

Completed acquisition by Dye & Durham Limited, through its subsidiary Dye & Durham (UK) Limited, of TM Group (UK) Limited

Provisional findings report

18 May 2022

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Glossary

Summary

Overview of our provisional findings

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, Connells Limited, and LSL Property Services plc (the **Shareholders**) (the **Merger**). The Competition and Markets Authority (**CMA**) has provisionally found that the Merger has resulted in a substantial lessening of competition (**SLC**) in the supply of property search report bundles (**PSRBs**) in England and Wales (**E&W**).
2. The report and the appendices constitute our provisional findings. We welcome views on our provisional findings, which will be published shortly, by no later than **17:00 hours (UK time) on Wednesday 8 June 2022**.
3. In our notice of possible remedies (**Remedies Notice**) published alongside our provisional findings, we have set out our initial view that the only effective way to address the competition issues we have identified would be for D&D to sell TMG to a suitable buyer. We also invite submissions on these initial views by **17:00 hours (UK time) on Wednesday 1 June 2022**.
4. We will take all submissions received by these dates into account in reaching our final decision, which will be issued by **16 August 2022**.

Who are the businesses and what services do they provide?

5. D&D and TMG overlap in the supply of PSRBs in E&W. PSRBs are bundles of a number of property search reports, which are provided together as part of single 'search packs'. They assist in assessing the value, risk, and general context of the property and its surroundings. PSRBs are ordered by conveyancers and intermediaries (eg panel managers which manage and provide access to panels of conveyancers on behalf of businesses introducing conveyancers to property buyers (**Panel Managers**), 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.
6. D&D provides products to customers in Australia, Canada, the UK and Ireland. Its UK products include 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.

D&D is a franchisor to third party franchisees (**Index Indirect** and **PSG Indirect, together D&D Indirect**) and D&D owned franchisees (**Index Direct** and **PSG Direct**). D&D is headquartered in Canada and listed on the Toronto Stock Exchange.

7. TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries, including property search reports for use in property transactions in E&W and Scotland. TMG is headquartered in England.
8. D&D and TMG are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

Sources of evidence

9. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional findings.
10. We received submissions and responses to information requests from the Parties and held a virtual site visit and in-person hearings with each of them. We also conducted a thorough examination of the Parties' internal documents, which show (among other things) how they run their businesses and how they view their competitors.
11. We gathered evidence from competitors via written questions and discussions to understand better the competitive landscape and get their views on the impact of the Merger. This includes evidence from the Parties' third party owned franchisees, from their major competitors (Landmark and ATI), from smaller competitors, and from the Association of Independent Personal Search Agents (**ISPA**).
12. As regards customer engagement, we commissioned the market research agency DJS Research (**DJS**) to undertake a telephone survey of customers of the Parties to better understand how they purchase and use PSRBs. The 170 respondents to the survey were made up of conveyancers who varied by size and their degree of residential or commercial focus. The survey was carried out in February and March 2022. The DJS customer survey report, including the full questionnaire and the methodology of the survey, is published on the [inquiry webpage](#) alongside this document.
13. We also spoke to several law firms including some 'Top 100' law firms (as identified by [The Lawyer](#)) which specialise in large transactions and are among TMG's largest customers, some law firms which are large or medium-

sized customers of D&D for residential and commercial services, and several Panel Managers which are either customers of D&D, or TMG, or both.

14. Moreover, we spoke to a number of companies which the Parties informed us were potential new entrants in the market.
15. Finally, we considered evidence from the Parties and third parties received during the CMA's phase 1 investigation of the Merger.

What would have happened had the Merger not taken place?

16. In order to determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
17. Having considered evidence from the Parties and the former Shareholders in TMG we provisionally conclude that the most likely counterfactual is that TMG would have continued to compete effectively in the market as it did pre-Merger as an independent entity, either having been sold to an alternative purchaser or being retained by the Shareholders.

What is the market that the Parties operate in?

18. We have looked at the impact of the Merger in relation to the supply of PSRBs in E&W. We have excluded Scotland and Northern Ireland from our assessment because the Parties do not have overlapping activities there.
19. In our analysis, we have considered whether searches relating to residential and commercial properties are different. While commercial properties require more extensive searches and command a higher price, they involve the same general process and have a similar breakdown of costs. All providers of residential property search reports also provide commercial property search reports.
20. We have also considered whether the conditions of competition vary in relation to different customer groups. We found that all of the Parties' brands serve small conveyancers, medium/large conveyancers, larger law firms and other customers.
21. On this basis, we did not think that the market should be further divided. We consider any differences between residential and commercial reports and between customer groups in relation to the effects of the Merger.
22. We have also examined the competitive dynamics in this market. We found that suppliers compete on a number of different aspects of quality, as well as

on price. However, many aspects of supplier quality are not directly observable by customers unless they have an existing relationship with the supplier concerned. Associated with this, relationships between customers and suppliers are often long-lasting, and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.

23. In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms and by integrating them with other existing software which the customer may use.
24. Suppliers also compete on price, often by offering discounts off the list price as part of negotiations to win new customers or to retain existing customers.
25. The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
26. There are few technical or contractual barriers to switching and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing may help to facilitate switching between existing suppliers. However, given that customers multi-source with a limited number of suppliers and for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
27. Economies of scale exist in this market, and we provisionally conclude that larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volumes and number of customers supplied.
28. The market is characterised by technological innovation, and has become increasingly digitised, including through integration with case management and ancillary services. It has also become vertically integrated as large PSRB suppliers have acquired companies that compile environmental reports.

The effects of the Merger

29. We have looked at whether the Merger would substantially lessen competition between the Parties by removing a previous competitor from the market and

whether there would remain sufficient competitive constraints to offset the effects of the Merger.

30. The Merger eliminates one of the largest PSRB suppliers from the market and creates a market leader with a very significant share of the supply of PSRBs in E&W.
31. The next largest competitors are ATI and Landmark, and after the Merger, the Merged Entity is significantly larger in terms of market shares than these two largest competitors. This is in a market in which we have evidence that economies of scale are important.
32. The market is highly concentrated. The three largest competitors post-Merger, ie the Merged Entity, ATI, and Landmark together account for over 80% if D&D Indirect franchisees are included and over 70% of the market if D&D Indirect franchisees are excluded from the Merged Entity.
33. There are a number of smaller suppliers in the market, but they all have much lower market shares. None of the smaller suppliers has a share above 5% and together they account for less than 20% of the market. These smaller competitors have lost market share since 2018.
34. The evidence that we have seen shows consistently that the Parties are close competitors. Both Parties have a significant presence in the supply of both residential and commercial PSRBs. While there are some differences in their competitive strengths (with TMG stronger than D&D in the supply of PSRBs to the Top 100 law firms, which represents a relatively small part of the overall market), both Parties supply PSRBs to conveyancers ranging from small to large law firms, and to intermediaries (such as Panel Managers). Both Parties also provide ancillary services that are closely linked to the supply of PSRBs and which are an important aspect of competition in this market.
35. The Parties' internal documents show that each Party sees the other as a key competitor and that the Parties monitor each other. Moreover, a material proportion of D&D's customers see TMG as an important alternative to D&D (although we also recognise that it is more difficult to determine whether TMG's customers see D&D as an important alternative). This is also consistent with the evidence provided by competitors, which consider that D&D and TMG are among each other's closest competitors, and the available evidence on customer switching (albeit that we interpret this evidence with caution).
36. Our current view is that the two large national providers (ATI and Landmark) each would provide a credible competitive constraint post-Merger, with ATI having been particularly effective in recent years. ATI and Landmark are

mentioned as close competitors in the Parties' internal documents, and the evidence from customers and competitors corroborates this view. The evidence from the survey and the available evidence on switching data, both of which we interpret with caution, shows ATI to be a strong constraint with Landmark attracting some customers but fewer than ATI. Like the Merged Entity, these providers are able to take advantage of economies of scale in order both to invest in integrated software systems and the provision of other ancillary services to customers, and to compete with the Parties in terms of marketing.

37. On the other hand, the competitive constraint that the smaller suppliers exert on the Merged Entity, both individually and in aggregate, is limited, weaker than the constraint the Parties exert on each other, and likely to diminish in the future. We consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. Whilst the customer survey and switching evidence shows that some customers see these smaller suppliers as alternatives to the Parties, we treat this evidence with caution and do not consider it sufficient to support a conclusion that they are effective competitors in light of the other evidence. As noted above, all the smaller suppliers have very low shares of supply, and they consider themselves restricted in their ability to compete with the large suppliers. The Parties' internal documents contain very few references to these smaller suppliers. In some of the references that are included, the Parties indicate that these smaller competitors are not seen as a competitive threat by them. We therefore do not consider that the presence of the smaller suppliers, either taken separately or together, is sufficient to offset the loss of competitive constraint arising from the Merger.
38. Any competitive constraint that the D&D franchisees that are owned by third parties (ie the D&D Indirect franchisees) may exert on the Merged Entity is also limited. We consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. This limits their ability to differentiate themselves, innovate and compete with the Merged Entity. Moreover, the D&D Indirect franchisees are themselves small regional competitors, who lack the ability to compete for some customer segments or to constrain the Merged Entity to a significant degree.
39. Finally, we consider that while certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

40. On this basis, our current view is that the Merger eliminates a major national PSRB supplier from the market, that in addition to the Merged Entity only two large national PSRB suppliers would remain, and that the constraints from franchisees and smaller suppliers would not impose a sufficient competitive constraint on the Merged Entity, either individually or collectively, to offset the effects of the Merger.

Countervailing factors

41. We considered the likelihood of entry and expansion of suppliers in the market. Our current view is that neither entry nor expansion would be timely, likely, and sufficient to mitigate any potential adverse effects of the Merger and prevent the SLC we have provisionally found from arising. We have not received any submissions on efficiencies.
42. We therefore provisionally conclude that countervailing factors would not be likely to prevent the SLC we have provisionally found from arising.

Provisional conclusions

43. For the reasons above, we provisionally conclude that the Merger has resulted, or may be expected to result in an SLC in the supply of PSRBs in E&W.

Provisional findings

1. The reference

- 1.1 On 23 December 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**), of TM Group (UK) Limited (**TMG**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). D&D and TMG are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) whether a relevant merger situation (**RMS**) has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 Having decided to extend the statutory timetable by eight weeks, the Inquiry Group is required to publish its final report by 16 August 2022.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to D&D and TMG in line with the CMA's rules of procedure.¹ Further information can be found on our webpage.²

2. The Parties, the transaction, the rationale and our investigation

Introduction

- 2.1 This chapter describes the Parties and sets out the background to the completed acquisition by D&D of TMG. This chapter is set out as follows:

¹ CMA rules of procedure for merger, market and special reference groups (CMA17), paragraphs 11.1–11.7.

² See webpage here: [Dye & Durham \(UK\) Limited/TM Group \(UK\) Limited merger inquiry](#), accessed by the CMA on 17 May 2022.

- (a) the Parties and their principal operations;
- (b) the transaction;
- (c) the rationale for the Merger; and
- (d) the investigation.

The Parties and their principal operations

2.2 The Parties are both suppliers of property search report bundles (in which a number of property search reports are provided together as part of single 'search packs') (**PSRBs**). Their activities are more fully described below.

D&D

2.3 D&D provides cloud-based software and technology solutions for legal and business professionals in the UK, Canada, Australia, and Ireland. D&D is headquartered in Canada and listed on the Toronto Stock Exchange.

2.4 D&D entered the UK property search sector with the acquisition of 51% of Easy Convey in 2016.³ Since then, D&D purchased the remaining 49% interest in Easy Convey in 2019, as well as acquiring other businesses active at different levels of the property search supply industry in England and Wales (**E&W**), and one supplier of PSRBs in Northern Ireland (see Table 2.1). D&D's UK products include 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. D&D currently has no activities in Scotland and has told us that it has no plans to expand its activities into Scotland.⁴ D&D had £[~~8~~] million of UK turnover in the financial year ending 30 June 2021.⁵

³ Response to the Enquiry Letter, paragraphs 11.5 and 11.5.4.

⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 23.1.

⁵ D&D UK/TMG Consolidated response to CMA's s.109 Notice of 25 August 2021, Annex 14.01 (D&D UK Ltd Consolidated Management Accounts 1 July 2020 – 30 June 2021).

Table 2.1: D&D's acquisitions in the property search industry, UK

Business acquired	Year	LA & DW searches	Environmental reports	Supply of:			PSRBs
				other property search reports*	conveyancing risk management reports		
Easy Convey†	2016/17						[✓]
Index PI	2019	✓					✓
PIE	2020	✓					✓
PSG	2020	✓					✓
Terrafirma	2021			✓			
FCI‡	2021		✓	✓			
Lawyer Checker	2021				✓		
GlobalX UK§	2021	[✓]					[✓]
TM Group	2021	✓					✓

Source: D&D (Response to the Enquiry Letter, paragraphs 8.2-8.3, 11.5 and 11.5.4. See also Response to the Enquiry Letter 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](#) and [D&D's acquisition of TMG](#). See also 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).

* eg ground and mining, chancel, etc.

† Easy Convey is principally a provider of case management software.

‡ including certain assets of CLS.

§ [§], GlobalX is [§] focused on business law.

Notes:

1. D&D acquired Finlay Associates in 2018. This company was dissolved in 2020.

2. D&D acquired Lawlink NI in 2021. This business only operates in Ireland.

2.5 A description of D&D's UK businesses is set out here:⁶

(a) **Property Information Exchange (PIE)**. PIE is a supplier of PSRBs in E&W through its brand 'poweredbypie'. D&D acquired PIE in September 2020. PIE also offers a white-labelled version of its property search platform technology to third party suppliers of property searches. Those businesses are able to use their own brand and use the PIE platform to supply PSRBs they have compiled or purchased. PIE also maintains a property search franchise business called PSG Connect (**PSG**). D&D acts as a franchisor but also operates and owns some of PSG's franchisees directly (**PSG Direct**), whereas other franchisees are owned by third parties (**PSG Indirect**). In addition to property searches, D&D provides a range of ancillary services to customers both through PIE but also through its separate brand, 'Brighter Law'. These include a conveyancing quotation tool (that conveyancers can offer their clients to obtain a conveyancing fee estimate) and a document sharing tool (that allows conveyancers to share transaction documents in one place).

(b) **Index Property Information (Index)**. Index is a compiler and supplier of PSRBs in E&W. It is a franchise business. D&D acts as a franchisor but also operates and owns some of Index's franchisees directly (**Index**

⁶ Response to the Enquiry Letter, paragraph 11.4.

Direct), whereas other franchisees are owned by third parties (**Index Indirect**).

- (c) GlobalX UK (**GlobalX**) is a compiler and supplier of PSRBs in E&W. D&D acquired GlobalX UK as part of its acquisition of GlobalX's Australian business in 2021. The Parties stated in their Response to the Enquiry Letter that GlobalX is a retailer of residential and commercial property searches.⁷ [X], the Parties submitted that GlobalX is [X] focused on business law and provides certain related services, including company searches, company formation and a workflow solution.⁸
- (d) Easy Convey Limited (**Easy Convey**) provides an online conveyancing case management platform (**CASA**) to conveyancers in E&W. It is also involved in compiling and supplying property searches (through CASA) together with various ancillary services, including client ID and anti-money laundering checks, mapping tools, and post completion submission forms (SDLT & AP1).⁹ D&D acquired a 51% stake in Easy Convey in April 2016 and acquired the remaining 49% in March 2019.
- (e) Future Climate Info (**FCI**). FCI compiles and supplies the following types of search reports mainly supplied to PSRB suppliers and sold on to conveyancers and other customers in E&W: (i) environmental risk reports; (ii) chancel repair liability reports (through its product 'ChancelCheck'); (iii) title investigation reports (through its product 'TitleChecker'); and (iv) ground and mining risk reports. D&D acquired FCI in May 2021.
- (f) Terrafirma (**Terrafirma**) compiles a range of ground and mining risk reports for the property market in E&W. D&D acquired Terrafirma in May 2021. These reports include ground risk reports and CON29M (mining) reports and are mainly supplied to PSRB suppliers and sold on to conveyancers and other customers.
- (g) LawLink NI (**Lawlink NI**) works with solicitors, financial institutions, and other professional bodies in Northern Ireland primarily retailing commercial and residential property searches. D&D acquired LawLink NI as part of its acquisition of the Irish business, Rochford Brady Group in April 2021. LawLink NI is solely active in Northern Ireland.

⁷ Response to the Enquiry Letter, paragraph 11.5.3.

⁸ D&D derogation request, 16 February 2022; Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.6, and Appendix 1, paragraph 2.4.3.

⁹ There is a requirement to inform HMRC about most England and Northern Ireland land and property transactions, and a Stamp Duty Land Tax (SDLT) return is sent to HMRC within 14 days of the 'effective date' of a transaction, even if there is no tax liability. Every transaction requires an AP1 application together with the necessary documents, eg TR1 (transfer of property document) which is sent to HM Land Registry for processing.

- (h) Lawyer Checker (**Lawyer Checker**). D&D also supplies a separate transaction risk management solution called Lawyer Checker (having acquired Lawyer Checker in June 2021). Its main product is a conveyancing risk management tool known as Account & Entity Screen (**AES**), which verifies the legitimacy of the law firm on the other side of a property transaction.

TMG

2.6 TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries, including property search reports for use in property transactions in E&W and Scotland. TMG does not have any activities in Northern Ireland. TMG was established in 1999, is headquartered in England and had UK turnover of £57.1 million in 2020.¹⁰

2.7 TMG has four main businesses:¹¹

- (a) tmConvey (**tmConvey**). tmConvey is a supplier of PSRBs in E&W. The technology infrastructure behind tmConvey [X] in E&W together with other [X] public authorities that produce search reports ([X]). tmConvey also provides ancillary services to customers, including client ID checks and anti-money laundering checks, HM Land Registry extract tools, post-completion submission forms (SDLT & AP1), risk management tools and certain insurance related solutions. Alongside tmConvey, TMG has an integrated software solution (**tmConnect**). tmConnect supports law firms and conveyancers with transaction distribution, engagement, and workflow into the case management systems.
- (b) Conveyancing Data Services (**CDS**). CDS is a compiler and supplier of PSRBs in E&W. CDS also offers a range of ancillary services, including ID checks, anti-money laundering checks, company searches and conveyancing insurance products.
- (c) Property Searches Scotland (**PSS**). PSS is a compiler and a supplier of a full range of property searches in Scotland.
- (d) TMG also has its own proprietary sales progression platform for estate agents in E&W called Mio (**Mio**) to improve management and communication of residential property transactions. Mio is primarily designed for estate agents to help them keep track of the status of each

¹⁰ D&D UK/TMG Consolidated response to CMA's s.109 Notice of 25 August 2021, paragraph 9.1, submitted on 17 September 2021.

¹¹ Response to the Enquiry Letter, paragraph 11.6.

property transaction on which they are currently instructed. The platform is also integrated with a consumer application for home-movers.

- 2.8 Pre-Merger, TMG's majority shareholders were three UK-based estate agents, namely Countrywide Group Holdings Limited (**Countrywide**), Connells Limited (**Connells**),¹² and LSL Property Services plc (**LSL**) (Countrywide, Connells and LSL are jointly referred to as the **Shareholders**).¹³

The transaction

- 2.9 D&D's wholly owned UK subsidiary, D&D UK, acquired the entire allotted and issued share capital of TMG for approximately £91.5 million¹⁴ pursuant to a share purchase agreement (**SPA**) dated and effective on [REDACTED].¹⁵
- 2.10 In addition to the SPA, TMG entered into agreements with each of LSL and Connells for the exclusive supply of PSRBs, including property search reports supplied by other D&D businesses, for at least [REDACTED] years (**Exclusivity Agreements**).¹⁶ Both Exclusivity Agreements became effective on [REDACTED].¹⁷
- 2.11 We consider the evidence shows that the Exclusivity Agreements were part of the rationale for entering into the Merger.¹⁸ This is also supported by the wording of the SPA which requires the Shareholders to 'deliver or procure to be delivered' the Exclusivity Agreements.¹⁹ D&D's internal documents discussing the Merger also indicate that the Exclusivity Agreements were being negotiated as part of the Merger.²⁰

¹² Connells acquired Countrywide on 8 March 2021.

¹³ Joseph Pepper (TMG's Chief Executive Officer) and Paul Albane (TMG's Chief Operating Officer) were also shareholders of TMG pre-Merger. See Response to the Enquiry Letter, Annex 03.01, Schedule 1.

¹⁴ Response to the Enquiry Letter, Annex 06.01.

¹⁵ Response to the Enquiry Letter, Annex 03.01.

¹⁶ 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).

