared to go to TMG, and only [confidential] of TMG’s losses appeared to go to D&D.

**Figure 3: Summary of proportion of losses going from one Party to another, Q3 2021 and Q3-Q4 2021**

[confidential]

*Switching from D&D to TMG following a price rise appears limited*

- 4.12 Customers that switched following D&D’s recent price increase also do not appear to have switched to TMG in significant numbers.<sup>28</sup> This further indicates that TMG is not a particularly close competitor to D&D.
- 4.13 The figure below shows the proportion of customers that purchased from D&D in Q1, Q2 and Q3 of 2021 and not in Q4 that appear to have been won by TMG.<sup>29</sup> It shows that, of customers

<sup>26</sup> These analyses have been updated over time as new data became available. Please see the response to RFI 2(a), Question 12 for further details.

<sup>27</sup> I.e. the level that would be expected if Party B had not won that customer. Different benchmarks were used to assess whether purchases increased at Party B. These benchmarks are: average purchases in all quarters in 2020, average purchases in all quarters in 2019, average purchases in all quarters in 2019 and 2020, average purchases in the same quarter(s) in 2019, and average purchases in the same quarter(s) in 2020.

<sup>28</sup> As explained in the response to Question 9 of RFI 2(a), D&D applied a price increase to some customers at the beginning of October 2021.

<sup>29</sup> Similar to the analysis presented in Figure 3 above, D&D’s lost customers’ purchases from TMG in Q4 2021 were assessed against different benchmarks to assess whether they had increased above “normal” levels. These benchmarks are: average purchases in all quarters in 2020, average purchases in all quarters in 2019, average purchases in all quarters in 2019 and 2020, average purchases in the same quarter(s) in 2019, and average purchases in the same quarter(s) in 2020. The results are the same for all of these benchmarks.

that switched from D&D following the price rise, only [confidential] by number, and [confidential] by volume, appeared to switch to TMG.

**Figure 4: Summary of proportion of losses going from D&D to TMG, Q4 2021**

[confidential]

Low level of customer overlap with multi-sourcing suggests Parties are not close competitors

- 4.14 The Parties have substantiated that the vast majority of their customers multi-source and that triple-sourcing or more is normal.<sup>30</sup> The CMA's own analysis shows that a substantial proportion of the Parties' customers multi-source from a variety of suppliers. This evidence is important. It indicates that: (i) the Merger is not a "4 to 3"; and (ii) the Parties are not particularly close competitors. This has been substantiated in detail in prior responses.<sup>31</sup> In summary: (i) if there were truly only four credible suppliers (including the Parties), the Parties would be expected to have a far higher number of common customers than in fact they do; and (ii) this relative lack of customer overlap (given the high degree of multi-sourcing) supports the view that the Parties are not particularly close competitors.
- 4.15 The Decision appears to misinterpret the above evidence. The Decision considers that multi-sourcing does not reflect lack of closeness between the Parties. It claims that different individuals or teams within the same conveyancing firm may each use only one supplier, such that *firm-level* multisourcing may in some cases reflect two or more single-sourcing relationships.<sup>32</sup> However, this is misconceived. The customer overlap is measured at the *firm-level*, not the individual user level. Therefore, the relevant measure of multi-sourcing to compare this against is at the firm level.<sup>33</sup>
- 5. CUSTOMERS ARE HIGHLY SENSITIVE TO PRICE AND QUALITY AND SWITCHING IS EASY**
- 5.1 The Issues Statement claims that customers are insensitive to price increases and suggests that D&D may intend to raise prices post-Merger. The CMA's assertion appears to be based on limited market feedback<sup>34</sup> and does not give proper consideration to the competitive dynamics which plainly reveal significant ongoing constraints that will not be affected by the Merger.
- 5.2 In fact, all customers (conveyancers) are highly sensitive to price either because the price of the search pack affects their own ability to compete for conveyancing work or, in the case of intermediaries, because the price they pay for the search pack directly affects their own margins.
- 5.3 Customers are also very sensitive to quality both in terms of the content, reliability, and consistency of the searches but also in terms of overall service levels including speed of

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<sup>30</sup> See further below for a more detailed discussion in paragraphs 5.17 to 5.21.

<sup>31</sup> For example, see the RBB Report of 29 October 2021, titled "Evidence on market size and multi-sourcing".

<sup>32</sup> The Decision, paragraph 107.

<sup>33</sup> Further, even where individual users single-source with Retailer A, while their (say) two colleagues single-source with respectively Retailers B and C, it is likely that if Retailer A delivers poor service or a higher price, the user of Retailer A will ask colleagues for their recommendation, thereby facilitating switching to Retailers B and C. In other words, even in the extreme scenario asserted by the Decision, multi-sourcing still facilitates switching.

<sup>34</sup> The Decision, paragraphs 124 and 133.

delivery, consistency of delivery and customer support. In fact, the analysis of D&D's CRM data shows that customers often cite quality as a reason to switch at least as much as price.

- 5.4 Switching supplier is easy. Multi-sourcing is widespread, with c.80% of the Parties' common customers already using at least one other supplier, i.e. triple-sourcing or more. Companies and staff are therefore already familiar with using different systems to order search packs. This allows customers to switch supplier rapidly in the event of a deterioration of price or service quality.
- 5.5 As a result, retailers have limited pricing power. Although the sector has seen price rises in the past, these have often been driven by cost increases or inflationary pressure, and, as explained below, headline price increases to "list" prices are not necessarily reflective of actual price increases which are negotiated directly with customers and may vary by customer. In fact, the average prices charged by D&D's largest business unit, PIE, have *declined slightly* since 2019.

*All customers are price sensitive*

- 5.6 There are three main customer groupings, namely: large law firms; intermediaries; and small and medium sized conveyancers. Each of these customer groupings are price sensitive (although sometimes for different reasons) and are motivated to actively negotiate on price.
- 5.7 Large law firms focus on commercial transactions and their customers are most likely to be businesses or wealthy individuals. In terms of pricing, large law firms order higher volumes of search packs and are therefore able to (and do) leverage those volumes to negotiate with retailers to keep prices down. More often than not, large law firms also multi-source which enables them to exert pricing pressure on retailers during price negotiations.
- 5.8 Customers undertaking commercial transactions tend to prefer to purchase official searches (i.e. searches produced by local authorities) rather than regulated searches (those that are independently compiled from information held by local authorities by third party providers including retailers of property search packs). However, this does not mean that they are not price sensitive. Official searches do tend to be more costly than regulated searches, as the price is set by the relevant local authority. However, search packs including official searches are highly commoditised products, as, for a given local authority, all search reports are formatted in the same way, regardless of the search retailer. As a result, price plays an important role in determining whether one retailer is chosen over another.
- 5.9 Small and medium-sized conveyancers tend to focus on residential transactions and their customers are mostly individual end consumers. Competition at the level of small and medium-sized conveyancers is fierce. The rules of the Solicitor's Regulatory Authority require that conveyancers publish details of the price of their conveyancing services including details of disbursements which should be separately itemised. This allows property purchasers to easily compare the prices of different conveyancers. In order to remain competitive, small and medium-sized conveyancers are therefore motivated to keep their overall price low, and they can do so in mainly two ways: (i) by lowering the price for their own services; or (ii) reducing the costs of disbursements, notably searches. Given that conveyancers prefer to maintain their own margins, they are highly sensitive to prices charged by retailers. As a result, even small and medium sized conveyancers have the ability to negotiate on price and leverage the volumes they purchase to secure the best pricing.