¹⁷ Response to the Enquiry Letter, Annex 03.02 (clause 12) and Annex 03.03 (clause 12).

¹⁸ See page 2 of D&D response to the CMA's s.109 Notice (RFI5) issued on 14 March 2022: '(F) D&D's rationale for acquiring TMG was, in part, to realise opportunities to cross-sell D&D products to TMG's customers and former shareholders (LSL and Connells), including products from FCI, TerraFirma and Lawyer Checker which D&D had recently acquired. (G) Accordingly, effective from 8 July 2021 (the date of its acquisition by D&D), TMG entered into Service Agreements with its former shareholders, LSL and Connells. [...]'

¹⁹ Clause 1.8 of schedule 5 to the SPA requires LSL to [REDACTED]. Clause 1.10 of schedule 5 to the SPA [REDACTED].

²⁰ See Response to the Enquiry Letter, Annex 21.04 (pages 13 and 16), Annex 21.05 (page 5), which state: 'Current shareholders (LSL and Connells) are major estate agencies delivering referral/leads that drive volume, with ongoing supply agreement being negotiated as part of the transaction'. See also Response to the Enquiry Letter, Annex 21.01, which states that '[t]he Purchase Price is subject to the Shareholders entering into a supply agreement with the Company providing for an ongoing business relationship and commercial commitments'.

2.12 TMG also signed [X] with [X] in relation to the provision of [X] to TMG's Mio product for a period of [X].²¹

Merger rationale

D&D's rationale

2.13 Since 2017 D&D has acquired over 20 businesses in three geographic markets: Canada, UK and Australia. Revenues have grown from CAD 43.8 million in the year ended 30 June 2019 to CAD 209 million in the year ended 30 June 2021. The acquisition of TMG is part of D&D's strategy [X] in the UK via acquisition.²²

2.14 D&D submitted that the Merger would enhance its offering in the UK property search industry, specifically its supply of PSRBs to conveyancers and intermediaries. According to D&D, the Merger would allow it to expand into Scotland and in areas that were not previously a focus, including commercial properties, social housing, and estate agents.²³ Specifically D&D stated that the Merger:

- (a) enhances D&D's position in commercial real estate transactions to larger conveyancers;
- (b) allows D&D to scale its business in the UK and puts it in a position to be able to provide an integrated end-to-end service to customers using its technology platform; and
- (c) enhances customers' ordering and tracking experience by providing more services under one platform, creating efficiencies through a faster integrated process.²⁴

2.15 The Merger was also expected to provide significant synergies.²⁵ Revenue synergies estimated at around £[X] million are shown to arise from a price increase of [X]% to be applied to the [X]% of the revenue that was not generated from TMG's ex-Shareholders through the Exclusivity

²¹ Response to the Enquiry Letter, Annex 03.04. See also Response submitted by D&D on 18 October 2021 to the s.109 Notice issued by the CMA on 11 October 2021, paragraph 9.1.

²² Response to the Enquiry Letter, Annex 20.03 (budget presentation, page 16). See also, Annex 21.08 FY2021 Quarterly Board Meeting presentation (slides 25, 27-28), Annex 21.11 and see also BMO Capital markets Broker report on D&D 30 September 2020 (pages 4-5).

²³ Response submitted by D&D on 18 August 2021 to the RFI issued by the CMA's merger intelligence committee on 10 August 2021, paragraph 2.2.

²⁴ D&D slide deck for meeting with the CMA on 27 October 2021, page 3.

²⁵ See D&D 'Project Titan Acquisition Approval' presentation 30 June 2021, Response to the Enquiry Letter, Annex 21.05 (pages 2, 5 and 9).

Agreements.²⁶ D&D submitted that its acquisition of TMG was not predicated on a price increase.²⁷ D&D submitted that the price increase assumption was based on [X]. This was based on D&D's experience of the UK market. D&D also stated that TMG had last increased prices in April 2020.²⁸ D&D further stated that TMG usually increased prices in April but had delayed as a result of the stamp duty holiday in place at that time. It stated that TMG felt it was not the appropriate time to increase prices as it was an extremely busy period, and an increase would be poorly received by its customers. TMG's prices were increased in October 2021 after the stamp duty holiday had ended.

2.16 Some of D&D's internal documents discuss D&D's plans to increase prices following the Merger.^{29,30} We also note that D&D increased the price of several products offered by D&D's brands following its acquisitions, with the increases ranging between [X]% and [X]%.³¹ The Parties submit that while there were increases in headline prices, the average PSRB price charged by PIE has not increased.^{32,33} Similarly, the Parties submitted that the internal documents considering price increases related to a financial forecast exercise and not to any plan to increase prices.^{34,35} The Parties also submitted that, while D&D did contemplate the possibility of a 'standard industry price increase', this was relatively insignificant compared with the revenue gains from synergies and cross-selling opportunities created by the Merger.^{36,37}

2.17 While direct evidence of price increases may be considered as evidence that a merger is likely to give rise to an SLC,³⁸ we have not – in light of the other

²⁶ Response to the Enquiry Letter, Annex 21.03 (pages 3-4); Annex 21.04 (pages 18, 20); Annex 21.05 (pages 9 and 16).

²⁷ Response to the Phase 1 Issues Paper, paragraphs 6.1 to 6.9 and associated footnotes.

²⁸ Response submitted by D&D stated 'the last time that case fees were increased was April 2020'. See Response submitted by D&D on 18 October 2021 to the s.109 Notice issued by the CMA on 11 October 2021, (Annex 12.01(a)).

²⁹ D&D response to the CMA's s.109 Notice issued on 11 October 2021, Annex 12.02 and Annex 12.03; See also Response to the Enquiry Letter, Annex 21.03; Annex 21.04 and Annex 21.05.

³⁰ We also note that D&D's intention to increase TMG's prices post-Merger appears confirmed by at least two of TMG's internal documents – see Annex TMG-0001765 of TMG's response to the CMA's s.109 Notice dated 25 January 2022; and TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex TM1887.

³¹ D&D's response to the CMA's s.109 Notice (RFI2a) dated 25 January 2022, Table 2.

³² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.12.

³³ The Parties further submitted that this is a result of: (i) D&D engaging with customers to assist them with switching to purchasing regulated searches rather than official ones; (ii) customers dissatisfied with price rises switching some or all of their volumes to competitors; and (iii) customers negotiating away price rises (Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.13).

³⁴ Response to the Phase 1 Issues Paper, paragraph 6.2.

³⁵ The Parties further submitted that the price increase assumption was based on D&D's general view of the likely annual rate of price increases on a 'business as usual' basis, based on D&D's experience of the UK market (Response to the Phase 1 Issues Paper, paragraph 6.5).

³⁶ Parties' response to the Issues Statement, paragraph 2.3.6.

³⁷ The Parties reiterated these views in response to our working papers (Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 7.1-7.6).

³⁸ Merger Assessment Guidelines (CMA129) (MAGs), 18 March 2021, paragraph 2.22.

evidence available to us – sought to rely on evidence of past and future planned price increases as part of our assessment in this case. D&D’s internal documents relating to price increases post-Merger are therefore not considered further in this provisional findings report.

- 2.18 Merger synergies also included significant cost synergies through combining platforms and which were estimated at £[redacted] million (run rate).
- 2.19 D&D further expected to generate through the Merger [redacted] to some of D&D’s [redacted] businesses which are used by TMG in supplying PSRBs.³⁹ [redacted]. However, only the figures from FCI are included in the synergy model, as these are under the direct control of D&D.⁴⁰

TMG’s and the Shareholders’ rationale

- 2.20 TMG submitted that the Merger represented an exit opportunity for the Shareholders who have made efforts to sell TMG [redacted].⁴¹
- 2.21 Connells submitted that it had acquired its shareholding in TMG as being ‘the largest seller of residential property’ it made sense to co-operate with ‘our competitors to create a scaled and efficient search provider with enough capacity to be always able to fulfil our customers’ needs. This then also secured the platform to develop Mio, a chain progression tool for the home buying customer and all parties to the transaction’.⁴² Connells further submitted that ‘over our period of ownership, searches became more commoditised and as the scale and profitability of TMG grew, so did the financial opportunity to dispose of our shareholding for significant value’.⁴³
- 2.22 In 2016 the Shareholders had looked to sell TMG ‘to optimise a cash exit value (particularly driven by Countrywide [redacted])’.⁴⁴ However, while there were a number of offers received the process was terminated. Connells stated that the timing of the sale was unfortunate, as it coincided with the UK’s vote to leave the EU which had an adverse impact on the UK housing market, and the appetite for such deals generally at a time of potential economic and political uncertainty. In 2020/2021, it felt that ‘the offer from D&D and our

³⁹ D&D response to the s.109 Notice of 11 October 2021, Annex 12.02.

⁴⁰ Lawyer Checker’s main product is AES, 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](#).

⁴¹ Response to the CMA’s s.109 Notice issued on 27 September 2021, paragraph 5.2.

⁴² Connells’ response to Request for Information (RFI) of 10 February 2022.

⁴³ Connells’ response to Request for Information (RFI) of 10 February 2022.

⁴⁴ Connells’ response to Request for Information (RFI) of 10 February 2022.

assessment that they were highly likely to complete made the offer compelling'.⁴⁵

- 2.23 LSL submitted that TMG had always been non-core, having been acquired as part of its acquisition of Halifax Estate Agencies Limited in 2009. It stated that it was willing to sell in 2016 when the business was put up for auction provided a suitable offer was made. At that time, it was looking for an offer in the region of [X] (around £[X] million).⁴⁶ In 2020/2021, the Shareholders decided to sell, as D&D made an approach regarding the possibility of acquiring TMG which was acceptable to LSL and the other Shareholders.⁴⁷

Our investigation

- 2.24 In assessing this Merger, we have reviewed a wide range of evidence in the round to reach our provisional findings.
- 2.25 We received submissions and responses to information requests from the Parties and held a virtual site visit and in-person hearings with each of them. We also conducted a thorough examination of the Parties internal documents, which show (among other things) how they run their businesses and how they view their competitors.
- 2.26 We gathered evidence from competitors via written questions and discussions to understand better the competitive landscape and get their views on the impact of the Merger. This includes evidence from the Parties' third party owned franchisees, from their major competitors (Landmark Information Group (**Landmark**)⁴⁸ and Australian Technology Innovators (**ATI**)), from smaller competitors, and from the Association of Independent Personal Search Agents (**IPSA**).
- 2.27 As regards customer engagement, we commissioned the market research agency DJS Research (**DJS**) to undertake a telephone survey of customers of the Parties to better understand how they purchase and use PSRBs. The 170 respondents to the survey were made up of conveyancers who varied by size and their degree of residential or commercial focus. The survey was carried out in February and March 2022. More details about the survey are set out in Appendix E. The DJS customer survey report, including the full questionnaire and the methodology of the survey, is published on the [inquiry webpage](#) alongside this document.

⁴⁵ Connells response to Request for Information (RFI) of 10 February 2022.

⁴⁶ LSL response to Request for Information (RFI) of 10 February 2022.

⁴⁷ LSL response to Request for Information (RFI) of 10 February 2022.

⁴⁸ We note that references to submissions from Landmark refer to submissions from SearchFlow.

- 2.28 We also spoke to several law firms including some 'Top 100' law firms⁴⁹ which specialise in large transactions and are among TMG's largest customers ([§]), some law firms which are large or medium-sized customers of D&D for residential and commercial services ([§]), and several panel managers (**Panel Managers**) which are either customers of D&D ([§]), or of TMG ([§]), or both ([§]).
- 2.29 Moreover, we spoke to a number of companies which the Parties informed us were potential new entrants in the market ([§]).
- 2.30 Finally, we have considered submissions and other evidence obtained at phase 1.

3. Industry background

Introduction

- 3.1 This chapter provides background information on the industry in which the Parties operate in E&W.
- 3.2 In particular, this chapter covers:
- (a) the supply of PSRBs; and
 - (b) industry participants.

The supply of PSRBs

- 3.3 PSRBs are sets of property search reports that assist in assessing the value, risk, and general context of the property and its surroundings. PSRBs are ordered by conveyancers (eg law firms and licensed conveyancers) and intermediaries⁵⁰ during the due diligence process in property transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties.

⁴⁹ Top 100 law firms identified through a publicly available ranking by [The Lawyer](#).

⁵⁰ Intermediaries typically include estate agents, lenders, mortgage brokers, and Panel Managers.

Types of property search reports

Composition of PSRBs

- 3.4 There are several different types of property search reports that may be included in a PSRB. These are compiled and supplied by different upstream suppliers⁵¹ and include in E&W:
- (a) Local Authority (**LA**) Search (**LAS**) reports, which provide information held by the local government authority in whose area the property is located (eg building status, conservation areas, outstanding charges on property, planning information, local infrastructure etc);
 - (b) Drainage and Water Search (**DWS**) reports, which identify a property's water supply, drainage and sewer access, water quality, etc supplied by LAs;
 - (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.
- 3.5 A typical PSRB in E&W contains (at a minimum) a LAS report, a DWS report, and (in most cases) an environmental report.⁵²

Official and regulated reports

- 3.6 LAS reports are and have historically been compiled by LAs, and in this case are known as 'official' LAS reports (**OLAS**). However, LAS reports are increasingly compiled by commercial suppliers, which often offer faster turn-around times and lower prices to gather information. In this case, LAS reports are known as 'regulated' LAS reports (**RLAS**). Similarly, DWS reports can be compiled by either official information holders,⁵³ and in this case are known as 'official' DWS reports (**ODWS**), or by commercial suppliers, and in this case are known as 'regulated' DWS reports (**RDWS**).
- 3.7 The Parties submitted that customers can choose between official and regulated search reports, and that the choice can be influenced by timeframes

⁵¹ For example, official information holders (eg LAs and water companies) and commercial suppliers.

⁵² Response to the Enquiry Letter, paragraph 11.3.3. See also Chapter 6.

⁵³ See [DWSN \(Drainage and Water Searches Network\) website](#).

or costs.⁵⁴ D&D further submitted that larger law firms, which predominantly deal with commercial property, prefer official reports, while small and medium sized conveyancers tend to prefer regulated reports on the basis that these can be cheaper and have a consistent layout and so tend to be considered more user friendly.⁵⁵ However, the Parties considered that regulated and official LAS and DWS reports are closely substitutable.

Residential and commercial searches

- 3.8 The Parties and their competitors distinguish between residential and commercial searches. The Parties told us that customers decide whether they would like to order a residential or commercial search report.⁵⁶ ATI told us a search would typically be defined as commercial when it involves either: (a) a large building complex (ranging from one parcel to several hundred parcels of land), or (b) upwards of 50 residential properties grouped together (eg a holding company divesting multiple properties in one transaction).⁵⁷ ATI clarified that it considers that ‘if the transaction relates, for example, to a single shop premise, it would be treated the same as residential. Small individual commercial premises would tend to be done by smaller firms, while large commercial transactions will tend to be done by the larger firms, who are likely to apply a similar categorisation. As there is no official definition each Search Provider may differ here. For all intents and purpose a one off basic commercial property, it would not typically be seen as “Commercial Searching” as specialist Commercial lawyers wouldn’t be used’.⁵⁸
- 3.9 In practice, individual suppliers’ and customers’ working definitions of what counts as a ‘commercial’ or ‘residential’ transaction may differ, and there does not seem to be a standard definition that is used consistently across the industry.
- 3.10 In this report, we use customers’ and suppliers’ own definitions of commercial and residential PSRBs. The Parties’ data regarding commercial and residential PSRBs relies on whether their customer ordered a commercial or residential PSRB.⁵⁹ Based on 2021 data for the four largest suppliers, [90-100%] by volume of PSRBs are residential.⁶⁰ The percentage would be

⁵⁴ D&D response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 3.1; TMG response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 3.1.

⁵⁵ D&D’s response to RFI2a, paragraph 3.2.

⁵⁶ D&D response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1. TMG response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1

⁵⁷ ATI call note, 16 February 2022, paragraph 10.

⁵⁸ ATI email of 16 May 2022.

⁵⁹ D&D response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1. TMG response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1.

⁶⁰ See Appendix B, Tables 3 and 5.

slightly lower by value as the price of residential PSRBs is lower than for commercial PSRBs.

- 3.11 The information provided in an LAS report is the same for commercial as residential searches, but the enquiries for a DWS are more extensive for commercial searches as they make provision for questions regarding, *inter alia*, wayleave agreements and easements. However, even in relation to LAS searches D&D told us there will typically be more work involved to produce the reports for commercial properties, as a local authority will typically have more detailed information about a commercial property as compared to a residential property. Providers of regulated searches, and some LAs, therefore charge more for commercial reports. Similarly, D&D told us there is a difference in content for environmental searches, with a commercial environmental search including more detailed analysis and opinion on contaminated/polluted land, and all commercial reports ordered are reviewed by a consultant environmental specialist.⁶¹
- 3.12 For both residential and commercial property searches, demand and supply is generally channelled through the same customers and the same suppliers. However, the proportion of residential and commercial searches an individual customer purchases is likely to vary by the nature of that customer's business, for example large law firms will tend to work on transactions involving large commercial properties, while a smaller conveyancer will likely deal with a higher proportion of residential properties.⁶²
- 3.13 A final distinction between commercial and residential searches relates to insurance. Customers require providers of PSRBs to be covered by professional indemnity insurance against the possibility of losses due to errors in search reports. The required level of such insurance tends to be higher for commercial property searches, and this contributes to commercial PSRBs being more expensive than residential PSRBs.

Online platforms

- 3.14 The Parties and their main competitors supply PSRBs through an online ordering platform and include features that facilitate the supply of search reports, for example mapping tools. We regard these features as integral to the supply of PSRBs and, as discussed further in Chapter 6, factors on which PSRB suppliers compete include the quality and features of the ordering platform and the standards of the support service provided.

⁶¹ D&D response to CMA follow-up questions of 4 May 2022.

⁶² Response to the Enquiry Letter, paragraph 11.9.

Case management software and ancillary services

- 3.15 We found there are two other sets of services related to the supply of PSRBs: first, the provision of case management software; and second, the provision of additional products provided by PSRB suppliers as part of a one-stop-shop for conveyancers, which customers may, or may not, choose to purchase (referred to as ancillary services).

Case management software

- 3.16 Case management software enables conveyancers to manage all aspects of conveyancing digitally. Most conveyancers now operate using such software. D&D said it estimated that at least five out of six of its customers use case management software, though smaller conveyancers were less likely to use case management software than larger ones, and it is possible to operate (including ordering PSRBs) without it.⁶³ At the point that they request a PSRB, conveyancers would have already logged on using their case management software (if they use it), and it is therefore advantageous for PSRB platforms to be integrated into case management software.
- 3.17 PSRB platforms may be capable of being integrated with a number of different case management software platforms. For example, D&D told us that PIE and Index were integrated with at least [REDACTED] case management software platforms,⁶⁴ TMG said that CDS was integrated with at least [REDACTED],⁶⁵ and ATI said that InfoTrack was integrated with at least [REDACTED].⁶⁶ PSRB suppliers may pay a referral fee if a case management software supplier refers a customer to them.⁶⁷

Ancillary services offered by PSRB suppliers

- 3.18 Suppliers of PSRBs may offer various other ancillary services, alongside the PSRBs themselves, with these services being integrated into the PSRB platform and accessible through it. We distinguish ancillary services from the core features of the PSRB platform, because ancillary services represent products that are not specifically related to property search but assist conveyancers with other aspects of the property purchase and sale.⁶⁸

⁶³ D&D's response to CMA's questions of 13 April 2022, footnote 12.

⁶⁴ D&D's response to Request for Information (RFI) dated 26 April 2022, paragraph 4.3.

⁶⁵ TMG's response to Request for Information (RFI) dated 26 April 2022, paragraph 3.2.

⁶⁶ ATI response to CMA's Request for Information (RFI) of 21 April 2022.

⁶⁷ D&D's response to CMA's Request for Information (RFI) dated 26 April 2022, paragraph 4.4, [REDACTED] response to CMA's Request for Information (RFI) of [REDACTED].

⁶⁸ Response to the Enquiry Letter, paragraph 11.17.

- 3.19 Ancillary services include document sharing tools (which allow conveyancers and intermediaries to share transaction documents in one place), conveyancing quotation tools (which provide conveyancing fee estimates), anti-money laundering services, HM Land Registry completion tools, post-completion submission forms (SDLT & AP1), risk management reports (eg D&D's Lawyer Checker which verifies the legitimacy of the law firm on the other side of a property transaction), and conveyancing insurance products.
- 3.20 The Parties submitted that TMG's tmconvey and CDS platforms provide various ancillary services, including client ID checks, anti-money laundering checks, and conveyancing insurance products. Similarly, D&D's brands PIE, Brighter Law and Easy Convey provide various ancillary services including a conveyancing quotation tool, a document sharing tool, client ID and anti-money laundering checks, and post-completion forms.⁶⁹
- 3.21 Both of the Parties' large national competitors, ATI and Landmark, also offer ancillary services as part of their PSRB platforms. If a conveyancer works with ATI's InfoTrack PSRB platform, they have access to InfoTrack's 'Conveyancing Quote Calculator'.⁷⁰ This can be set up with a firm's branding including logo, address, and service fees. There are also several due diligence checks provided by InfoTrack including verification of identity and funds, anti-money laundering searches and verification of a vendor's solicitor.⁷¹
- 3.22 Landmark's SearchFlow PSRB platform includes a 'Quoting Tool' to help conveyancers provide quotes for conveyancing fee estimates to potential clients. Additionally, SearchFlow provides fraud and ID checks and post-completion services amongst other services.⁷²
- 3.23 Suppliers of case management software may also offer such ancillary services integrated into their case management platforms.⁷³ In addition, conveyancers might purchase some of these services directly from HM Land Registry or HMRC.⁷⁴

⁶⁹ Response to the Enquiry Letter paragraphs 11.5.4, 11.7.1 and 11.7.2.

⁷⁰ Infotrack's Conveyancing Quote Calculator is available on their website [here](#), accessed by the CMA on 11 May 2022.

⁷¹ See Infotrack website [here](#), accessed by the CMA on 11 May 2022.

⁷² See the following pages of the SearchFlow website [here](#), residential searches [here](#) and commercial searches [here](#), all accessed by the CMA on 11 May 2022.

⁷³ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 3.10.

⁷⁴ D&D response to CMA follow-up questions of 4 May.

Estimated market size of case management software and ancillary services

- 3.24 D&D told us it estimated the value of case management software services supplied in the UK in 2021 to be £27 million.
- 3.25 D&D considered the most important ancillary services, together with rough estimates of market size where these services are provided in the context of a property transaction, were:
- (a) anti-money laundering (estimated value £49 million);
 - (b) insurance (estimated value £24 million);
 - (c) land registry fees (estimated value £9 million);⁷⁵ and
 - (d) stamp duty, automatic registration (estimated value £5 million).⁷⁶
- 3.26 D&D's rough estimates imply a total market size for case management and the largest four ancillary services where these services are provided as part of a property transaction, of around £113 million. This would compare to a total PSRB market size in 2021 of about £300 million.⁷⁷

Industry participants

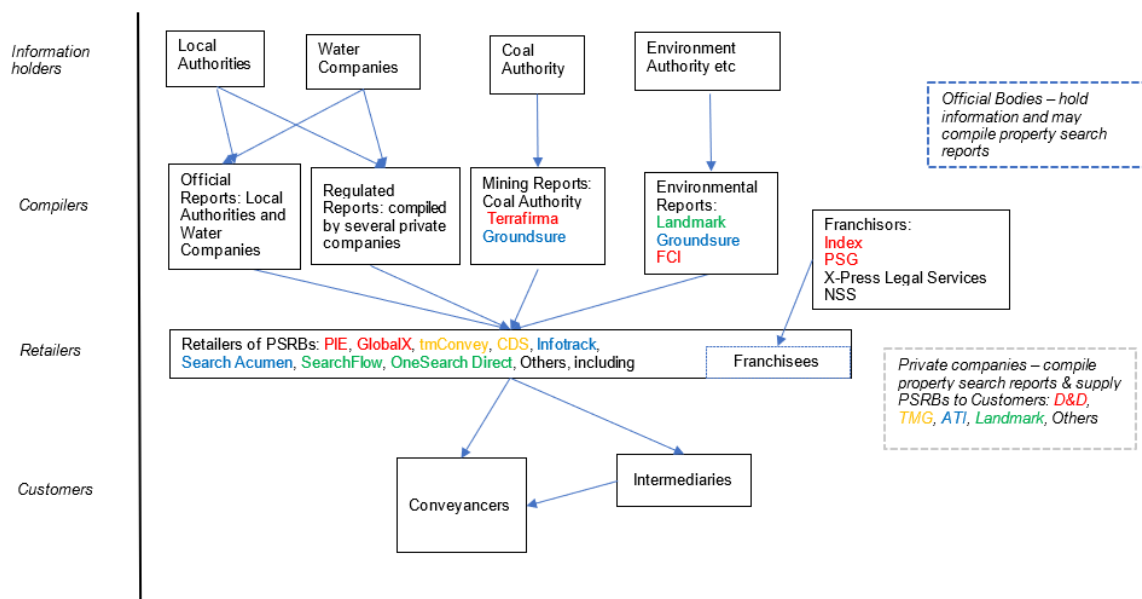
- 3.27 Figure 3.1 shows the main participants active at each level of the supply chain for PSRBs, the distinction between official bodies and private providers and the role of franchise groups and intermediaries.

⁷⁵ D&D's figures for land registry fees relate only to OC1 forms and disregard other Land registry fees, for example in relation to AP1 forms, D&D provisional findings put back comments 12 May 2022. The Parties argue that if additional fees are included, they estimate the market value to be in excess of £100m - £200m and could be even greater.

⁷⁶ D&D's response to CMA's questions of 13 April 2022, paragraph 2.9. Estimated market sizes were based on multiplying the approximate price per unit by the number of units per transaction and by the total number of transactions in 2021.

⁷⁷ This is based on our estimated volume (see Appendix B, Table 1) and D&D's estimated average revenue per PSRB for its PIE and owned Index businesses of £207.79, see D&D's response to CMA's questions of 13 April 2022, paragraph 2.6.

Figure 3.1: Illustration of the supply chain for PSRBs



Source: CMA.

Note: This is an illustration of the supply chain and does not seek to include every detail.

3.28 We discuss each type of industry participant below. We then describe the Parties' activities, the activities of their largest competitors ATI and Landmark and of their smaller competitors.

Customers

3.29 Customers include:

- (a) Conveyancers, which are law firms and licensed conveyancers that buy PSRBs on behalf of people or companies engaged in property transactions (buying a property, refinancing a mortgage or reviewing the value of their portfolio of properties).
- (b) Intermediaries, typically include estate agents, lenders, mortgage brokers, and Panel Managers (which manage and provide access to panels of conveyancers on behalf of businesses introducing conveyancers to property buyers).

3.30 Most conveyancers deal with both residential and commercial property, and therefore order both residential and commercial PSRBs. The relative importance of residential and commercial property differs between conveyancers. In particular, some large law firms focus on large commercial property transactions but have limited residential business. The Parties distinguished between the following categories of conveyancer:

- (a) 'large law firms' are conveyancers appearing in the Top 100 UK law firms identified through a publicly available ranking by *The Lawyer*;
 - (b) 'medium conveyancers' are conveyancers carrying out more than 240 property transactions annually, and not large law firms as defined above; and
 - (c) 'small conveyancers' are conveyancers carrying out fewer than 240 transactions annually and not large law firms as defined above.⁷⁸
- 3.31 Intermediaries typically include estate agents, lenders, mortgage brokers, and Panel Managers. They intermediate between retail PSRB suppliers and conveyancers, primarily for residential property. For example, an estate agent may 'introduce' a property buyer to a conveyancer through a Panel Manager. The Panel Manager would generally have an arrangement with a preferred PSRB supplier. The Panel Manager normally earns a form of referral fee from the PSRB supplier for introducing the business. This fee is normally added to the cost of the PSRB and charged to the conveyancer, who in turn charges the cost as a disbursement to the property buyer. Similarly, the Panel Manager normally charges a referral fee to the conveyancer.⁷⁹
- 3.32 Evidence submitted by the Parties suggests that average revenues per PSRB may be lower for intermediary customers than for direct sales to conveyancers.

Retail PSRB suppliers

- 3.33 Retail PSRB suppliers, which we describe elsewhere in this report as PSRB suppliers, sell PSRBs to customers.
- 3.34 Retail PSRB suppliers may either compile property search reports in-house or source them from third-party compilers.⁸⁰
- 3.35 As noted above (see paragraph 3.17), retail PSRB suppliers may also supply ancillary services along with PSRBs. Such services may also be sold by others, ie retailers that are not selling PSRBs.

⁷⁸ D&D's response to the CMA's s.109 Notice (RFI2a) dated 25 January 2022, Table 1 and paragraph 2.2. See also, TMG's response to the CMA's s.109 Notice dated 25 January 2022, Table 1 and paragraph 2.2. Other customers are primarily intermediaries but also include in-house counsel for commercial clients and law firms that carry out property transactions occasionally.

⁷⁹ Parties' response to the CMA's Phase 1 Issues Paper, paragraph 2.4.

⁸⁰ The Property Codes Compliance Board maintains a register of private companies active as retailers and/or compilers: see [PCCB - The Property Codes Compliance Board - Standards for Property Searches](#).

Compilers

- 3.36 Compilers collect the relevant unrefined property information and produce property search reports.
- 3.37 Compilers include:
- (a) LAs, which compile OLAS reports from their own property information;
 - (b) water companies, which compile ODWS reports from their own property information;
 - (c) the Coal Authority, which compiles Coal Mining and other reports; and
 - (d) private companies, which compile RLAS and RDWS reports, environmental reports, etc and often act as retailers too. Traditionally private search companies would visit the LA or water company to view its records, but in some cases the information is now available online and during the Coronavirus (**COVID-19**) pandemic restrictions compilers were able to obtain the information by email.

Information holders

- 3.38 Information holders collect and hold the unrefined property information necessary to compile property search reports. These include LAs, water companies, HM Land Registry, the Environment Agency and the Coal Authority.

The Parties' activities

- 3.39 The Parties are active as retail suppliers of PSRBs and ancillary services and as compilers of property search reports. D&D is also active as a provider of case management software.

D&D

- 3.40 Table 3.1 below summarises D&D's activities in relation to the supply of PSRBs and related products in E&W.

Table 3.1: D&D's activities in relation to the supply of PSRBs and related products, E&W

D&D brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
PIE*	✓		✓	✓	✓	
GlobalX†	✓			[✓]	✓	
Index‡	✓			✓	✓	
PSG‡	✓			✓	✓	
FCI		✓				
Terrafirma		✓				
Easy Convey§				[✓]		✓
Lawyer Checker¶			✓			

Source: CMA based on information provided by D&D (Response to the Enquiry Letter, paragraph 11.5, tables 1 and 2 and the table at paragraph 11.8).

* poweredbypie, PSG and Brighter Law are all part of the PIE business, see paragraph 2.5. Brighter Law provides a number of ancillary services (see paragraph 3.19).

† [X], GlobalX is [X] focused on business law.

‡ Index and PSG are franchise businesses.

§ Easy Convey is principally a provider of case management software.

¶ Lawyer Checker provides risk management reports.

3.41 In relation to D&D's franchise businesses (Index and PSG), D&D acts as franchisor and also operates and owns some of Index's and PSG's franchisees (Index Direct and PSG Direct), while other franchisees are owned and operated by third parties (Index Indirect and PSG Indirect, together referred to as D&D Indirect).⁸¹

3.42 As franchisor, D&D, through Index and PSG, provides Index Indirect franchisees and PSG Indirect franchisees with the brand, bespoke ordering platform and case management software, [X]⁸² in order to enable them to supply PSRBs to customers in specific territories across E&W.⁸³ In return, Index Indirect franchisees and PSG Indirect franchisees pay Index and PSG, respectively, monthly royalties as a proportion of their revenue.⁸⁴ In addition, D&D supplies certain upstream property search reports to the Index Indirect franchisees and the PSG Indirect franchisees.⁸⁵

3.43 D&D's upstream property search businesses (FCI and Terrafirma) supply their search reports to third party PSRB suppliers as well as to D&D's own

⁸¹ Index Indirect franchisees account for about 80% of total Index volume, with Index Direct franchisees accounting for 20%. No equivalent data for PSG was available, as D&D provided sales volume data for PIE and PSG Direct combined.

⁸² Franchise agreement between Index and Index Indirect franchisees (clauses 4.1, 5.1-5.2, 6.1, 10.9, 11.1-11.2, 12.4(B), 16.5) and franchise agreement between PSG and PSG Indirect franchisees (clauses 4.1, 5.1-5.2, 6.1, 10.9, 11.1, 12.4(B), 16.5). 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 (RFI) issued by the CMA on 17 November 2021, paragraph 5.2.

⁸³ Pursuant to the franchise agreements between Index and Index Indirect franchisees, Index Indirect franchisees are not permitted to make active sales into the reserved territory of other Index franchisees. The same provision is found in the franchise agreements between PSG and PSG Indirect franchisees. Response to the Issues Paper, Annex 03.01 (clause 2.2) and Annex 03.02 (clause 2.2).

⁸⁴ Response to the Issues Paper, Annex 03.01 (clauses 9.1-9.2) and Annex 03.02 (clauses 9.1-9.2).

⁸⁵ Response to the Issues Paper, paragraphs 3.6, 3.10-3.11, Table 3.

downstream PSRB suppliers. Similarly, Lawyer Checker supplies its risk management reports to third party retailers as well as to D&D's own downstream PSRB suppliers.

TMG

3.44 Table 3.2 below summarises TMG's activities in relation to the supply of PSRBs in E&W.

Table 3.2: TMG's activities in relation to the supply of PSRBs and related products, E&W

TMG brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
tmConvey	✓			✓	✓	
CDS	✓			✓	✓	

Source: CMA based on information provided by TMG (Response to the Enquiry Letter, paragraph 11.5, tables 1 and 2, table at paragraph 11.8.).

Note: Alongside tmConvey, TMG has an integrated software solution, tmConnect, that also allows customers to order PSRBs from tmConvey.

Other PSRB retail suppliers

ATI and Landmark

3.45 Besides the Parties, there are two other large retail suppliers of PSRBs, ATI and Landmark.

3.46 ATI supplies PSRBs through its retail brands InfoTrack and Search Acumen. ATI also owns Groundsure, a compiler of environmental reports and other reports, which it acquired in 2021. ATI is an Australian company that introduced its brand, InfoTrack, to the UK in 2015 and has gained significant market share over the past few years (see Table 7.1). ATI attributes InfoTrack's rapid growth to its innovative offering, based on an open-source technological solution, which allows conveyancers to access the whole suite of property searches from the same interface, where previously conveyancers did manual website searches and used multiple platforms.⁸⁶ ATI acquired a second retail brand, Search Acumen, in 2021. Search Acumen focuses on commercial property transactions.

3.47 Table 3.3 below summarises ATI's activities in relation to the supply of PSRBs in E&W.

⁸⁶ ATI call note, 16 February 2022, paragraphs 2-4.

Table 3.3: ATI's activities in relation to the supply of PSRBs and related products, E&W

ATI brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
InfoTrack	✓			✓	✓	
Search Acumen	✓			✓	✓	
Groundsure*		✓		✓		
Leap						✓

Source: CMA based on information provided by ATI.

* We have added a tick under retailer for Groundsure [X].⁸⁷

3.48 Landmark is part of Daily Mail and General Trust (DMGT) plc.⁸⁸ It supplies PSRBs through its retail brands SearchFlow and OneSearch Direct and is also a compiler of environmental reports and other reports through its Landmark brand. SearchFlow is a well-established retail supplier, although it has lost market share to some extent in recent years (see Table 7.1). Landmark told us [X] and is enhancing infrastructure and capability, to reduce internal costs and make it more attractive and easier to use for customers. [X].⁸⁹

3.49 Table 3.4 below summarises Landmark's activities in relation to the supply of PSRBs in E&W.

Table 3.4: Landmark's activities in relation to the supply of PSRBs and related products, E&W

Landmark brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
SearchFlow	✓			✓	✓	
OneSearch Direct	✓			✓	✓	
Landmark*		✓	✓			
Argyll*			✓			
Ochresoft						✓

Source: CMA based on information provided by Landmark.

* Landmark and Argyll provide risk management reports.

Smaller PSRB suppliers

3.50 In addition to ATI and Landmark, there are many smaller suppliers of PSRBs. We identified 84 companies that may be smaller suppliers of PSRBs to which we sent questionnaires, and received 40 responses. We estimated each of

⁸⁷ ATI email of 16 May 2022.

⁸⁸ DMGT plc's portfolio of companies operate across business to business and consumer markets in the property information sector, including in the supply of property information through Landmark and Trepp. (Trepp is a provider of data, analytics, and software technology.)

⁸⁹ Landmark call note, 14 February 2022, paragraph 17.

these suppliers had a share of less than [0–5%] of PSRB sales in 2021 (see Appendix B, Table 1).

- 3.51 Some of the smaller PSRB suppliers told us they operate nationally, while others operate on a purely regional basis.
- 3.52 Xpress Legal the largest of these smaller suppliers. It was founded in 1998 and operates a franchise model, selling through 27 franchisees.

Horizontal consolidation

- 3.53 The supply of PSRBs in E&W has undergone significant horizontal consolidation in the last few years. This was largely the result of several acquisitions undertaken by the Parties and their main competitors, including:
- (a) D&D entered E&W with the acquisition of a majority interest in Easy Convey in 2016. Since then, D&D has acquired the remaining shares of Easy Convey in 2017; Finley Associates in 2018; Index in 2019; SDG, PIE/PSG in 2020; FCI, Terraforma, Lawyer Checker, GlobalX and TMG in 2021.
 - (b) TMG, which was already active in E&W through tmConvey, acquired CDS in April 2018.
 - (c) ATI, which entered E&W with its acquisition of STL in 2014 and the launch of InfoTrack, acquired Search Acumen and Groundsure in 2021.
 - (d) Landmark acquired SearchFlow in 2013 and OneSearch Direct in 2019.

Industry bodies

- 3.54 The Council of Property Search Organisations (**CoPSO**)⁹⁰ is a trade association for the property search industry whose members include over 150 suppliers in E&W.⁹¹ CoPSO's website states that it was set up in 2003 to provide a voice for property search reports producers and to drive forward quality standards within the sector.⁹²
- 3.55 The IPSA website describes itself as 'a non-profit-making representative body and support group for search companies across the UK'.⁹³ IPSA represents sole practitioners and small organisations that provide personal local authority

⁹⁰ See CoPSO website [here](#), accessed by the CMA on 11 May 2022.

⁹¹ Response to the Enquiry Letter, paragraph 30.28. Response to the Issues Paper, paragraph 3.2.

⁹² CoPSO website [here](#), accessed by the CMA on 11 May 2022.

⁹³ IPSA website [here](#), accessed by the CMA on 11 May 2022.

searches to solicitors and conveyancers. IPSA has approximately 65–70 members.⁹⁴

4. Relevant merger situation

- 4.1 A completed merger must meet the following two criteria, set out in sections 23 and 26 of the Act, to constitute a relevant merger situation (**RMS**):
- (a) two or more enterprises have ceased to be distinct enterprises; and
 - (b) one of the following conditions is satisfied:
 - (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test);
 - (ii) the result of those enterprises ceasing to be distinct creates or enhances a share of supply of 25% or more in respect of goods or services of any description which are supplied in the UK, or a substantial part of the UK (the share of supply test).
- 4.2 This second element establishes sufficient connection with the UK on a turnover or share of supply basis to give us jurisdiction to investigate.

Enterprises ceasing to be distinct

Enterprises

- 4.3 The first element of the jurisdictional test considers whether two or more enterprises will cease to be distinct as a result of the Merger.
- 4.4 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.⁹⁵
- 4.5 The activities of the Parties overlap in the supply of PSRBs in E&W. Both Parties generate turnover in the UK (see paragraphs 2.4 and 2.6 above).
- 4.6 We are therefore satisfied that D&D and TMG is each a ‘business’ and that, accordingly, each constitutes an ‘enterprise’ for the purposes of the Act.

⁹⁴ IPSA call note, paragraph 4, 9 September 2021. The [IPSA website](#) states that it has ‘70+ current members’.

⁹⁵ Section 129(1) and (3) of the Act.

Ceasing to be distinct

- 4.7 Section 26 of the Act explains the concept of ‘ceasing to be distinct’. Two enterprises cease to be distinct once they are brought under common ownership or common control.
- 4.8 Through the Merger, D&D UK has acquired the entire issued allotted share capital of TMG and therefore D&D (as holder of 100% of the shares of D&D UK) has acquired legal control over TMG.⁹⁶ As a consequence, we are satisfied that both businesses have ‘ceased to be distinct’ prior to the date on which the reference was made.
- 4.9 We therefore consider that the first limb of the jurisdiction test is met.

The turnover or share of supply test – nexus with the UK

- 4.10 The second element of the jurisdictional test seeks to establish sufficient connection with the UK on a turnover or share of supply basis to give the CMA jurisdiction to investigate.