- 5.10 Intermediaries typically include, but are not limited to, panel managers (that manage and provide access to panels of conveyancing firms), estate agents, lenders, and mortgage brokers. Intermediaries are often the primary point of contact with property purchasers and make recommendations to them about who they should use for conveyancing service and Property Search Report Bundles.<sup>35</sup> They frequently manage large volumes of transactions which gives them buyer power when negotiating prices with retailers who compete to be one of the intermediaries' preferred retailers. Retailers compete to enter into arrangements with intermediaries, in the hope of supplying large volumes, albeit at discounted rates.
- 5.11 Importantly, the intermediary's profit is the difference between the price passed on to the customer and the discounted rate it obtains from the retailer. Therefore, it is in the interests of the intermediaries to negotiate aggressively on price. Indeed, intermediaries secure the lowest priced search packs of all customer groups.<sup>36</sup>

*Quality of the products is an important factor for customers*

- 5.12 Price is not the only factor that customers consider when choosing a search retailer: quality is also a key driver of competition. Different customer types tend to prioritise different types of quality.
- 5.13 Larger law firms, which tend to rely on official searches rather than regulated ones, are focused on the customer service that a retailer can give in terms of their availability to address ad hoc queries from the firm, how they deal with delays in the system, the efficiency of the IT systems, good payment terms and efficient billing. Poor quality service from the search retailers would ultimately impact the law firms' performance and reputation. As a result, both quality and price are crucial components for a search retailer.
- 5.14 Small and medium-sized conveyancers also focus on quality. They tend to purchase more regulated searches which differ in format depending on the compiler. They take this into account when selecting a retailer, focusing on the content of the search reports, how user friendly they are and the consistency of content. They also require efficient and user friendly IT systems, good payment terms and efficient billing. Relationships are important for smaller conveyancers, who may have strong personal relationships with local retailers of Property Search Report Bundles, and who value the ability of smaller regional or local retailers to "cut through the red tape" of local authorities to speed up the search report process.
- 5.15 Similarly, intermediaries have an incentive to recommend service providers who they know are of sufficient quality to progress the transaction to completion in a timely and efficient way to ensure they maintain their reputation.
- 5.16 D&D's CRM data provide evidence that service quality and price concerns are commonly cited as a reason for a customer loss. Proportions in the chart below reflect the number of lost customers that mention an issue as relevant to the departure.<sup>37</sup> This chart shows that [confidential] of customers switched because of price issues. IT capability played a role in almost [confidential] of switches, accounting issues in [confidential] of switches, and other

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<sup>35</sup> Intermediaries may refer end consumers directly to specific retailers of Property Search Bundles, or indirectly via their preferred conveyancers.

<sup>36</sup> For further details, please see the Response to RFI 2a, questions 6 and 7.

<sup>37</sup> Note that percentages can add up to more than 100% as customers can mention multiple issues as relevant to their departure.

quality issues in almost [*confidential*] of switches (multiple issues can play a role in a single switch).

**Figure 5: *D&D lost customers by reason for departure, 2017-2021***

[*confidential*]

*Prevalence of multi-sourcing further intensifies competition*

- 5.17 Multi-sourcing is widespread in the market and this facilitates switching. As reported in the Phase 1 Decision, the main consideration is ensuring staff are able to use new ordering systems.<sup>38</sup> Customers that are already multi-sourcing will have staff that are already used to using these new systems.
- 5.18 The relationship between intermediaries and conveyancers is a key driver of multi-sourcing, as different intermediaries may require the same conveyancer to use different retailers. Moreover, intermediaries themselves may multi-source their contracts with retailers tend to be non-exclusive.<sup>39</sup> This ensures that individual users (conveyancers) are generally used to using more than one supplier of Property Search Report Bundles.<sup>40</sup>
- 5.19 A large proportion of the Parties' customers already multi-source and, as such, already have an alternative supplier to which they can switch in the event of a price increase or degradation of service quality post-Merger. In fact, RBB has previously noted that, weighted by size, c.80% of the Parties' common customers purchase from at least one other supplier (i.e., they triple source at the least).<sup>41</sup> This remains the case when including the most recent data available for 2021.<sup>42</sup>
- 5.20 This result is estimated as follows. Customers that definitely multi-source can be identified when they deal with more completed transactions than the number of search packs that they order from one of the Parties. Put simply, if a conveyancer deals with 100 completed transactions it will purchase at least 100 search packs. If that same conveyancer orders only

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<sup>38</sup> Phase 1 Decision, paragraph 124.