Turnover

- 4.11 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. TMG did not generate more than £70 million of turnover in the UK in its most recent financial year and therefore the turnover threshold set out in section 23(1)(b) of the Act is not satisfied.

Share of supply

- 4.12 Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire at least 25% or more of those goods or services in the UK as a whole, or in a substantial part of it. There must be an increment in the share of supply as a result of the merger.
- 4.13 The CMA has a broad discretion to identify a specific category of goods or services supplied or acquired by the merger parties for the purposes of

⁹⁶ D&D UK/TMG Consolidated response to CMA’s s.109 Notice of 25 August 2021, Annex 3.01 (Agreement relating to the sale and purchase of TM Group (UK) Ltd) submitted on 17 September 2021).

applying the share of supply test.⁹⁷ The group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market, and can aggregate, for example, intra-group and third party sales even if these might be treated differently in the substantive assessment.⁹⁸

- 4.14 As noted at paragraph 4.5 above, the Parties overlap in the supply of PSRBs in E&W. The CMA considers this to be a reasonable description of a set of goods and services to determine whether the share of supply test is met. The CMA considers E&W to be a substantial part of the UK for the purpose of the share of supply test.

The 25% threshold

- 4.15 In this case, the CMA considers the number of PSRBs supplied in E&W to be the appropriate criterion for determining whether the 25% threshold is met.⁹⁹
- 4.16 Chapter 7 provides details of how the CMA has reached its estimates of the shares of supply of the Parties.
- 4.17 In addition to direct supplies of PSRBs through D&D's subsidiaries and franchisees which it owns and operates, D&D also makes indirect sales through D&D Indirect franchisees. We have calculated the share of supply of the Parties both including and excluding the shares of the D&D Indirect franchisees.
- 4.18 On the basis of our estimates (see Table 7.1), the Parties had a combined share of supply of [40–50%] in the supply of PSRBs supplied in E&W in 2021,¹⁰⁰ with an increment of [10–20%] brought about by the Merger.¹⁰¹ Even if sales through D&D Indirect franchisees are excluded (see Table 7.2), the Parties had a combined share of supply of [30–40%] in the supply of PSRBs in E&W in 2021, with an increment of [10–20%]. Therefore, the share of supply test is met on either basis.
- 4.19 Whilst the share estimates in Table 7.1 and Table 7.2 in Chapter 7 and Table 1 and Table 2 of Appendix B do not include all of the smaller suppliers of

⁹⁷ Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2 Revised, December 2020) (**CMA2**), paragraph 4.63. The December 2020 version of CMA2 applies in this case as the Merger was referred for a phase 2 investigation before the date of entry into force of the latest revised version of CMA2 (see [Mergers – the CMA's jurisdiction and procedure: CMA2](#)).

⁹⁸ **CMA2** (December 2020), paragraph 4.63(a).

⁹⁹ Section 23(5) of the Act states that for the purposes of deciding whether the 25% threshold is met, the CMA shall apply the criterion, or combination of criteria, that the CMA considers appropriate.

¹⁰⁰ CMA estimates based on sales volume data for 2021.

¹⁰¹ During phase 1, the Parties submitted that D&D and TMG had a combined share of [20–30%] in the supply of PSRBs in E&W in 2020, with D&D representing an [10–20%] increment (Response to the Issues Paper, Table 5). Therefore, even on the Parties' estimates, the share of supply test is met.

PSRBs active in E&W, they comprise a total number of 36 competitors. We consider that this is a sufficiently robust basis for the purposes of the share of supply test, and we consider that inclusion of the remaining smaller suppliers would not materially alter the analysis for the reasons set out in paragraph 7.23.

- 4.20 The CMA therefore considers that the share of supply test in section 23(2)(b) of the Act is met, both on the basis of including and excluding sales of D&D Indirect franchisees.

Provisional conclusion

- 4.21 In view of the above assessment, we are satisfied that, as a consequence of the Merger:

- (a) the enterprises of D&D and TMG have ceased to be distinct; and
- (b) the share of supply test is met.

- 4.22 For these reasons we provisionally conclude that the Merger has resulted in the creation of an RMS.

5. Counterfactual

Introduction

- 5.1 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.¹⁰² It does this by providing the basis for a comparison of the competitive situation on the market with the merger against the likely future competitive situation on the market absent the merger.¹⁰³ The latter is called the counterfactual.¹⁰⁴
- 5.2 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.¹⁰⁵ The CMA's assessment of those conditions is considered in Chapter 7. The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.¹⁰⁶

¹⁰² MAGs, paragraph 3.1.

¹⁰³ MAGs, paragraph 3.1.

¹⁰⁴ MAGs, paragraph 3.1.

¹⁰⁵ MAGs, paragraph 3.7.

¹⁰⁶ MAGs, paragraph 3.11.

- 5.3 The counterfactual may consist of the prevailing, or pre-merger, conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁰⁷
- 5.4 The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time. For example, an assessment based on the prevailing conditions of competition might reflect that, absent the merger under review, a merger firm would have continued making investments in improvements, innovations, or new products.¹⁰⁸
- 5.5 At phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.¹⁰⁹ In its assessment of the counterfactual, the CMA may need to consider multiple possible scenarios, before identifying the relevant counterfactual. As part of this assessment, the CMA will take into account whether any of the possible scenarios make a significant difference to the conditions of competition, and if they do, the CMA will ultimately select the most likely conditions of competition absent the merger as the relevant counterfactual.
- 5.6 The CMA recognises that evidence relating to future developments absent the merger may be difficult to obtain.¹¹⁰ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merging parties to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available. However, if two or more possible counterfactual scenarios lead to broadly the same conditions of competition the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.¹¹¹
- 5.7 Further, the time horizon considered by the CMA in its assessment of the counterfactual will depend on the context and will be consistent with the time horizon used in the competitive assessment.¹¹²
- 5.8 Owing to the inherent uncertainty of predicting future events, the CMA benefits from a margin of appreciation in relation to its conclusion. This assessment must meet the requirements of a rationality test – in other words,

¹⁰⁷ MAGs, paragraph 3.2.

¹⁰⁸ MAGs, paragraph 3.3.

¹⁰⁹ MAGs, paragraph 3.13.

¹¹⁰ MAGs, paragraph 3.14.

¹¹¹ MAGs, paragraph 3.9.

¹¹² MAGs, paragraph 3.15.

the CMA must have a sufficient basis in light of the totality of the evidence available to it for making the assessment and reaching its decision.¹¹³

Counterfactual analysis

The Parties' position on the counterfactual

- 5.9 The Parties submitted that, absent the Merger, the Shareholders would have sold TMG to a company [X]. It would be most likely that the alternative buyer would be [X].¹¹⁴
- 5.10 The Parties further submitted that they did not believe a sale to a non-trade buyer was plausible. They considered a trade sale to be the only realistic disposal counterfactual.¹¹⁵
- 5.11 If a sale had not happened, the Parties submitted that the Shareholders would have gradually [X] ([X]) and that this would have led to a decrease in the competitive position of TMG over time.¹¹⁶
- 5.12 The Parties stated that TMG was originally set up in 1999 to allow its Shareholders to obtain searches at a reasonable cost. The Parties stated that over the last 20 years or so, official and regulated searches have become substitutable, and the number of compilers and retailers has increased, meaning the Shareholders no longer needed to rely on TMG for a secure source of PSRBs at reasonable cost.¹¹⁷ As such, the Shareholders had no reason to invest in TMG and 'keep it alive'.¹¹⁸
- 5.13 The Parties further submitted that the reluctance of the Shareholders to invest in TMG was shown by the discussions the Shareholders had with 20CI, to use its competing sales progression platform in place of Mio.¹¹⁹ The Parties argued that as the Shareholders were not prepared to invest even £[X] million in a key aspect of TMG's future strategy (ie [X]), TMG management had no reason to believe that the Shareholders would have been prepared to make another material investment in TMG to maintain it as a viable competitor in the medium to long term. A further example of this was the Shareholders' refusal to participate in the 2020/2021 auction for Groundsure (ultimately won

¹¹³ See *BAA Ltd v Competition Commission* (2012) CAT 3 at paragraph 20. See also, *Stagecoach Group Plc v Competition Commission* [2010] CAT 14 at paragraph 45.

¹¹⁴ Response to the Enquiry Letter, paragraph 18.4. See also, Response to Request for Information (RFI) issued on 27 September 2021, paragraph 5.1. See also, Parties' response to CMA's request for documents issued on 29 October 2021' dated 4 November 2021, question 3.

¹¹⁵ Response to the Issues Paper, paragraph 7.2.

¹¹⁶ Response to the Issues Paper, paragraph 7.2.

¹¹⁷ Response to the Issues Paper, paragraph 7.8.

¹¹⁸ Response to the Issues Paper, paragraph 7.8.

¹¹⁹ Response to the Issues Paper, paragraph 7.9.

by ATI Global) or to bid for Terraforma in 2021 (in the latter case, against the recommendation of management to participate).¹²⁰

Our approach to assessment of the counterfactual

5.14 In assessing the appropriate counterfactual, we first consider the sale process and the potential for alternative buyers (paragraphs 5.15 to 5.24). Second, we consider what would likely have happened in the event of a no sale (paragraphs 5.25 to 5.30). Finally, we conclude on what we currently consider to be the appropriate counterfactual for the purposes of our analysis under the framework set out in paragraphs 5.1 to 5.8.

Potential alternative purchasers

The Shareholders' decision to sell and the sale process

5.15 TMG's Shareholders (ie Countrywide, Connells and LSL) took the decision to sell TMG [REDACTED]. [REDACTED] TMG had [REDACTED] been approached by D&D. An arrangement with D&D to give it exclusive bidder status was entered into in January 2021.¹²¹ The Shareholders did not actively look for alternative offers and no auction was held.¹²² Although TMG was also approached by ATI during the exclusivity period, no offer was made by ATI.¹²³ D&D and TMG entered into the SPA on 8 July 2021.

5.16 As set out in paragraphs 2.9 to 2.12, [REDACTED], TMG and each of the Shareholders entered into the Exclusivity Agreements for the exclusive supply of PSRBs, including property search reports supplied by other D&D businesses, for at least [REDACTED] years.

Alternative purchasers

5.17 The Merger Assessment Guidelines state that 'the CMA (in phase 1 or phase 2) will not have as its counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth phase 2 investigation, given the uncertainty over whether such an acquisition would, ultimately, be cleared or subject to subsequent remedial action'.¹²⁴ In our

¹²⁰ Response to the Issues Paper, paragraph 7.10.

¹²¹ Response to the Enquiry Letter, paragraph 18.3.

¹²² Connells response to Request for Information (RFI) of 10 February 2022, question 3(a)(ii). Connells stated that 'the Shareholders felt that the offer from D&D and our assessment that they were highly likely to complete made the offer compelling and therefore did not pursue alternative options of other potential buyers'.

LSL response to Request for Information (RFI) of 10 February 2022, question 3(a)(i).

¹²³ Response to the Enquiry Letter, paragraph 18.3. See also, Parties' response to Request for Information (RFI) issued on 27 September 2021, paragraph 5.4.

¹²⁴ MAGs, paragraph 3.11.

view, a sale to ATI or Landmark would have raised *prima facie* competition concerns. As a result, we consider that ATI and Landmark could not be alternative acquirers under the counterfactual.¹²⁵

- 5.18 As there was no formal sale process, TMG's Shareholders did not actively look for alternative trade buyers. As such, we have no evidence, except for ATI, of the level of interest from trade buyers in acquiring TMG.
- 5.19 When TMG had been put up for sale in 2016,¹²⁶ it attracted interest from private equity firms and a number of offers were received, including from [X].¹²⁷ We also note that in the intervening period between 2016 and 2020, TMG received a number of enquiries from private equity firms and other financial investors, which the Parties stated were speculative.¹²⁸ TMG also had a number of conversations with private equity firms in the period between 2016 and 2020 to assess their interest in an acquisition. In addition, TMG told us that interest from private equity firms could not have been ruled out in 2020 but expressed [X].¹²⁹
- 5.20 Private equity has had a history of involvement in the property search sector. Prior to D&D's purchase, PIE was majority owned by MML Capital Partners, and prior to Landmark's purchase, SearchFlow was owned by Decision Insight Information Group, a portfolio company of the US private equity firm TPG Capital.

Our view on potential alternative purchasers

- 5.21 While we received no evidence that trade buyers (ie companies operating in the same sector) other than ATI expressed an interest in acquiring TMG in 2020, we cannot rule out the possibility that a trade buyer would have been interested in acquiring TMG, particularly if a formal sales process had been conducted at that time.
- 5.22 In addition, the interest shown in the 2016 auction, and the various levels of interest shown by private equity firms in the intervening period to 2020, suggest that a sale to a private equity firm would have been a plausible

¹²⁵ [X] told us that [X]. [X] also believed that if [X] had acquired TMG, there would be competition issues to resolve. ([X] call note, [X], paragraph 27; and [X] call note, [X], paragraph 19.)

¹²⁶ Connells response to Request for Information (RFI) of 10 February 2022, question 2(c). That auction did not result in a sale as it coincided with the UK EU Exit vote which the Shareholders told us 'had an adverse impact on the UK housing market and the appetite for such deals generally at a time of potential economic and political uncertainty'.

¹²⁷ LSL response to Request for Information (RFI) of 10 February 2022, question 2(c).

¹²⁸ Response to s.109 Notice issued on 27 September 2021, paragraph 5.2. Response to request for documents of 29 October 2021 question 3. Parties' response to the Issues Paper, paragraphs 7.3-7.4.

¹²⁹ Transcript of the main party hearing with TMG, page 14.

alternative in 2020 absent the sale to D&D. In this regard we also note private equity's historical involvement in the property search sector.

- 5.23 Therefore, we do not consider that the Parties' view that a trade sale was the only realistic disposal counterfactual is correct. We consider that absent the Merger, one scenario is that there would have been interest from potential alternative purchasers for TMG and that TMG would have been sold and continue to compete with D&D.
- 5.24 We have seen no evidence to suggest that TMG would have been a materially different competitive presence under alternative ownership. We consider it likely that some kind of formal or informal supply relationship (most likely along the lines of the existing relationship) between TMG and the Shareholders would have continued under the new ownership. However, on the basis of the evidence available to us, it is not sufficiently certain that TMG (under alternative ownership) would have entered into these specific Exclusivity Agreements associated with the Merger for those arrangements to be included in the counterfactual.

What would have happened to TMG in the event of no sale?

The Parties' view

- 5.25 The Parties argue that in a no sale scenario investment for internal development and expansion by the Shareholders would have effectively ceased and TMG's competitive position would have deteriorated over time. The Parties cited the Shareholders' reluctance to bid for Groundsure or Terraforma as evidence of their reluctance to invest.

Our assessment

- 5.26 While the Shareholders viewed TMG as a non-core operation, there is evidence that they were only willing to sell the business provided a suitable offer was made. In 2016, [X], this would have had to be an offer of around £[X] million ([X]).¹³⁰ This valuation is consistent with TMG being a profitable business¹³¹ which has provided and would be expected to provide in the future a regular and consistent cash flow to its Shareholders.

¹³⁰ [X] stated that it would have been a seller at an enterprise value of £[X] million or over ([X] response to Request for Information (RFI) of 10 February 2022, question 2(b)). [X] was looking for an offer in the region of [X] ([X] response to Request for Information (RFI) of 10 February 2022, question 2(b)).

¹³¹ TMG statutory accounts showed revenues of between £55 million and £59 million for the financial years 2016 to 2020. In addition, EBITDA after adding back payments to Shareholders was between £[X] million and £[X] million during the period.

- 5.27 The Shareholders told us they were reluctant to invest any new capital in TMG.¹³² This is consistent with their previous actions. Prior to TMG's acquisition of the business and assets of CDS in June 2018, TMG explored the possibility of obtaining further funding from existing Shareholders.¹³³ [REDACTED].¹³⁴ In terms of future investment through this route, Connells stated [REDACTED].¹³⁵ LSL believed that TMG [REDACTED].¹³⁶
- 5.28 In terms of ongoing investment in the business, the main development area for TMG was [REDACTED]. Connells and LSL told us that they thought [REDACTED]. However, [REDACTED].
- 5.29 The evidence above shows that the Shareholders were increasingly unwilling to invest further in Mio. However, we note that Mio was designed as a tool to help the Shareholders' businesses to manage the property sales chain, rather than help TMG compete in the property search sector. Therefore, we consider this unwillingness to invest in Mio to have limited relevance to our assessment of the Shareholders' ability and incentive to support TMG in future.

Our view of what would have happened to TMG in the event of no sale

- 5.30 The evidence above shows that the Shareholders saw value in TMG through its cash flow to the Shareholders and their valuation of the business. It also shows that they were willing to invest in certain parts of the business using retained profits, although there was a reluctance to invest new capital. The evidence in the round therefore does not indicate that there would have been any change in the Shareholders' overall position towards TMG.
- 5.31 As such, there is no basis to conclude that TMG would have been a materially weaker competitive presence. The likely scenario is that TMG would have continued to compete as it had pre-Merger. Again, we consider it likely that some kind of formal or informal supply relationship between TMG and the Shareholders would have continued had TMG not been sold. However, on the basis of the evidence available to us at present, it is not sufficiently certain that TMG (in the event of no sale) would have entered into these specific Exclusivity Agreements associated with the Merger for those arrangements to be included in the counterfactual.

¹³² LSL response to Request for Information (RFI) of 10 February 2022, question 3(b)(i).

¹³³ LSL response to Request for Information (RFI) of 10 February 2022, question 3(b)(ii).

¹³⁴ LSL response to Request for Information (RFI) of 10 February 2022, question 3(b)(ii).

¹³⁵ Connells response to Request for Information (RFI) of 10 February 2022, question 3(b)(i)-(ii).

¹³⁶ LSL response to Request for Information (RFI) of 10 February 2022, question 3(b)(iii).

Provisional conclusion on the counterfactual

- 5.32 On the basis of the evidence set out above, our provisional conclusion is that TMG would have continued to compete as it did pre-Merger as an independent entity, either having been sold to an alternative purchaser or being retained by the former Shareholders. We are not required to consider which of these scenarios is more likely because the outcome would be the same (ie TMG would continue to exert broadly the same constraint as it did pre-Merger) under either scenario.
- 5.33 On this basis, we provisionally conclude that the appropriate counterfactual in this case would be the conditions of competition prevailing at the time of the Merger.
- 5.34 We note that this counterfactual includes broad changes in the market as a result of dynamic competition and market evolution. The discussion on the market trends and the future of the market is set out in Chapter 3 and Chapter 6.

6. Market definition and market dynamics

Introduction

- 6.1 This chapter first sets out our assessment of the appropriate product and geographic market. It reflects the submissions we have received from the Parties during phase 1 and phase 2, the responses to competitors' questionnaires, as well as other evidence we have received to date. It then considers market dynamics (including the factors on which suppliers compete and how competition works), including the role of multi-sourcing and switching, the significance of economies of scale, and recent and future market trends.

Market definition

Framework of assessment

- 6.2 The assessment of the relevant market is an analytical tool that forms part of the analysis of competitive effects of the merger.¹³⁷ It involves identifying the most significant competitive alternatives available to the Parties and includes the sources of competition to the Parties that are the immediate determinants

¹³⁷ MAGs, paragraph 9.1.

of the effects of the merger.¹³⁸ 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.¹³⁹ In this context, we have identified the appropriate product and geographic market for our assessment of the competitive effects of the Merger.

Product market

- 6.3 The CMA has considered the impact of the Merger in relation to the supply of PSRBs, taking into account in its assessment the different competitive strengths of each PSRB supplier and considering possible sub-segmentations, where relevant.
- 6.4 At phase 1, the Parties submitted that the market could potentially be segmented by different types of property search reports.¹⁴⁰ However, third party evidence received by the CMA, the Parties' submissions, and the Office of Fair Trading (**OFT**) findings in Landmark/DIIG¹⁴¹ showed that only a limited number of discrete property search reports are purchased directly from compilers.¹⁴²
- 6.5 Moreover, while the Parties had submitted that the market could be potentially segmented between reports for residential versus commercial properties,¹⁴³ third party evidence received by the CMA and the Parties' submissions indicated that demand and supply for PSRBs for residential and commercial properties typically occur through the same customers and suppliers.¹⁴⁴ Further, the CMA found that there is a continuum of customers for residential and commercial PSRBs and suppliers compete for the supply of both.¹⁴⁵
- 6.6 The Parties did not make any submissions at phase 2 on the appropriate product market.¹⁴⁶
- 6.7 We have considered whether the market for the supply of PSRBs should be further divided as the conditions of competition may vary (i) between residential and commercial reports and (ii) across different customer groups.

¹³⁸ [MAGs](#), paragraph 9.2.