<sup>39</sup> Even where contracts are exclusive with any retailer, these are often very short-term and can be easily terminated by the intermediary. Therefore, even where intermediaries purchase supply under written contract, they can easily switch where, for example, a retailer announces a forthcoming price rise.

<sup>40</sup> Even if individuals within a firm single source, multi-sourcing at the firm level may well make switching easier. If an individual's colleagues use provider B, while that individual uses provider A, the individual may well be more likely to switch to B than C in the event of an increase in the price of A because the company already has an account and they may find it easy to ask their colleagues for training on using a new ordering system.

<sup>41</sup> For further details, please see "*DD TMG Issues Letter - Technical annex - Multi-sourcing.pdf*". This does not appear to contradict the finding in the Phase 1 Decision, paragraph 104, that "*a material proportion of the Parties' customers ... uses only one supplier or mainly one supplier*". While some customers may well single-source, a larger proportion do source from more than one supplier. Moreover, sourcing from mainly one supplier is not the same as sourcing from only one supplier: the former is multi-sourcing and the latter is not. Furthermore, it should be noted that the sample used in the Parties' analysis contains around 2,000 customers (including those in 2021) whereas the sample used in the Phase 1 Decision contained at most 68 customers. The Parties' analysis is therefore far more comprehensive.

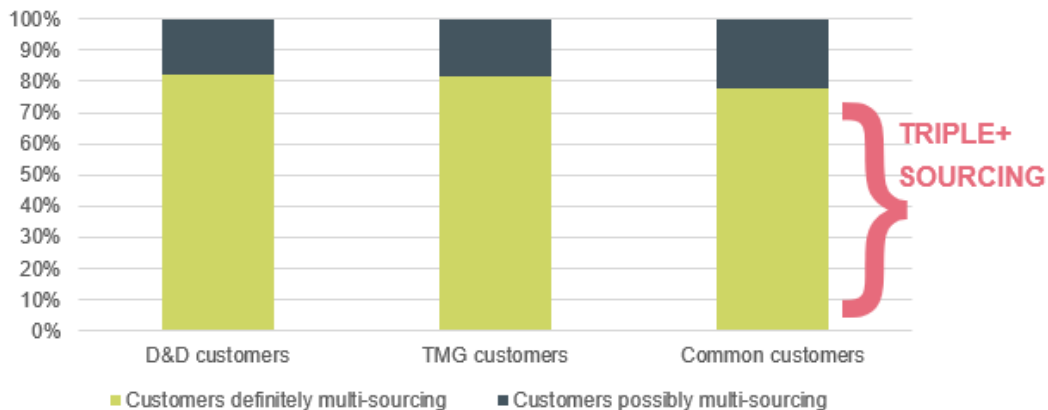
<sup>42</sup> Data on the number of completed transactions a conveyancer carries out, i.e., their LR score, is available up to the end of September 2021. LR score data and the Parties' sales data have been included up to the end of September 2021 in this analysis.



50 search packs from one of the Parties, it must be multi-sourcing.<sup>43</sup> When such customers are weighted by size, (i.e. their LR score, which captures the number of completed transactions they register), over 80% of the Parties’ customers multi-source. In the case of common customers using both Parties, almost 80% triple-source or more.

5.21 This is shown in the chart below. The green bar to the right shows that, of all the completed transactions accounted for by customers that purchase from both Parties, almost 80% are registered by customers that purchase fewer search packs from the Parties than the number of transactions that they register. These customers are definitely sourcing from at least three suppliers – i.e., purchasing from D&D, TMG and at least one other rival (“triple+ sourcing”).

**Figure 6: Proportion of customers that definitely multi-source, weighted by LR score, 2019-Sep 2021**



Source: RBB analysis of Parties’ and LR data

Notes: Includes residential volumes only. Excludes customers for which an LR score could not be identified. Excludes SDG customers, for which customer level volume data are unavailable. Includes the Parties’ sales to conveyancers through intermediaries. Possibly multi-sourcing customers are those who have a LR score less than or equal to their residential volumes.