¹³⁹ [MAGs](#), paragraph 9.5.

¹⁴⁰ Response to the Enquiry Letter, paragraph 10.2.

¹⁴¹ OFT, ME/6272/13 – Completed acquisition by Landmark Information Group of Decision Insight Information Group (Europe), decision on reference under section 22(1) [of the Act] given on 24 January 2014, [Full text of decision](#), paragraph 11.

¹⁴² [Phase 1 Decision](#), paragraphs 57 and 59-60.

¹⁴³ Response to the Enquiry Letter, paragraph 87.

¹⁴⁴ Response to the Enquiry Letter, paragraph 11.9; [Phase 1 Decision](#), paragraphs 58 and 62.

¹⁴⁵ [Phase 1 Decision](#), paragraphs 63-64.

¹⁴⁶ We discuss the Parties' submissions on segmentation within the product market in Chapter 7.

Residential and commercial property search reports

- 6.8 As discussed in Chapter 3 in more detail, searches relating to residential and commercial properties can be different,¹⁴⁷ and commercial properties may require more extensive searches than searches for residential properties.¹⁴⁸ Moreover, we show below in our assessment of factors on which suppliers compete in the PSRB market (see paragraph 6.47) that the price of commercial property search reports is generally higher than the price of equivalent residential property search reports.¹⁴⁹
- 6.9 However, while commercial properties may require more extensive searches, these involve the same general process and have a similar breakdown of costs,¹⁵⁰ and all providers of residential property search reports also provide commercial property search reports. In particular, all of the Parties' brands supply both residential and commercial property search reports,¹⁵¹ and we show in Appendix B that all four large national suppliers have substantial shares in both the residential and commercial segments (although D&D has a relatively lower share in the commercial segment).
- 6.10 Most of the Parties' customers buy residential property search reports, and out of those customers a substantial proportion also buy commercial property search reports. We estimate that around [90–100%] of D&D's and TMG's customers buy residential PSRBs; and around [50–60%] of D&D's customers and around [60–70%] of TMG's customers who buy residential PSRBs also buy commercial PRSBs.¹⁵² Focusing on each Party's main brand, we estimate that: (i) around [90–100%] of PIE/PSG customers and around [90–100%] of tmConvey/tmConnect customers buy residential PSRBs; and (ii) around [60–70%] of PIE/PSG customers and around [70–80%] of tmConvey/tmConnect customers who buy residential PSRBs also buy commercial PSRBs.¹⁵³

¹⁴⁷ The customer Eversheds Sutherland, for example, noted that commercial property searches require a higher level of professional indemnity cover (Eversheds Sutherland call note, 23 February 2022, paragraph 16).

¹⁴⁸ Mincoffs Solicitors call note, 22 February 2022, paragraph 9.

¹⁴⁹ See also PIE's and TMG's standard retail price lists: See the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01; See also the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04. See also: Eversheds Sutherland call note, 23 February 2022, paragraph 10; Mincoffs Solicitors call note, 22 February 2022, paragraph 9.

¹⁵⁰ This means that a similar proportion of the cost would go to the compiler, to the authority providing the search, and form the internal costs of the PSRB supplier ([§] call note, paragraph 11).

¹⁵¹ D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD001. See also, TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM001.

¹⁵² Based on organisations listed in D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD002. See also TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM002 with positive residential and positive commercial volume in 2020.

¹⁵³ Based on organisations listed in D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD002. See also TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM002 with positive residential and positive commercial volume in 2020.

Customer groups

- 6.11 Third party evidence indicates that different suppliers may focus on different customer groups.¹⁵⁴ The conditions of competition for these various customer groups may vary as average revenues per PSRB may be lower in the case of sales to intermediaries as opposed to conveyancers, and intermediaries may be able to negotiate lower prices for their PSRBs compared to conveyancers.¹⁵⁵ Moreover, less than 40% of the Parties' competitors that responded to our questionnaire at phase 2 stated that they serve large law firms.¹⁵⁶ A number of the competitors that do not serve large law firms explained that they are unable to compete for this customer segment, as they do not have the capacity to service their requirements (including the ability to provide an integrated service or build an ordering platform) or to offer the prices that larger search milli providers offer.
- 6.12 However, all of the Parties' brands serve small conveyancers, medium/large conveyancers, large law firms and other customers (including intermediaries) to some degree,¹⁵⁷ and the Parties' list prices do not vary across these customer groups.¹⁵⁸
- 6.13 In our phase 2 competitor questionnaire over 90% of the competing suppliers that responded stated that they serve both small and medium/large conveyancers. Over 60% of competing suppliers that responded also serve customers other than conveyancers, including Panel Managers and other intermediaries.¹⁵⁹ We also show in Appendix B that, based on revenues by customer group, all four large national suppliers serve all four customer groups to some extent, and none of the large national suppliers' main brands focuses exclusively on one customer group.

¹⁵⁴ For example, two Index Indirect franchisees noted that they do not serve intermediaries or Panel Managers, and that they serve predominantly residential conveyancers (Index Indirect franchisees call note, 3 February 2022, paragraph 2).

¹⁵⁵ See the discussion of prices by customer group below in paragraphs 6.11 to 6.13 below.

¹⁵⁶ Competitors' responses to our phase 2 questionnaires.

¹⁵⁷ D&D's response to the CMA's s.109 Notice (RFI2a) dated 25 January 2022, Table 1. See also, TMG's response to the CMA's s.109 Notice dated 25 January 2022, Table 1. Other customers are primarily intermediaries but also include in-house counsel for commercial clients and law firms that carry out property transactions occasionally.

¹⁵⁸ See, for example, PIE's and TMG's standard retail price lists: Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01. See also, the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04.

¹⁵⁹ Competitors' responses to our phase 2 questionnaires ([3]). Specifically, 40 out of 43 respondents serve small conveyancers; 39 out of 43 respondents serve medium-to-large conveyancers; 26 out of 43 respondents serve intermediary/other customers. For context, (i) CoPSO lists 88 members (excluding the Parties), and (ii) out of the 83 CoPSO members that D&D identified to be competitors, 39 firms responded to Q6 in our phase 2 questionnaire (D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, response to question 21, Annex DD2303; we excluded the Parties' business units that D&D identified as competitors).

Provisional conclusion on product market

- 6.14 For the above reasons, we currently consider that the impact of the Merger should be assessed in relation to the supply of PSRBs,¹⁶⁰ and that this product market should not be further divided. We consider any differences between residential and commercial reports and between customer groups in Chapter 7, to the extent appropriate.
- 6.15 As discussed in Chapter 3, the large PSRB suppliers integrate their offerings with case management software and include ancillary services on their platforms. We consider competitive effects associated with these services (ie case management software and ancillary services), where appropriate, below in our discussion of market dynamics (see paragraphs 6.23 to 6.91) and in our assessment of the theory of harm.

Geographic market

- 6.16 The Parties' activities only overlap in E&W.¹⁶¹ As such, the CMA has considered the impact of the Merger in E&W, taking into account in its assessment the different competitive strengths of suppliers of PSRBs across E&W.
- 6.17 At phase 1, the Parties' submissions and third party evidence received by the CMA indicated that several suppliers (including the Parties and the other large PSRB suppliers) can and do supply PSRBs across multiple regions or the entire area of E&W, and that several customers of the Parties require national coverage.¹⁶²
- 6.18 The Parties did not make any additional submissions at phase 2 on the appropriate geographic market. However, the Parties submitted that:¹⁶³
- (a) National coverage is a significant consideration for the largest law firms, conveyancers and intermediaries, but for residential conveyancing regional suppliers often have a distinct advantage over the national providers;
 - (b) Smaller suppliers can replicate national coverage through IPSA,¹⁶⁴ the development of franchise networks, or relationships with independent

¹⁶⁰ For the avoidance of doubt, this includes both 'standard' bundles and 'custom' bundles for which customers choose the reports included when placing an order.

¹⁶¹ 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.

¹⁶² See Response to the Enquiry Letter, paragraph 17.3.

¹⁶³ [Parties' response to the Issues Statement](#), paragraphs 3.2-3.7.

¹⁶⁴ The competitor [X] also noted that it can provide searches nationally if required by using IPSA of which it is a member ([X] response to phase 2 questionnaire of 21 January 2022, question 6).

search agents, and the widespread availability of technology facilitates competition from all suppliers irrespective of their specific geographic footprint; and

- (c) Within each region in E&W, the Parties face competition from several suppliers, including both national and regional competitors.¹⁶⁵

6.19 We have considered additional evidence at phase 2, which substantiates the view that the relevant geographic market is the whole of E&W, including:

- (a) Feedback from the Parties' customers obtained through interviews. TMG's customer [X], for example, indicated that national coverage of PSRBs is valued by large intermediaries which operate conveyancing panels with national coverage.¹⁶⁶ Simply Conveyancing said that [X], it will compare providers, *inter alia*, on national coverage.¹⁶⁷ Another customer ([X]) indicated that they serve customers across E&W and prefer to obtain searches from a single provider.¹⁶⁸
- (b) Evidence from competitors' responses to our questionnaire, which found that more than 70% of suppliers that serve large law firms (those engaged in large transactions of either a residential or commercial nature) indicated that they compete nationally for them.¹⁶⁹ Landmark also submitted that the bigger law firms require national coverage.¹⁷⁰
- (c) Evidence from the Parties' internal documents, which do not suggest that they differentiate between individual regions within E&W in competing for business, apart from one Index South West business plan.¹⁷¹
- (d) The Parties' standard retail list prices, which are set nationally and do not vary across different regions of E&W (with the exception of OLAS and ODWS reports, where the prices are set by each LA or Water Company and may differ between them).¹⁷²

6.20 We note, however, that feedback from our customer survey suggests that neither a supplier's regional or local expertise nor its national coverage are

¹⁶⁵ We also note that a significant number of the regional competitors that the Parties listed in their response to the Issues Statement are active in multiple regions.

¹⁶⁶ [X] call note, [X], paragraphs 11-12.

¹⁶⁷ Simply Conveyancing call note, 11 March 2022, paragraph 8.

¹⁶⁸ [X] call note, [X], paragraphs 6-7.

¹⁶⁹ Competitors' responses to our phase 2 questionnaires.

¹⁷⁰ Landmark call note, 14 February 2022, paragraph 15.

¹⁷¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 10, Annex DD-1482.

¹⁷² See, for example, PIE's and TMG's standard retail price lists in response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01; See also the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04.

given significant weight when choosing a PSRB supplier (paragraphs 7.159 to 7.161).

- 6.21 For the reasons set out above, the CMA has considered the impact of the Merger in E&W, at a national level, taking into account in its assessment the different competitive strength of suppliers of PSRBs across E&W, if appropriate. This in-depth analysis is presented in Chapter 7.

Provisional conclusion and our current views on market definition

- 6.22 For the reasons set out above with regards to the appropriate product and geographic market, we currently consider the impact of the Merger in the supply of PSRBs in E&W.

Market dynamics

- 6.23 In this section, we consider evidence on the following aspects of competition, in order to understand how competition in the PSRB market works:
- (a) the factors on which suppliers compete;
 - (b) multi-sourcing and switching, and what they tell us about the competitive dynamics of this market;
 - (c) economies of scale, and how they impact on smaller suppliers' ability to compete; and
 - (d) recent market trends, and their potential implications for future market evolution.

Factors on which suppliers compete

- 6.24 As set out the CMA's guidance, the CMA will, in its merger assessments, develop a general understanding of the competitive process, including of the competitive parameters that are most important to the process of competition in the relevant industry.¹⁷³
- 6.25 To this end, we have sought to consider the extent to which PSRB suppliers compete on quality of service and price, such that if the Merger were to give rise to an SLC it could lead to a reduction in quality or an increase in prices in this market.

¹⁷³ MAGs, paragraph 2.3.

- 6.26 It is important to note that the CMA's approach (as endorsed by the Competition Appeal Tribunal) is to rely on an overall assessment of how a merger might affect merging parties' incentives to deteriorate parameters on which they compete such as price, quality, range, and service (**PQRS**). The CMA is not required to conduct a parameter-by-parameter assessment of competition and does not need to show that the SLC will lead to adverse effects for consumers on a specific parameter.¹⁷⁴
- 6.27 In this section, we consider how suppliers compete in the relevant market in order to assess whether there are parameters (quality of service and price in this case) on which the Parties compete. Our assessment of whether the Merger results in a loss of competition is provided in Chapter 7.

Quality

- 6.28 In their response to the Annotated Issues Statement and Working Papers, the Parties considered that timeliness and accuracy were the aspects of quality that were of key importance to customers.¹⁷⁵ While they acknowledged that customers also valued other aspects of service, they considered such factors were not core drivers of competition.¹⁷⁶
- 6.29 To understand the role of quality in this market, we considered evidence from our customer survey (where we assessed the evidential weight of the results to be sufficiently robust¹⁷⁷), from third parties, from the Parties in response to our Annotated Issues Statement and Working Papers, and from the Parties' internal documents.
- 6.30 As an initial point, we note that PSRBs are an 'experience' product,¹⁷⁸ in the sense that the various quality attributes of the different PSRB suppliers tend not to be directly observable and hence are known by customers only after they have experienced the service. For example, TMG told us that a supplier can only prove to a customer it is better than its competitors once it has started supplying the customer.¹⁷⁹ Consequently, customers may not be well informed about the quality attributes of all potential suppliers.

¹⁷⁴ *JD Sports Fashion plc v Competition and Markets Authority [2020] CAT 24*, paragraph 99.

¹⁷⁵ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraphs 6.2 and 6.4.

¹⁷⁶ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraphs 6.5 and 6.6.

¹⁷⁷ As set out in Appendix E, paragraph 4.

¹⁷⁸ An experience good is one whose qualities cannot be determined before purchase and can be distinguished from a search good whose qualities can be determined by the consumer before purchase. The distinction was introduced in *Information and Consumer Behavior*, Nelson, Phillip, *Journal of Political Economy*, Vol. 78, pp. 311-329, 1970.

¹⁷⁹ Notes of a hearing with TMG held at the CMA, page 28.

Customer survey

- 6.31 When asked which factors were important when choosing a supplier of PSRBs, the evidence from our customer survey suggests customers regard quality and timeliness of service as particularly important. Under 'quality and timeliness of service' we have combined mentions of quality of product (which included an example of 'accuracy of data'), speed of supply, and reliability of supply. Other aspects of service quality were also mentioned to be important, as was price (see Table 6.1).

Table 6.1: Number of respondents saying each factor was most important and/or important when choosing a supplier of PSRBs

	<i>Most Important</i>	<i>Important</i>
Quality and timeliness of service	64	99
Pricing	30	96
Functionality and quality of software platform	29	50
Customer Service	28	61
Range of service	4	21
Brand strength	2	4
Any other mentions	9	20
Can't say	4	4

Source: CMA customer survey (170 respondents).

Notes: Figures represent total for all factors within each category shown. For example, 30 respondents said a pricing factor was most important, which comprised 19 respondents who said competitive fees was the most important factor and 11 who said the pricing model was the most important factor. Figures are net totals for each category, so if a respondent mentions more than one factor within a category, it is only counted once.

- 6.32 The customer survey evidence¹⁸⁰ also suggests that customer service¹⁸¹ and functionality and quality of the software platform are important drivers of customer choice, in addition to the quality and timeliness of the service. Each of these two broad factors was considered most important by a similar number of respondents as considered pricing factors most important.

Evidence from third parties

- 6.33 Our engagement with third parties found that a range of aspects of quality, including accuracy and timeliness, standards of customer service and functionality and quality of the software platform, are important to customers.
- 6.34 Feedback from third parties indicated that accuracy and timeliness of the service were important:

¹⁸⁰ We assess the evidential weight of the results in Table 6.1 to be robust, because they are based on the full sample of 170 respondents. See Appendix E, paragraph 10.

¹⁸¹ The broad customer service category includes good customer service/technical support, ease of contact and knowledgeable staff.

- (a) LMS, a Panel Manager which works on behalf of banks and building societies as an intermediary to law firms, identified service metrics for choosing a search provider, including ‘turnaround timescales’.¹⁸²
- (b) United Legal Services (**ULS**), a Panel Manager and intermediary which connects consumer and legal professionals via housing market comparison services, mentioned accuracy and speed, amongst other things, as being very important to conveyancers because they are working at pace.¹⁸³
- (c) Simplify,¹⁸⁴ a Panel Manager, said it had had issues with all providers in terms of speed of service particularly during the COVID-19 restrictions.¹⁸⁵
- (d) Ward Gethin Archer, a Top 100 law firm which provides conveyancing services, told us that it considers search reports to be effectively the same from any provider, and it referred to speed of search as a factor that affected the conveyancer’s choice of provider (as noted below it also mentioned presentation of reports).¹⁸⁶
- (e) Landmark, a competitor, told us that ‘The quality, timeliness and level of service is vital, and this becomes increasingly important with bigger law firms with high volume searches’.¹⁸⁷

6.35 In relation to customer service, feedback from some customers indicated it was important to them:

- (a) [X], a Top 100 law firm which provides real estate services on behalf of housing associations and charities (and a small amount of standard residential conveyancing), told us that customer service was a consideration in choosing a search provider.¹⁸⁸
- (b) [X], a Top 100 law firm focussed on commercial work, said the reason for switching from [X] was because of the poor service being offered by [X].¹⁸⁹ Prices between the two suppliers were roughly comparable, but [X] service delivery was too slow at the time. There was delay from [X] in answering questions and [X] needed a quick turn-around. [X] said

¹⁸² LMS call note, 3 March 2022, paragraph 17.

¹⁸³ ULS call note, 11 February 2022, paragraph 11. ULS also mentioned innovation and resilience as important.

¹⁸⁴ Simplify is an independent conveyancing and property services group. This group includes the following brands: APL, Cook Taylor Woodhouse, DC Law, Gordon Brown Law, JS Law, Move With Us, Moving Made Easy, My Home Move and Premier Property Lawyers.

¹⁸⁵ Simplify call note, 24 February 2022, paragraph 26.

¹⁸⁶ Ward Gethin Archer call note, 11 March 2022, paragraph 3.

¹⁸⁷ Landmark call note, 14 February 2022, paragraph 7.

¹⁸⁸ [X] call note, [X], paragraph 4.

¹⁸⁹ [X] call note, [X], paragraph 11.

that '[X] got complacent' and that 'we do expect our provider to try and answer as many questions as they can before they come back to my lawyers and ask them for more detail.' Also, when working on big projects, [X] requires search providers like [X] to provide Portfolio Management (tracking of the searches provided, searches lagging etc), which [X], was not providing to an acceptable standard.

(c) Mincoffs Solicitors, a Top 100 law firm which handles commercial and residential transactions, mentioned a decline in customer service (as well as software problems) as a reason for switching away from [X] for six months.¹⁹⁰

(d) ULS, a Panel Manager, referred to support framework for problems, among other things, as being very important to conveyancers.¹⁹¹

6.36 In relation to functionality and quality of the software platform, feedback indicated these were important as well:

(a) [X], a Top 100 law firm, also told us that it chose Search Acumen (acquired by ATI in 2021) as an additional supplier because of features including a map search tool and an address search tool which can outline flood zones, planning histories, etc. [X] ([X]) often attempted to win custom from [X] but was not considered credible, due to its inability to provide such additional services.¹⁹² User-friendly interfaces was also a consideration in [X] choosing a search provider.¹⁹³

(b) As noted above, Mincoffs Solicitors, a Top 100 law firm, told us that it had switched away from [X] for six months. This decision was driven by problems with the software, as well as a decline in customer service.¹⁹⁴

(c) LMS, a Panel Manager, identified service metrics for choosing a search provider, including 'ease of access to search ordering platform, being able to order via a digital methodology (API), instruction tracking and reporting, access to a range of speciality searches...'.¹⁹⁵

(d) ULS, a Panel Manager, said that quality of service can vary considerably between PSRB providers even though they are all essentially carrying out

¹⁹⁰ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

¹⁹¹ ULS call note, 11 February 2022, paragraph 11.

¹⁹² [X] call note, [X], paragraph 6.

¹⁹³ [X] call note, [X], paragraph 4.

¹⁹⁴ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

¹⁹⁵ LMS call note, 3 March 2022, paragraph 17.

the same function.¹⁹⁶ It referred to the presentation of data, among other things, as being very important to conveyancers.¹⁹⁷

- (e) As already mentioned, Ward Gethin Archer, a Top 100 law firm, told us that it considers search reports to be effectively the same from any PSRB supplier, but that (as well as speed of search) the conveyancer's choice of supplier is affected by the presentation (eg inclusion of photos, graphs and bar charts).¹⁹⁸
- (f) ATI, a competitor, told us that integration with case management software had been important to its growth in the UK. ATI said that InfoTrack was the first to offer customers the ability for their search reports to be integrated into their case management software platforms, and while Infotrack continues to innovate, others have also followed this development and today ATI believes that all of its main competitors (ie Landmark (SearchFlow), D&D, and TMG) are able to offer an integrated solution.¹⁹⁹

Parties' internal documents and submissions

6.37 D&D's documents also identified that all aspects of quality were relevant:

- (a) A June 2021 D&D strategy slide pack refers to a D&D competitive strategy of '[REDACTED]'. This document also discusses D&D's strategy, including '[REDACTED]'.²⁰⁰ D&D's discussion of specific customers in its internal documents indicates that customers, including smaller customers, are influenced by both quality of service and price. For example, among D&D documents:
 - (i) A September 2021 spreadsheet²⁰¹ listing at-risk and lost customers notes of one at-risk customer: '[REDACTED]'. The notes on another at-risk customer in this document refer to: '[REDACTED]'.
 - (ii) Among lost customers in the same spreadsheet, while some switched due to '[REDACTED]', other switches were attributed to '[REDACTED]'.²⁰²

¹⁹⁶ ULS call note, 11 February 2022, paragraph 7.

¹⁹⁷ ULS call note, 11 February 2022, paragraph 11.

¹⁹⁸ Ward Gethin Archer call note, 11 March 2022, paragraph 3.

¹⁹⁹ ATI response to CMA's RFI of 21 April 2022.

²⁰⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, document dated 19 July 2021, Annex DD-0002119, additional questions.

²⁰¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

²⁰² D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

(iii) Another ‘at-risk and lost’ spreadsheet from November 2020²⁰³ attributes £[REDACTED] of lost business to [REDACTED], compared to just below £[REDACTED] to [REDACTED].²⁰⁴

(b) A 2019 Index customer survey²⁰⁵ asked customers to rate the importance of aspects of service from Index from 1 (least important) to 10 (most important). [REDACTED]. These results suggest that customer service and intuitive order platform were important as well as accuracy and timing.

6.38 Similarly, the importance of quality is also clear from TMG documents:

(a) A TMG Spreadsheet records that in 2020 and 2021 TMG lost [REDACTED] customers due to [REDACTED].²⁰⁶

(b) A CDS customer spreadsheet indicates that a prospective customer of CDS ([REDACTED]) was unwilling to switch from [REDACTED] due to [REDACTED].²⁰⁷

(c) The importance of service quality is also evident in further TMG internal documents which we consider below in our assessment of closeness of competition (see paragraph 7.26).

6.39 A submission from TMG supports the view that quality is an important parameter of competition. TMG said that [REDACTED].²⁰⁸

6.40 D&D’s documents also show that PSRB suppliers benchmark their offerings, [REDACTED], against their competitors, which suggests that [REDACTED] is an aspect of quality on which suppliers compete:

(a) The June 2021 D&D strategy slide pack compares D&D’s product offering, [REDACTED], with ATI (InfoTrack), Landmark (SearchFlow) and TMG. The document states that, [REDACTED].²⁰⁹

²⁰³ D&D response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

²⁰⁴ In total £[REDACTED] million was identified as ‘lost’ in 2019 and 2020. The largest category was ‘[REDACTED]’ (around £[REDACTED]), but a range of other reasons were listed, not necessarily related [REDACTED]. A further £[REDACTED] was labelled ‘at-risk’ from [REDACTED].

²⁰⁵ D&D response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, internal email dated 30 April 2019, Annex DD-0000820.

²⁰⁶ TMG response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022. See internal document ‘CDS Monthly Volume by Product analysis’ dated 7th June 2021, Annex TMG-0002415.

²⁰⁷ TMG response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11 and question 21, Annex TMG0001613.

²⁰⁸ TMG response to the CMA’s s.109 Notice (RFI6) issued on 24 March 2022, paragraph 2.1.

²⁰⁹ D&D response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, additional questions. We note that this slide is titled ‘For Brighter Law, what is our value prop compared to others’. Brighter Law is the part of PIE providing ancillary services, and in our view the link with PSRBs is clear from the comparison with D&D’s main search competitors.

(b) In D&D (PIE) market research in 2021, D&D assesses the offering of competitors with regard to [X], and compares it to its own offering.²¹⁰

Provisional conclusions on quality

- 6.41 In their response to our working paper, the Parties submitted that the most important aspect of quality was timeliness and accuracy, which form the baseline of what customers expect from a supplier. On the other hand, the Parties argued that other aspects of quality are parameters of competition, but they are subsidiary to price, accuracy and timeliness.²¹¹
- 6.42 We agree that timeliness and accuracy are very important, and that poor experiences may lead customers to switch supplier. But we believe that the range of evidence set out above shows that other aspects of quality, including the standards of customer service, the functionality and quality of the PSRB platform, the degree of integration with case management software, and the ancillary services offered, are also important to customers, and can be a basis on which suppliers differentiate their offers to customers and benchmark against each other.
- 6.43 Maintaining or improving on a given level of quality necessarily imposes a cost on PSRB suppliers, for example through the need to invest in technology, hire sufficient staff (with sufficient expertise and supervision) relative to the volume of business, and spend on staff training. In our view, this applies to all aspects of quality and not just to accuracy and timeliness. The greater the competitive constraint faced by a PSRB supplier, the stronger will be its incentive to invest in maintaining a higher level of service quality. As a result, if the Merger were to give rise to an SLC, this could lead to the Merged Entity being able to worsen its quality of service and other non-price factors of competition, or to reduce efforts to innovate relative to the position absent the Merger.

Price

- 6.44 In relation to pricing, we considered evidence on how the Parties set their prices, the role of negotiated discounts, how prices differ by customer group, the importance customers attach to prices, and the Parties' submissions on price sensitivity.

²¹⁰ D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slide 2.

²¹¹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraphs 6.9.

How the Parties set their prices

- *Price lists*

- 6.45 The Parties maintain standard retail price lists.²¹² These price lists include [REDACTED].²¹³ The structure of prices may differ between suppliers in that some (such as tmConvey)²¹⁴ charge a case or handling fee while others rely only on individual search prices. The total list price for a bundle will depend on the level of individual search prices as well as whether a case or handling fee is included.
- 6.46 The price of official searches is generally higher than the price of regulated searches – for example, [REDACTED].²¹⁵
- 6.47 As noted in paragraph 3.12, the price of commercial property searches is generally higher than the price of equivalent residential property searches – for example, [REDACTED].²¹⁶ TMG's case fee is also higher for commercial customers. As of September 2021, tmConvey's case fee was £[REDACTED] for a standard residential bundle and £[REDACTED] for a standard commercial bundle ([REDACTED], if the customer opted for a premium service).²¹⁷
- 6.48 The Parties' [REDACTED].
- 6.49 We note that PSRB suppliers tend to increase their list prices every year.²¹⁸ D&D increased prices on some PIE products in October 2021 and November 2020, while TMG increased prices to its tmConvey residential and commercial customers, and its CDS customers, in October 2021.²¹⁹
- 6.50 The cost of PSRBs is passed on by conveyancers to the property purchaser who is the ultimate consumer. However, conveyancers are required to publish details of the price of their conveyancing services including details of disbursements which should be separately itemised. The Parties said this

²¹² Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.3, 25.9 and Annex .

²¹³ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01. Official searches are compiled by official information holders (eg LAs or water companies), while regulated searches (also known as 'personal') are compiled by commercial suppliers, see Chapter 3.

²¹⁴ Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.10; TMG's Site Visit presentation, slides 28-30. [REDACTED].

²¹⁵ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01.

²¹⁶ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01.

²¹⁷ Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.10; TMG's Site Visit presentation, slides 28-30. The case fee price for a residential fee was increased to £20 in October 2021. [REDACTED].

²¹⁸ Notes of a hearing with TMG held at the CMA, pages 30-31.

²¹⁹ Parties' response to the CMA's s109 Notice issued on 17 November 2021, paragraph 7.

allows property purchasers to easily compare the prices of different conveyancers.²²⁰

- *Discounts and negotiations*

6.51 Suppliers may depart from their list prices in order to acquire or retain customers. Negotiations may take place principally around either a discount from list prices, or an agreed 'pack-price' for a standard bundle of search reports. As part of negotiations, suppliers may offer to include ancillary services in the PSRB price. For intermediaries, negotiations would also cover the referral fee paid by the supplier to the intermediary.²²¹

6.52 We note that discounts may be given or increased if particular customers threaten to leave following an across-the-board increase in list prices:

(a) D&D provided a list including [REDACTED] customers who threatened to switch in response to the November 2020²²² price increase mentioned in paragraph 6.49 above, and [REDACTED] from the October 2021 price increase, but which it was able to retain.²²³ It did so in a range of ways, including by [REDACTED].²²⁴

(b) TMG announced the October 2021 price increase to tmConvey customers in September (and communicated to CDS customers through account managers). This increase represented [REDACTED]% to [REDACTED]% of the PSRB price, and TMG identified [REDACTED] existing customers who threatened to switch until TMG agreed not to increase their prices.²²⁵

Prices by customer group

6.53 The Parties submitted analyses of average 2020 revenue per PSRB, and per residential PSRB for certain customer groups ([REDACTED]).²²⁶ These were provided

²²⁰ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.5.

²²¹ D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 4; TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 4

²²² The November 2020 price increase was by a weighted average of 4% on PSRB prices across all customers, D&D updated response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Table 2, paragraph 9.4, and Annex DD862.

²²³ For comparison, D&D has provided data showing PIE had about [REDACTED] customers in 2020, of which about [REDACTED] purchased more than [REDACTED] PSRBs, D&D's response to CMA s.109 Notice dated 23 December 2021, paragraph 2.

²²⁴ D&D updated response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraphs 9.4-9.5, and Annex DD862.

²²⁵ For comparison, TMG has provided data showing it had about [REDACTED] customers in 2020, of which about [REDACTED] purchased more than [REDACTED] PSRBs; TMG's response to CMA s.109 Notice dated 23 December 2021, paragraph 2.

²²⁶ [REDACTED].

separately for PIE/PSG, Index, tmConvey and CDS.²²⁷ The data do not take account of any differences in the types of PSRB ordered by each customer group, and so are not a like-for-like comparison of the prices charged to different types of customer. However, they do provide an indication of how prices might vary by customer group.

6.54 The Parties submitted that the data suggested that [REDACTED].²²⁸ They stated that this was supported by other evidence:

(a) D&D submitted that [REDACTED].²²⁹

(b) TMG submitted (for tmConvey) an analysis of the average discount on list price per search pack for each customer group in 2020.²³⁰ The results of this analysis suggest that [REDACTED].

6.55 Overall, we agree that this evidence suggests that, on average, [REDACTED].

Importance of price to customers

6.56 Our customer survey (see Table 6.1) found that 30 out of 170 respondents said that price was the most important factor in choosing a supplier (behind quality and timeliness of service (64) and slightly ahead of customer service (28) and functionality and quality of software platform (29)). A total of 96 respondents mentioned price as an important factor (slightly behind quality and timeliness of service (99) and ahead of customer service (61) and functionality and quality of software platform (50)). We note that 74 respondents (44%) did not mention price as an important factor.²³¹

6.57 Our engagement with larger customers generally indicated that, while they are aware of price, price tended not to be the most important factor in their decision making:

(a) Eversheds Sutherland, a Top 100 law firm focussing on commercial transactions, said that the only time it focused on pricing was when InfoTrack provided a cheaper quote for the same searches which TMG had provided, and Eversheds Sutherland decided to pilot using InfoTrack

²²⁷ D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraphs 6.6-6.9; TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraphs 6.6-6.8; and Parties' response to the Annotated Issues Statement and Working Papers, Appendix 2 paragraph 1.3.

²²⁸ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 2 paragraph 1.3.

²²⁹ D&D's response to CMA s.109 Notice dated 24 March 2022, paragraph 1.2.

²³⁰ TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.9-6.12. TMG explained that the analysis is not feasible for CDS as CDS does not keep data on list prices in the same databases as their sale prices, and a lengthy, manual exercise would be required to match the different datasets (see TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.10). D&D provided an equivalent explanation in relation to its brands (see D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.6).

²³¹ Of these, 70 mentioned other factors but not price, and 4 could not say which was the most important factor.

as its supplier. It noted that the search providers' fee is relatively modest as compared to the cost of searches from a local authority or a utility provider.²³²

- (b) Hugh James, a Top 100 law firm which provides conveyancing services mostly for large scale commercial transactions, told us that price of searches is important, in that 'the price of everything impacts on how competitive Hugh James is'.²³³ However, Hugh James said that most search providers are comparable in price. Provided a price is not more than marginally higher than average, price does not cause concern.
- (c) [X], a Top 100 law firm which provides real estate services on behalf of housing associations and charities (and a small amount of standard residential conveyancing), said that it is able to negotiate prices for some products by requesting price matching between [X] and [X] when one is offering a cheaper service than the other.²³⁴ The fees for searches are passed on to the clients, and while [X] will endeavour to secure the best price for the client, price is not the only deciding factor in choice of search provider.
- (d) Mincoffs Solicitors, a Top 100 law firm which handles commercial and residential transactions, told us that it has an obligation to achieve value for customers, particularly for residential transactions, but this needs to be balanced against ensuring a good quality service for each search.²³⁵ In Mincoffs Solicitors' view 'reliability of service and not price was crucial when selecting their search report provider'.²³⁶

6.58 Panel Managers we spoke to tended to be more concerned with price, though they also did not necessarily regard price as the most important factor:

- (a) LMS noted that it would not challenge price increases if they are broadly in line with inflation or RPI or CPI, but only if it saw exceptional increases in their suppliers' annual review of costs.²³⁷ However, LMS [X] 'test the market periodically to make sure [they] are buying well on behalf of [their] customers'.²³⁸
- (b) Simplify told us that it considers whether suppliers are competitive on price, and had gradually removed suppliers in the past when they could

²³² Eversheds Sutherland call note, 23 February 2022, paragraph 17.

²³³ Hugh James call note, 3 March 2022, paragraph 7.

²³⁴ [X] call note, [X], paragraph 9.

²³⁵ Mincoffs Solicitors call note, 22 February 2022, paragraph 4.

²³⁶ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

²³⁷ LMS call note, 3 March 2022, paragraph 14.

²³⁸ LMS call note, 3 March 2022, paragraph 15.

not compete on price.²³⁹ However, Simplify was also focused on reliability of service, including ensuring the continuity of supply and using a provider with a track record that can support high volumes of transactions.²⁴⁰

- (c) ULS told us that, while price was important as it is a key part of their revenue stream, it considered quality (accuracy, speed, and support framework for problems), innovation, and resilience to be critical.²⁴¹
- (d) [REDACTED], a Panel Manager which works with a panel of solicitors and offers these firms conveyancing work, focused on the commission they get rather than the price but said that the relationship was key rather than achieving the highest possible commission.²⁴²

6.59 The Parties' submissions and internal documents also reflect that price is not always the main relevant factor for customers:

- (a) A D&D internal document (2019 Index slide pack) notes that [REDACTED].²⁴³
- (b) TMG told us that the price it needed to offer to win a new customer depended on the circumstances (eg how content the customer is with their current supplier), but [REDACTED].²⁴⁴ This related to the point that customers need to experience a supplier's customer service to know its quality (see paragraph 6.30).

The Parties' submissions on price sensitivity

6.60 The Parties submitted that all of the main customer groupings are highly price sensitive (although sometimes for different reasons) and are motivated to actively negotiate on price.²⁴⁵ In respect of these customer groupings, the Parties submitted:

- (a) 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;²⁴⁶
- (b) Small and medium-sized conveyancers are price sensitive, as they have to publish details of disbursements, including PSRB costs, to their

²³⁹ Simplify call note, 24 February 2022 paragraph 17.

²⁴⁰ Simplify call note, 24 February 2022 paragraph 19.

²⁴¹ ULS call note, 11 February 2022, paragraph 11.

²⁴² [REDACTED] call note, [REDACTED], paragraph 15.

²⁴³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁴⁴ Notes of a hearing with TMG held at the CMA, page 28.

²⁴⁵ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.2.

²⁴⁶ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.3.

residential customers and seek to reduce PSRB costs to remain competitive on total costs (including disbursements);²⁴⁷

- (c) Intermediaries frequently manage large volumes of transactions which are attractive to PSRB suppliers and enable intermediaries to negotiate favourable prices.²⁴⁸

6.61 The Parties also referred to their prices and/or average revenue not having increased over time. They then reached a 'conclusion on price sensitivity' that all customers groups are highly price sensitive and that, given the ease by which customers can switch, aided by prevalent multi-sourcing, the Merged Entity will have no ability, nor any incentive, to raise prices post-Merger.²⁴⁹

6.62 We consider multi-sourcing and ease of switching in the next section below, but, given the evidence set out above (see paragraphs 6.56 to 6.59), we do not believe that all customers are highly price sensitive. There are differences in price sensitivity both between customer groups and between customers within each group. Thus, even if some customers are price sensitive, that does not mean they are all price sensitive; and even if customers are price sensitive, that does not necessarily imply they are highly price sensitive. Furthermore, the existence of some price sensitive customers would not protect other non-price sensitive customers from price increases, given that price sensitive customers negotiate discounts individually with suppliers, and this is not information that other customers would have access to or benefit from.

6.63 Additionally, we do not believe that it is possible to assume that pre-Merger market dynamics would continue post-Merger. For example, the fact that some customers are able to negotiate prices that they consider to be at a competitive level pre-Merger does not exclude the risk that, by reducing the number of suppliers that customers can play off against each other, a Merger could reduce competition and lead to higher prices. We consider our theory of harm about the effect of the Merger in Chapter 7.

6.64 We do, however, agree with the Parties that prices are important to all groups of customers and that intermediaries can be considered more price sensitive than other groups in the sense that they pay lower net prices.

²⁴⁷ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.5.

²⁴⁸ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.6.

²⁴⁹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 4.19.

Provisional conclusion on pricing

- 6.65 Overall, the evidence shows that many customers consider price to be an important, but not necessarily the most important, factor in choosing a PSRB supplier. The importance of price varies both between customer groups and within customer groups, with intermediaries generally being more concerned with price (after referral fees) and benefitting from lower net prices (see paragraph 6.55 above).

Multi-sourcing and switching

- 6.66 Multi-sourcing refers to the practice of customers using multiple PSRB suppliers at the same time. The frequency and extent of multi-sourcing and the ease of switching between suppliers may contribute to the intensity of competition in the market. In this section, we consider evidence on multi-sourcing and switching across the PSRB market. Any implications for the effects of the Merger are covered in our assessment of our Chapter 7.
- 6.67 The Parties submitted that a large proportion of their customers 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.²⁵⁰ The Parties estimated that 55% of their customers multi-sourced. When weighted by HM Land Registry score (number of HM Land Registry transactions), the proportion rose to 80%, suggesting that large customers are more likely to multi-source. The Parties assume a customer is multi-sourcing when ‘they deal with more completed transactions than the number of search packs that they order from one of the Parties’. They also submitted that switching is widespread, at least among some customer groups, and that multi-sourcing is used as a means both to increase the ease of switching, but also as a vehicle to make credible threats to switch.²⁵¹

Single and multi-sourcing

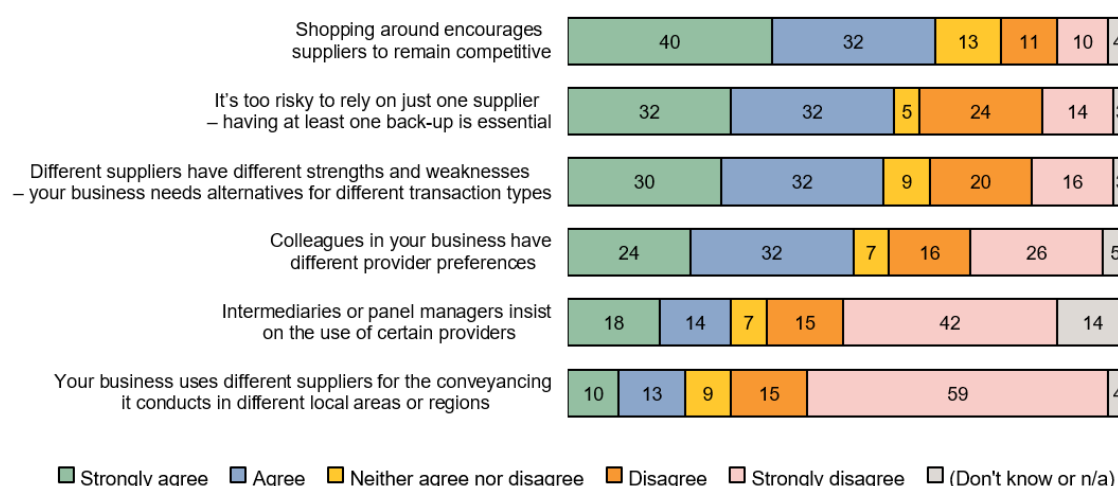
- 6.68 Both the Parties and competitors suggested that multi-sourcing is common. ATI commented that many law firms have more than one provider. Landmark told us that law firms may use a backup provider in case one search provider platform goes down, but generally firms will favour training conveyancers on one system/platform for their conveyancing needs.