Ease of switching ensures that the suppliers do not have any pricing power

5.22 The CMA has confirmed that switching Property Search Report Bundles provider is easy.<sup>44</sup> The vast majority of customers do not have a contractual relationship with a retailer, are not committed to purchasing fixed volumes and they are free to switch supplier at any moment they choose.

5.23 The prevalence of multi-sourcing described above, which from a practical perspective means that conveyancers will have access to multiple Property Search Bundle platforms on their computers means that there is a negligible cost involved in switching between retailers and customers can respond to price rises or service degradation rapidly.

D&D’s headline prices have not increased significantly over time

5.24 In line with customers being engaged, despite several increases in notional headline prices, the average prices of a Property Search Report Bundle charged by D&D’s largest business

<sup>43</sup> This does not mean that if said customer were to purchase 100 search packs it would not be multi-sourcing. As explained in paragraph 3.16 above, more search packs are purchased than the number of completed transactions.

<sup>44</sup> The Decision, paragraph 124.

unit, PIE, have not increased over the past few years.<sup>45</sup> In fact, in December 2021, they were [*confidential*] lower than they were in January 2019.

- 5.25 This trend reflects in part the increasing tendency for customers to purchase regulated searches rather than official ones. In January 2019, OLAS accounted for [*confidential*] of LA searches sold by PIE. By December 2021, they accounted for only [*confidential*]. This switching from OLAS to RLAS has allowed D&D to both lower the price to customers and at the same time increase its gross profit per Property Search Report Bundle.<sup>46</sup>
- 5.26 This is shown in the chart below. The top of the blue portion of the chart shows the evolution of the average retail price of a Property Search Report Bundle.<sup>47</sup> The top of the grey portion of the chart shows the evolution of the average wholesale price per Property Search Report Bundle that PIE pays to third-party compilers. The green line shows the evolution of the difference between these two, i.e., its gross profit per Property Search Report Bundle.

**Figure 7: Average revenue, cost price and gross profit per Property Search Report Bundle, PIE, 2019-2022 (£)**

[*confidential*]

## 6. SUMMARY

- 6.1 The Merger will not give rise to an SLC. The Parties operate in a highly dynamic, evolving, and competitive sector in which their activities are largely complementary in terms of product and customer focus. TMG's core activity is the provision of Official Searches to large law firms and conveyancers whereas D&D is more focused on smaller law firms and conveyancers handling residential conveyancing. D&D's economic rationale in acquiring the TMG is based on synergies and the cross-selling opportunities provided by extending the scope of its UK business.
- 6.2 The merged entity will face sufficient competitive constraint at all levels post-Merger. There are a large number of franchise operations and local and regional suppliers of Property Search Report Bundles in addition to the national suppliers. In fact, in all regions within E&W, the Parties face no fewer than seven competitors where local suppliers have a competitive advantage in terms of quality of service and relationships. Entry opportunities are also enhanced as a result of ongoing digitisation in the industry.
- 6.3 Contrary to the CMA's assertion, consumers are highly price sensitive in this market. This is due, amongst other things, to conveyancers competing on the basis of total costs (including disbursements). Suppliers are also reliant on intermediaries for higher volumes of business and such intermediaries drive prices down in order to increase their own margin.

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<sup>45</sup> These increases in notional headline prices are referred to in the Decision.

<sup>46</sup> The gross profit is the difference between the wholesale price D&D pays to third party compilers of search reports and the retail price at which it sells the search pack. D&D does not pay a third party compiler for RLAS, but compiles them in-house. This is more efficient, allowing D&D to increase its gross profit and lower the price of the search pack.

<sup>47</sup> Over the same time period, the average price for a Property Search Report charged by TMG increased by [*confidential*], by CDS increased by [*confidential*], and by Index Direct increased by [*confidential*].

- 6.4 Finally, the Parties will not have any incentive to degrade services since the quality of the product is inherent to the success of the business. It is not realistic to contemplate a reduction in quality since any such action would compromise the underlying property transaction and would have a disproportionately adverse effect on the reputation and ongoing viability of the Parties' business and the business of their customers.
- 6.5 In short, the evidence strongly supports a finding that the Merger does not give rise to the realistic prospect of an SLC and should be unconditionally cleared.