²⁵⁰ Parties' response to the Issues Statement, paragraphs 5.19-5.20, D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Table 6.

²⁵¹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.11.

- 6.69 Our customer survey found that 110 out of 170 respondents (65%) used two or more providers for PSRBs, with the remaining 60 (35%) using a single provider.²⁵² The average number of suppliers used by respondents (including those single sourcing) was 2.2 to 2.4.²⁵³
- 6.70 In regard to reasons for multi-sourcing, as shown in Figure 6.1, a net total of 72 respondents agreed that they used two or more suppliers because 'shopping around encourages suppliers to remain competitive'.²⁵⁴ Other common reasons for using two or more suppliers were managing the risk of having only one supplier, that different suppliers were stronger for particular transaction types, and because of the different preferences of individual colleagues.²⁵⁵ A subset of respondents also considered regional specialism and the requirements of Panel Managers to be important reasons for multi-sourcing.²⁵⁶

Figure 6.1: Counts of respondents - disagreement / agreement to reasons for multi-sourcing



Source: DJS customer survey report, March 2022, page 13, figure 5.

Notes:

1. Based on 110 respondents that had used more than one supplier since Jan 2020 in response to the question 'To what extent do you agree or disagree that each of the following is a factor in why you [multi-source]?'
2. In the chart legend, Tend to agree has been labelled as Agree, and Tend to disagree as Disagree, to save space.

- 6.71 The main reasons for using a single provider were that this was sufficient for the amount of conveyancing business the firm did, it was too complex to use more than one, and because all providers were 'pretty much the same'.²⁵⁷

²⁵² DJS customer survey report, March 2022, page 12. Respondents were asked which suppliers they had used since January 2020 (a two year period).

²⁵³ The average number of suppliers used was 2.2 if all D&D brands (including Index and PSG) are counted as a single supplier. This increases to 2.4 if all Index and PSG volume is considered to be D&D Indirect (rather than sales by Index Direct and PSG Direct) and all Index and PSG franchisees are counted Index Indirect and PSG Indirect franchisees.

²⁵⁴ DJS customer survey report, March 2022, page 13, Figure 5.

²⁵⁵ DJS customer survey report, March 2022, page 13, Figure 5.

²⁵⁶ DJS customer survey report, March 2022, page 13, Figure 5.

²⁵⁷ DJS customer survey report, March 2022, page 12, Figure 4.

6.72 Our engagement with large customers similarly revealed a range of different approaches and different motivations regarding PSRB sourcing:

- (a) Some large customers to varying degrees indicated that they multi-sourced to maintain competitive tension and/or as a back-up in case of issues with a particular supplier;²⁵⁸
- (b) Some customers multi-sourced but used different providers for different purposes, or because individual conveyancers in the firm had a preference for a specific provider;²⁵⁹ while
- (c) Other customers saw a benefit in primarily or exclusively using a single provider.²⁶⁰

Our provisional conclusions on multi-sourcing

6.73 Overall, we found that multi-sourcing is common in this market, and, as argued by the Parties, we recognise that the fact that a customer is multi-sourcing is likely to make it easier for it to switch demand between suppliers.

6.74 However, this increased ability to switch only applies to suppliers with which a customer is multi-sourcing (on average 2.2 to 2.4 suppliers, see paragraph 6.69) and not to all suppliers in the market. Moreover, customers who are multi-sourcing may do so for a variety of reasons and not just to create competitive tension between suppliers. Where a customer uses different suppliers for different types of transaction, or where different individuals within a customer firm use different suppliers, the implications for ease of switching and therefore competitive pressure are less clear.

Ease of switching

6.75 The Parties submitted that switching 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’. They also submitted that the quantitative evidence corroborates this and shows that there is a substantial level of switching, particularly from D&D's customers.²⁶¹

²⁵⁸ See [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

²⁵⁹ See [REDACTED], [REDACTED] and [REDACTED].

²⁶⁰ See [REDACTED] and [REDACTED].

²⁶¹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.1.

Evidence from third parties

- 6.76 Our engagement with large law firms and Panel Managers suggested that some had found switching PSRB supplier to be a difficult and/or lengthy process due to the need to integrate with other software, for example case management software.²⁶² However, one large law firm said it had found the experience of switching providers to be straightforward,²⁶³ and a Panel Manager said its most recent switch had taken only three days.²⁶⁴
- 6.77 In relation to the impact of case management software on switching between PSRB suppliers, the Parties submitted that evidence from our customer survey suggested that customers do not consider compatibility of their PSRB ordering platforms with case management platforms to be important.²⁶⁵ Nevertheless, during our customer calls some larger customers did cite integration with other software as a factor making switching more difficult or a longer process (see previous paragraph) and it was mentioned as important by a number of survey respondents (see paragraph 6.120). We have also seen evidence that integration of PSRBs with case management software is becoming more important (see paragraph 3.16). We recognise, as far as the impact of such integration on switching is concerned, it may make customers reluctant to switch away from an existing PSRB supplier that is integrated with their case management software, but it may also encourage customers to switch if another PSRB supplier can better integrate with their case management software.²⁶⁶
- 6.78 In our engagement with larger customers, some also expressed a reluctance to switch due to long-standing business relationships with particular companies or individuals.²⁶⁷
- 6.79 Among competitors, Landmark commented that the lack of incentive to switch providers created ‘a sticky market’. Landmark said that law firms rarely change PSRB suppliers once a business relationship is established, so it is difficult for to win customers (unless there are problems with the technology of the chosen provider).²⁶⁸ ATI commented that its rapid growth since entering

²⁶² See [X], [X], [X] and [X] (though [X] also said that it can [X]).

²⁶³ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

²⁶⁴ [X] call note, [X], paragraphs 11-12. [X] also said that an earlier switch had taken nine months.

²⁶⁵ 16 survey respondents mentioned compatibility/ease of integration with other business software as important, and seven survey respondents said it was the most important factor for their business.

²⁶⁶ For example, ATI attributed Infotrack’s rapid growth to its integration with a number of case management systems, see paragraph 3.16).

²⁶⁷ [X] noted that it had little incentive to switch provider and has found that poweredbypie has been very responsive to any issues raised, [X] call note, [X], paragraph 14. Mincoffs Solicitors told us that its reason for continuing to use D&D was a long-standing business relationship with a key D&D representative, Mincoffs Solicitors call note, 22 February 2022, paragraph 4.

²⁶⁸ Landmark call note, 14 February 2022, paragraph 7.

the market was due to its innovative offering, particularly as lawyers can be apathetic to change and require a compelling offering to switch providers.²⁶⁹

Internal documents

- 6.80 An internal document from D&D in relation to [REDACTED] 'complexities in switching real estate DD Software'. It states that [REDACTED]. The reasons customers found switching difficult appear to relate to their willingness to switch, and the perceived risk of doing so, rather than practical barriers. Reasons for customer inertia included 'change creates risk that the replacement supplier doesn't operate the same standards', 'searches are different between suppliers', 'reliance on a supplier's integrity and accuracy [REDACTED]'.^{270, 271}
- 6.81 Other D&D internal documents also suggest that customers may be [REDACTED] loyal to their existing supplier or suppliers:
- (a) A June 2021 D&D strategy slide pack²⁷² [REDACTED].²⁷³
 - (b) Similarly a May 2020 document from a D&D Indirect franchisee '[REDACTED]' notes '[REDACTED]'.²⁷⁴ The same document also notes: '[REDACTED]'.

Switching rates

- 6.82 We considered data on switching rates from the customer survey, internal documents and the Parties' data on customer losses.
- 6.83 In our customer survey we asked respondents if they had switched suppliers since January 2020. We defined switching as any instance of a customer moving all or the majority of searches from one provider to another. We found that 49 out of the 170 respondents (29%) had switched since January 2020, ie over a period of about two years. This suggests an annual switching rate of

²⁶⁹ ATI call note, paragraph 4.

²⁷⁰ D&D's response to the Phase 2 Opening Letter, Annex DD116, Slide 29.

²⁷¹ The Parties submitted that [REDACTED] and that the assertion that [REDACTED] was wrong. (Parties' response to the Annotated Issues Statement and Working Papers, paragraph 2.12 and Appendix 1 paragraph 3.8.) In our view, whilst the slide refers to software, it is clear from references to 'searches', 'property search companies', the source of the data being CoPSO on the slide, that the document relates to the acquisition of PIE (which does not provide case management software), and that the previous slide shows the competitive landscape for PSRB suppliers, that the slide relates principally to PSRBs. We note that the slide also identifies lack of integration with customers' case management software and connectivity with due diligence providers as factors that may induce switching to a better integrated/connected PSRB supplier. It is unclear why integration with case management software would be mentioned in this context, if the slide relates solely to case management software, as the Parties submit.

²⁷² D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119.

²⁷³ The Parties submitted that [REDACTED]. (Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.8) However, in our view, the slide is referring to a D&D [REDACTED].

²⁷⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0001298.

about 15%. Switching appeared higher among D&D customers (33 out of 89, implied annual rate of 19%) and lower for TMG customers (18 out of 87, implied annual rate of 10%), though these results are only indicative due to smaller sample sizes.²⁷⁵

- 6.84 The overall switching rate estimate from the customer survey is similar to the market switching rate implied by a D&D internal document (see paragraph 6.80 above), which states that property search companies have an average client relationship of [X] years.²⁷⁶
- 6.85 We also considered the Parties' data on customer losses. Our detailed consideration of this data is in Chapter 7, where we assess the implications for closeness of competition. We note that there are some difficulties in using the data to calculate switching rates, including the variation between years in the levels of switching; incompleteness; and duplication. But in a number of cases, this data indicated a switching rate below 15%, especially if weighted by customer revenue.²⁷⁷
- 6.86 We considered that the evidence on switching rates suggested that customers did not change their PSRB suppliers very often and was consistent with the evidence from third parties and from internal documents that customers tended not to be very proactive in seeking out new suppliers and to show a degree of loyalty to their existing suppliers. However, we have also seen evidence that customers can and do switch when they are prompted to, either a result of a poor experience with an existing supplier or for other reasons.

Our provisional conclusions on the factors on which suppliers compete

- 6.87 The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
- 6.88 As the Parties have pointed out, there are few technical or contractual barriers to switching, and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing across this market may help to facilitate

²⁷⁵ See Appendix E, paragraph 11. In the survey, 24 respondents were customers of both D&D and TMG and 18 respondents stated that they were customers of neither.

²⁷⁶ Annex DD116 of D&D's response to the Phase 2 Opening Letter, slide 29. In steady state, an average client relationship of [X] years implies a switching rate of [10-20%].

²⁷⁷ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022. See 'lost customers' spreadsheet, Annex DD2867 and TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, paragraphs 9.1-9.5.

switching between existing suppliers. However, given that customers multi-source for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.

- 6.89 As discussed above, suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers unless they have an existing relationship with the supplier concerned. Associated with this, relationships between customers and suppliers are often long-lasting, and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.
- 6.90 In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms (as illustrated by ATI's growth and evidence from internal documents that suppliers monitor each other's ancillary services).
- 6.91 Suppliers also compete on price, often by offering discounts as part of negotiations to win new customers or retain existing customers.

Economies of scale

- 6.92 Economies of scale arise when costs per unit of volume (in this case, PSRBs) decline as volume increases. We have considered the degree to which the supply of PSRBs is characterised by economies of scale, while recognising that scale economies are not the only factor that can differentiate the constraint imposed by a larger supplier from that imposed by a smaller supplier (see paragraph 7.155). We have considered evidence from competitors, from the Parties' internal documents, and submissions from the Parties.

Evidence from competitors

- 6.93 Some smaller suppliers considered they were at a competitive disadvantage against larger providers because they were unable to achieve economies of scale, for example in marketing spend and in fixed costs, enabling larger providers to be more aggressive in their pricing or in developing technology and product features.

- 6.94 In relation to marketing costs, fixed costs, and pricing, a number of competitors told us (see Appendix C, paragraph 7) that it is difficult to compete with large national competitors:
- (a) 'the scale of larger organisations allows much greater scope for aggressive marketing activity and also aggressive pricing policies'. ([REDACTED])²⁷⁸
 - (b) 'Low product margins and local presence of bigger firms makes it hard to compete'. ([REDACTED])²⁷⁹
 - (c) 'The scale of sales and marketing activity that the top 3/4 resellers have at their disposal, combined with the vertically integrated producer/retailer proposition and the horizontal IT/Service proposition eg Case Management Systems makes it extremely difficult to grow sales and in fact retaining existing level of sales is difficult enough. This is in spite of us having a higher quality core product and providing excellent and personalised customer service to clients'. ([REDACTED])²⁸⁰
 - (d) 'Small suppliers will be unable to meet price incentives, price discounting, constant marketing pressure and entertainment incentives'. ([REDACTED])²⁸¹
- 6.95 Smaller suppliers also identified difficulties in developing technology and product features to compete against larger firms, see Appendix C, paragraph 8. For example:
- (a) 'It is quite difficult to expand in this market as the larger firms have the technology and systems which solicitors and conveyancers are looking for. Small firms do not have the financial clout to compete with this technology, so are left to compete on a quality over quantity front'. ([REDACTED])²⁸²
 - (b) 'Our client base of solicitors is declining due to them going to large firms with technologically advanced software systems. We have tried to use already developed online ordering systems, however as we only have a small amount of solicitor clients, it was not economical'. ([REDACTED])²⁸³

²⁷⁸ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁷⁹ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 6(a).

²⁸⁰ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁸¹ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁸² [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁸³ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 5(a).

Internal documents

- 6.96 A number of D&D internal documents refer to economies of scale:
- (a) Slides from an Index conference note economies from '[REDACTED]'.²⁸⁴
 - (b) A D&D slide pack mentions economies of scale from '[REDACTED]'.²⁸⁵
 - (c) Another identifies '[REDACTED]'.²⁸⁶
 - (d) Another states that D&D's mission is to enable its growth strategy through '[REDACTED]'.²⁸⁷
- 6.97 Similarly, [REDACTED].²⁸⁸ This suggests that a lack of scale may cause smaller competitors to struggle to compete on price. In this context, we note that [REDACTED] was subsequently acquired by [REDACTED].
- 6.98 D&D's acquisition documents showed cost synergies from combining platforms and back-office services (see paragraph 2.14), which also suggests economies of scale in relation to these services. We note that D&D anticipated these cost synergies even though the Parties are both already large relative to most firms in the industry.

Parties' submissions

- 6.99 D&D said that it achieved economies of scale from getting [REDACTED],²⁸⁹ [REDACTED] over greater volume, and from being able to produce RLAS more efficiently (a larger firm 'can go there and do two properties far quicker than going there, doing one property and coming back').²⁹⁰ However, D&D subsequently told us that RLAS scale economies were limited at the scale it operates. If D&D were to produce, for example, 50% fewer RLAS, it expects that its in-house staff costs would reduce by [REDACTED]%.²⁹¹
- 6.100 When asked about economies of scale, TMG said volume did not have the expected effect because each transaction had to be handled separately, ie the cost of OLAS and ODWS was the same irrespective of volume purchased. In relation to overheads, TMG said it may achieve economies from spreading

²⁸⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁸⁵ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁸⁶ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁸⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁸⁸ TMG response to CMA's s.109 Notice dated 23 December 2021, internal document entitled 'Sales Meeting' dated 7 November 2019, slide 5. Annex TM022.

²⁸⁹ D&D subsequently clarified that it had [REDACTED], but it did not [REDACTED], D&D's response to CMA's questions of 13 April 2022, paragraph 1.2.

²⁹⁰ Notes of a hearing with D&D held at the CMA, pages 29-30.

²⁹¹ D&D's response to CMA's questions of 13 April 2022, paragraph 1.3.

overheads over a larger volume ('the more we sell, the more gross margin we have to cover our overheads'). In regard to purchases of environmental reports, TMG said it [REDACTED] but indicated it did not know if it achieved lower prices from its relatively large purchases.²⁹²

6.101 D&D also provided a break-down of the cost of a typical residential PSRB supplied by D&D in terms of the cost of third party searches, the cost of searches carried out by D&D, other costs (eg insurance), D&D's allocation of central costs, and D&D's profit. D&D presented two illustrative examples of PSRBs based on PIE's costs: one containing property search reports compiled by D&D and one containing property search reports compiled by third party suppliers, see Table 6.2.

Table 6.2: Breakdown of PIE costs for illustrative PSRBs comprising D&D reports and third party reports

				(£)
Report type	Cost type	Cost to D&D		
		D&D reports	Third party reports	
LA report				
Official	Payment to third party		[X]	
Regulated	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
DW report				
Official			[X]	
Regulated	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
Environmental report				
Landmark			[X]	
FCI	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
Central costs and profit		[X]	[X]	
Allocation of central costs		[X]	[X]	
Profit		[X]	[X]	
Total (price paid by customer)		[X]	[X]	

Source: D&D's response to CMA's questions of 13 April 2022, paragraphs 1.1 to 1.3.

Note: D&D average prices are based on component and PSRB volumes and prices from PIE 2022 sales accounts; total overhead costs are based on March 2020 PIE P&L; and the price of each illustrative PSRB is the sum of the average prices of each of the products included in the illustrative PSRB. Central costs are allocated equally to each PSRB.

6.102 D&D's illustrative calculations show that for property search reports compiled by D&D, central costs (ie overheads) accounted for [30–40%] of total costs (excluding profit margin).²⁹³ For the illustrative example containing property search reports compiled by third party suppliers, central costs (ie overheads)

²⁹² Notes of a hearing with TMG Limited held at the CMA, pages 21-23.

²⁹³ Additionally, FCI staff costs for environmental reports amounted to [5-10%] of total costs RLAS and RDWS staff costs amounted to [30-40%] of total costs.

accounted for [10–20%] of total costs (excluding profit margin). The central costs percentage was [%] for the example based on third party reports due to the price being [%] (£[%]) compared to £[%]), though we note that D&D tends to compile most of its own reports.²⁹⁴ The central costs percentage was also lower because the overheads in this example were allocated on a per-PSRB basis.

6.103 While D&D acknowledged the existence of economies of scale, at least in relation to central costs, it said that the existence of smaller search providers suggested that any economies of scale in relation to overhead costs do not result in barriers to entry and expansion.²⁹⁵ While we consider barriers to entry and expansion in more detail in Chapter 7 and Chapter 8, the existence of smaller suppliers in the market does not, by itself, provide evidence that any economies of scale are not a barrier to entry and expansion. We note that those smaller suppliers have generally not grown significantly over time (in fact the aggregate market share of smaller suppliers has decreased in recent years, as we set out in Chapter 7) and several of those suppliers consider that a lack of economies of scale has impeded their expansion.

Provisional conclusion on economies of scale

6.104 We have evidence from competitors and from the Parties that suggests economies of scale exist in this market. We provisionally conclude that larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volumes and number of customers supplied. This is likely to increase their capacity to make investments to raise the quality of their service, as well as to raise their profile with potential customers through marketing.

Recent market trends

6.105 The supply of PSRBs has changed in a number of ways in recent years, including increased digitisation and technological change more broadly, integration with case management software and ancillary services, the emergence of property technology (**PropTech**) companies,²⁹⁶ and vertical integration.

²⁹⁴ 79% of PIE's LA reports are RLAS rather than OLAS, and thus likely to be produced by D&D, D&D's response to CMA s.109 Notice dated 17 February 2022, paragraph 11.1.

²⁹⁵ D&D's response to CMA's questions of 13 April 2022, paragraph 1.2.

²⁹⁶ Companies providing property technology, the usage of technology, platforms, and software to assist in real estate markets.

Increased digitisation and technological change

- 6.106 We consider there to be at least two relevant trends with respect to digitisation and technological change within this market. Firstly, there is the digitisation of the underlying product, the PSRB itself, and secondly there are broader changes in the IT infrastructure PSRB suppliers use to operate, including the use of cloud computing and the sophistication of the PSRB platform.
- 6.107 The supply of PSRBs has been digitising for years. To date, the development of online search ordering platforms, which enable customers to order all searches online, has been important. These have brought a streamlined process to the ordering of all searches and have made new build ordering and commercial mapping easier.²⁹⁷
- 6.108 So far as the compilation of search reports is concerned, D&D told us that there is a HM Land Registry project to digitise the LAs' local land charges. D&D said this project has been ongoing for five or six years and so far has been completed for about 40 out of 360 LAs.²⁹⁸
- 6.109 Broader technological change and innovation is another trend in the market. ATI, which launched InfoTrack UK in 2015, attributes its rapid growth to its innovative offering, based on an open-source technological solution, which allows conveyancers to access the whole suite of property searches from the same interface, where previously conveyancers did manual website searches and used multiple platforms.²⁹⁹
- 6.110 Landmark told us [REDACTED] and is enhancing infrastructure and capability, to reduce internal costs and make it more attractive and easier to use for customers ([REDACTED]). [REDACTED].³⁰⁰
- 6.111 The Parties' documents show a focus on automation and improving and extending their systems. For example:
- (a) A D&D strategic planning document of June 2021 stated a key lesson of 2021 for the UK and Ireland was that [REDACTED].³⁰¹ The same document listed three key projects for 2022 of which the first two were: [REDACTED].³⁰²

²⁹⁷ D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slide 2.

²⁹⁸ Notes of a hearing with D&D held at the CMA, page 80.

²⁹⁹ ATI call note, 16 February 2022, paragraphs 2-4.

³⁰⁰ Landmark call note, 14 February 2022, paragraph 17.

³⁰¹ Global Strategic Planning Country & Shared Service Strategy, Slide 39

³⁰² Global Strategic Planning Country & Shared Service Strategy, Slide 55. The third project concerned [REDACTED].

(b) Another D&D strategy document of June 2021 referred to [REDACTED].^{303,304}

(c) A TMG shareholder briefing document of December 2020 stated that TMG saw the next three years as involving [REDACTED] in the property search market from one of [REDACTED] to a [REDACTED]. Mentioned in this context were higher levels of [REDACTED] and [REDACTED] coming to the fore and getting utilised in the [REDACTED] as well as [REDACTED].³⁰⁵

6.112 Overall, the evidence suggests that digitisation of the PSRB market, and broader technological innovation, is continuing through automation of search production, improvements to the platform, and introduction of new cloud services. The future implications of this for the structure of the market are uncertain but could be profound, particularly for the compilers of PSRBs.

Integration with case management software and ancillary services

6.113 Recent developments in the market have gone beyond the introduction of online ordering to involve integration with case management software and the supply (cross-selling) of ancillary services to PSRB customers.

6.114 The Parties told us that customers do not consider compatibility with case management or ancillary service platforms to be important, citing our customer survey results. They said that such services are often unrelated to PSRBs, and any additional features that such services offer are not necessarily purchased by the same user of PSRBs. In regard to ancillary services, they stated that to the extent they are important to customers, they are often purchased as an integrated offering alongside case management systems or the offering of other PropTech providers.³⁰⁶

6.115 However, at the start of our investigation the Parties had told us that, with the developments in technology and software, ancillary services are increasingly provided alongside property search report services and are designed to reduce transaction costs and improve the efficiency and quality of service for consumers.³⁰⁷

³⁰³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, slide 3.

³⁰⁴ D&D submitted that references in these documents relate to the whole of D&D's UK and Ireland business and should not be inferred by the CMA as relating solely or predominantly to PSRBs in E&W. The Parties argue that, for example, [REDACTED] are relevant to Ireland, Business Law and Insights and Data. There should be no implication that these strategic initiatives are necessary to compete in relation to the supply of PSRBs in E&W. D&D Response to provisional findings putback request of 13 May 2022.

³⁰⁵ Briefing ahead of shareholder meeting with D&D on 4 December 2020, page 4.

³⁰⁶ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.10.

³⁰⁷ Response to the Enquiry Letter, paragraph 11.17.

- 6.116 Our customer survey showed that 7 (out of 170) respondents mentioned compatibility/ease of integration with other business software as the most important factor in choosing a PSRB supplier, and 6 other respondents mentioned it as important (but not most important), with 11 respondents mentioning range of additional/value-added services offered as important (but not most important).
- 6.117 ATI submitted that InfoTrack's ability to integrate with over [REDACTED] existing third party case management software platforms used by conveyancing firms was very important for InfoTrack's growth in the UK.³⁰⁸ Feedback from a number of smaller competitors also supports the importance of integration with case management software and ancillary services (see Appendix C). For example, one smaller supplier submitted that 'Conveyancers are now in the digital age and require case management systems to execute the conveyance procedure and link with [HM Land Registry]. This has created a new Industry of Prop-Tech companies which seek to corner the marketplace from IT conveyancing provision to automated ordering of searches and reports to the final registering with HM Land Registry and HMRC'. ([REDACTED])³⁰⁹
- 6.118 We also found that the Parties' documents showed that customers attach importance to case management software and ancillary services. For example:
- (a) A D&D document in relation to the acquisition of PIE (see paragraph 6.80) identifies technology integrations as a driver of switching Real Estate DD software, noting that as interoperable technology grows, a missing integration to a case management provider can cause movement to another supplier; and that without immediate processing through API connectivity to data providers, delay in production can push a conveyancer to another provider.³¹⁰
 - (b) A June 2021 D&D strategy slide pack states its FY22 Product Strategy involved 'acquisition cross-sell' (slide 2). This document also shows the importance D&D attaches to integration with case management software (slide 4) and ancillary services (slide 5).³¹¹
 - (c) D&D (PIE) market research in 2021 listed D&D's competitors representing the biggest threat as [REDACTED] and identified as relevant product features,

³⁰⁸ ATI response to follow-up questions submitted to the CMA on 21 April 2022.

³⁰⁹ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

³¹⁰ Annex DD116 of D&D's response to the Phase 2 Opening Letter, slide 29.

³¹¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119.

alongside search ordering platforms, the following: [X] is listed first, before search ordering platforms.³¹²

6.119 A D&D Indirect franchisee recognised the importance of case management software and ancillary services. A May 2020 document from a D&D Indirect franchisee 'Index PI South West Business Plan – 2020/2021' stated that the market is changing largely due to the impact of [X], who are majoring on service offerings outside traditional search provision, namely: a leading modern case management system offering in [X]; integration to a variety of third party case management software systems; and post completion functionality. As already noted (see paragraph 6.81(b)), [X]. The Index Indirect franchisee also identified five areas where D&D would assist its business going forward which included: [X].³¹³

6.120 The evidence is to some extent mixed in that, while our customer survey did not show integration with case management software and ancillary services to be the most important factor for many customers, evidence from competitors and from the Parties' internal documents suggested that integration with case management software and ancillary services is important. Taking this evidence in the round, our provisional conclusion is that integration with case management software and ancillary services is a significant factor for competition in this market and is likely to become more important as the digitisation trend continues.

PropTech

6.121 The Parties submitted that a recent feature of the industry is the emergence of PropTech companies. The Parties submitted that 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 PSRBs are ordered.³¹⁴

6.122 [X] (a PropTech company which provides an automated risk assessment service to lawyers, title insurers and property developers) told us that 'in the last three or four years PropTech has really seen a boom in the UK', that numerous start-ups have been launched alongside several PropTech specific incubators and Venture Capital investment funds, and that 'change in this industry and innovation is going to come from start-ups rather than the

³¹² D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slides 5, 7 and 9.

³¹³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0001298.

³¹⁴ [Parties' response to the Issues Statement](#), paragraph 3.10.

incumbents'. [X] was concerned that the Merger would disincentivise innovation in real estate transactions, because it would increase the trend for conveyancers to select one big supplier to provide search reports rather than smaller or emerging players who are innovative.³¹⁵

6.123 While we recognise PropTech developments across the whole property sector are beneficial to conveyancers and their customers (ie property buyers), we did not consider they would necessarily strengthen smaller PSRB suppliers in competing with the Parties, ATI and Landmark. Many of the services offered by PropTech companies address other aspects of the conveyancing process or other aspects of property management and ownership and so have no direct impact on the market for PSRBs that we are concerned with. To the extent that third party PropTech firms offer services that are sold by or compete with PSRB suppliers, these are likely to be widely available but other evidence suggests that smaller PSRB suppliers may find it more difficult to integrate them into their existing platforms or services (see Appendix C, paragraph 8).

Vertical integration

6.124 Suppliers of PSRBs, including the Parties, typically source some or all of the RLAS and RDWS reports they need from within their own business.³¹⁶ D&D is also present (through FCI and Terrafirma) in the supply of environmental and flood reports and other property search reports such as ground and mining and chancel, which are often included in PSRBs.

6.125 Three of the four large national PSRB suppliers supply environmental search reports, which are included in almost all PSRBs. Of these, ATI's Groundsure is the market leader and accounts for [60–70%] of environmental search reports, followed by Landmark with [30–40%], and D&D (FCI) with [5–10%].³¹⁷

6.126 The vertical integration of environmental search reports and PSRB provision is a recent development, following ATI's acquisition of Groundsure, and D&D's acquisition of FCI and Terrafirma, all of which occurred in 2021.

Provisional conclusion on market dynamics

6.127 Suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers, unless they have an existing relationship with the supplier

³¹⁵ [X] call note, [X], paragraphs 5 and 11.

³¹⁶ Response to the Enquiry Letter, paragraph 11.3.3.

³¹⁷ See Table 3 of Appendix B.

concerned. The supply of PSRBs is therefore to an extent an 'experience' product.

- 6.128 In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms and by integrating them with other existing software which the customer may use.
- 6.129 Suppliers also compete on price, often by offering discounts off the list price as part of negotiations to win new customers or to retain existing customers.
- 6.130 The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
- 6.131 There are few technical or contractual barriers to switching and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing may help to facilitate switching between existing suppliers. However, given that customers multi-source with a limited number of suppliers and for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
- 6.132 Associated with the need to experience the product, relationships between customers and suppliers are often long-lasting and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.
- 6.133 Economies of scale exist in this market, and we provisionally conclude that larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volume and number of customers supplied.
- 6.134 The market is characterised by technological innovation, and has become increasingly digitised, including through integration with case management and ancillary services. It has also become vertically integrated as large PSRB suppliers have acquired companies that compile environmental reports.

7. Theory of harm

Introduction and framework of assessment

- 7.1 This chapter sets out our assessment of whether the Merger has given or may be expected to give rise to an SLC in the supply of PSRBs in E&W, by removing a previous competitive constraint from the market. This is a horizontal unilateral effects theory of harm.
- 7.2 Unilateral effects can arise in a merger where one firm merges with a competitor that previously provided a competitive constraint. Through the merger, removing one party as a competitor might allow the merged entity profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation relative to what might occur in the counterfactual.³¹⁸
- 7.3 The concern under horizontal unilateral effects relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. 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. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.³¹⁹
- 7.4 As noted in the Chapter 6, the Parties overlap in the supply of PSRBs in E&W.
- 7.5 The Parties submitted, in response to our Issues Statement,³²⁰ that 'there will be no ability for the Merged Entity to increase prices or degrade the quality of service as a result of the Merger'³²¹ because:
- (a) the Parties are not particularly close competitors;
 - (b) switching between suppliers is easy;
 - (c) conveyancers are highly price sensitive;

³¹⁸ MAGs, paragraph 4.1.

³¹⁹ MAGs, paragraph 4.3.

³²⁰ A copy of the Issues Statement is available on the case page [here](#).

³²¹ Parties' response to the Issues Statement, paragraphs 2.3 and 5.2.

- (d) intermediaries exert buyer power;
- (e) past price increases reflected cost increases, and D&D's consideration of a post-merger price increase was insignificant relative to other aspects of the merger rationale; and
- (f) any degradation of quality would have a major impact on D&D's business.

7.6 In response to our working papers, the Parties submitted that the Merger does not give rise to an SLC.³²² In particular, the Parties submitted that:³²³

- (a) the Parties are not particularly close competitors;
- (b) high levels of switching and multi-sourcing are a material constraint;
- (c) customers multi-source to encourage competition;
- (d) customers are sensitive to price;
- (e) smaller competitors, which the Parties refer to as 'regional experts', are a significant cumulative constraint on the Parties;
- (f) franchisees are an important competitive constraint; and
- (g) there is evidence of 'historic disruptive new entrance and growth, and the prospect of new entry is real, imminent and potentially disruptive'.

7.7 We consider the Parties' submissions as part of our assessment.

7.8 The assessment is structured as follows:

- (a) We set out our estimates of the shares of supply of the Parties and their competitors in the PSRB market in E&W.
- (b) We assess whether the Parties are close competitors, ie to what extent they acted as a competitive constraint on one another before the Merger.
- (c) Finally, we assess the remaining competitive constraints that the Merged Entity faces following the Merger from other large national providers of PSRBs, from smaller providers of PSRBs, from D&D's franchisees, and from intermediaries.

³²² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.2.

³²³ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.1-2.45.

Market shares

- 7.9 This section sets out the estimates of the shares of supply of the Parties and their competitors. It reflects the submissions we have received from the Parties during phase 1 and phase 2, the responses to competitors' questionnaires, as well as other evidence we have received to date.
- 7.10 We first consider the Parties' submissions on market shares. We then set out our estimates of the shares of supply of the Parties and the other PSRB suppliers by number of PSRBs sold annually. The analysis below is based on our provisional view that the relevant market in which to measure such shares is the supply of PSRBs in E&W (see Chapter 6).

Parties' submissions

- 7.11 In response to the Issues Statement, the Parties submitted that there were three errors in the CMA's phase 1 market share analysis:³²⁴
- (a) an incorrect assessment of the total size of the market;
 - (b) a disregard of significant competitors; and
 - (c) an overestimation of D&D's presence in the market.
- 7.12 In relation to the assessment of the total size of the market, the Parties submitted that the CMA underestimated the total size of the market for PSRBs supplied in E&W by basing its estimate on the total volume of only the 15 largest suppliers.³²⁵
- 7.13 The Parties submitted that the total size of the market for PSRBs supplied in E&W could be estimated from the number of property transactions completed in 2020, as published by HMRC,³²⁶ by applying a 1.7 multiplier that includes:³²⁷
- (a) a 35% factor to reflect the Parties' understanding that over a third of property transactions abort; and

³²⁴ [Parties' response to the Issues Statement](#), paragraph 3.13.

³²⁵ [Parties' response to the Issues Statement](#), paragraph 3.14.

³²⁶ The Parties also submitted that cash-only transactions would not cast doubt on the Parties' market size estimate based on transactions data as a cash buyer would carry out a search to protect its own investment, and a lender would do the same in line with its lending criteria ([Parties' response to the Issues Statement](#), paragraph 3.16.4).

³²⁷ [Parties' response to the Issues Statement](#), paragraph 3.15–3.16. The Parties also submitted that RBB Economics' (RBB) analysis supports their multiplier estimates ([Parties' response to the Issues Statement](#), footnote 6). RBB updated its analysis in response to the CMA's s.109 Notice dated 17 February 2022 (see D&D's response to the CMA's s.109 Notice (RFI3) dated 17 February 2022, paragraphs 23.1-26.4, Annex DD2869).

(b) another 35% factor to reflect that not all PSRBs ordered will relate to property transactions, with some searches undertaken in relation to the management of social housing or in relation to property refinancing not involving the transfer of land.

7.14 However, the Parties ultimately submitted that they ‘strongly suggest that the best way to ascertain the market size with any certainty would be to ask all retailers of PSRBs for their sales’.³²⁸

7.15 In relation to whether significant competitors have been disregarded, the Parties submitted that the CMA did not substantiate the claims that: (i) the inclusion of smaller suppliers would not materially alter the CMA’s analysis, and (ii) there is no evidence to suggest that the smaller retailers have material shares of supply.³²⁹ The Parties noted that CoPSO estimates that there are over 150 retailers of PSRBs in E&W, and that IPSA lists a total of 55 members.³³⁰ The Parties submitted that, at an aggregate level, these suppliers still constitute a substantial part of the market and should be considered.³³¹

7.16 In relation to D&D’s presence in the market, the Parties submitted that the CMA overestimated D&D’s presence by including sales of all of D&D’s franchisees within D&D’s share.^{332, 333} The Parties submitted that Index Indirect and PSG Indirect franchisees operate independently from and are economically independent of D&D, and that D&D cannot influence its D&D Indirect franchisees’ commercial strategy or objectives.³³⁴ The Parties consider that D&D’s share of supply should consist only of sales D&D makes directly to customers (ie D&D Direct).³³⁵

Our analysis

7.17 There is no publicly available information on the shares of supply or the total size of the market for the supply of PSRBs in E&W.³³⁶ We note that the total market size is largely determined by the number of property transactions.

³²⁸ D&D’s response to the CMA’s s.109 Notice (RFI3) dated 17 February 2022, paragraph 26.5.

³²⁹ [Parties’ response to the Issues Statement](#), paragraph 3.18.

³³⁰ [Parties’ response to the Issues Statement](#), paragraph 3.17. We note that in an internal document of January 2019 D&D estimated that there are only approximately 80 search providers left in the UK, with membership numbers of the Search Code being out of date (D&D response to the CMA’s s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD937).

³³¹ [Parties’ response to the Issues Statement](#), paragraph 3.18.

³³² [Parties’ response to the Issues Statement](#), paragraph 3.20.

³³³ We discuss the Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.9-5.14, below in paragraph 7.170.

³³⁴ [Parties’ response to the Issues Statement](#), paragraphs 3.20-3.21.

³³⁵ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 3, paragraph 1.4.

³³⁶ [Phase 1 Decision](#), paragraph 83.

However, data received by the Parties and third parties (see Table 7.1 and Table 7.2 below) shows that the total number of PSRBs supplied in E&W in 2021 exceeded the number of completed property transactions recorded by HMRC,³³⁷ and the exact number of PSRBs supplied in E&W in 2021 is unknown.

7.18 In particular:

- (a) As noted by the CMA at phase 1, the Parties' estimate of the 35% factor applied to account for the number of transactions that fall through (see paragraph 7.13(a)) relies on certain assumptions that are hard to verify.³³⁸
- (b) As noted by the CMA at phase 1, the Parties' estimate of the 35% factor applied to account for the number of property search reports undertaken in relation to the management of social housing or in relation to property refinancing not involving the transfer of land (see paragraph 7.13(b)) also relies on several assumptions that are hard to verify.³³⁹
- (c) The Parties ultimately submitted that the best way to ascertain the market size with any certainty would be to ask all suppliers of PSRBs for their sales (see paragraph 7.14).

7.19 For the reasons set out above, we do not consider it appropriate to rely on the total market size estimates submitted by the Parties.³⁴⁰ Instead, we consider that the best way to calculate the market size is to use volume figures from suppliers of PSRBs. We, therefore, requested sales volume data from the Parties and all CoPSO members, as further explained below.

7.20 In relation to the Parties' submission regarding the D&D Indirect franchisees (see paragraph 7.16), we consider below (paragraphs 7.168 to 7.207) the degree to which third-party owned franchisees (ie D&D Indirect franchisees) exert a sufficient competitive constraint on D&D. For the purposes of calculating market shares, we have presented the third-party owned franchisees (ie D&D Indirect) as part of the Merged Entity (see Table 7.1) as well as separately (see Table 7.2). We show below (see paragraph 7.25(a)) that the exclusion of D&D Indirect franchisees from the Merged Entity does

³³⁷ [HMRC data](#) indicates that around 1,437,950 property transactions with a value of £40,000 or above were completed in E&W in 2021 (combining residential and non-residential property transactions).

³³⁸ Moreover, the CMA in phase 1 found evidence that FCI and two third parties used materially lower factors in their market size estimates (see [Phase 1 Decision](#), paragraph 84(a)).

³³⁹ Moreover, the CMA in phase 1 found that one third party used a materially lower factor in its market size estimates (see [Phase 1 Decision](#), paragraph 84(b)).

³⁴⁰ We also note that two third parties submitted their own market size estimates in phase 1 and that these estimates were materially lower than the Parties estimate (see [Phase 1 Decision](#), paragraph 84(d)).

not materially affect our conclusions in relation to the impact of the Merger on market structure.

Our estimates of shares of supply

- 7.21 We sought to estimate the shares of supply of the Parties, ATI, Landmark, the franchise groups, and the smaller competitors by verifying the volume of PSRBs that these suppliers sold to conveyancers and intermediaries in each year from 2017 to 2021. To do this, we requested sales volume data from the Parties and all CoPSO members.³⁴¹ We received a total of 42 responses from third parties, which cover 39 out of the 88 listed CoPSO members (excluding the Parties) as well as three water companies.³⁴²
- 7.22 Our shares of supply estimates are reported in Table 7.1 and Table 7.2. Appendix B includes the estimates listing each smaller supplier that provided its sales data individually.³⁴³ We excluded from the estimates the responses of five CoPSO members, which we identified to be resellers or specialist providers that do not compete with the Parties in the supply of PSRBs in E&W.³⁴⁴ One CoPSO member responded that it was too difficult to supply sales data.³⁴⁵
- 7.23 It was not possible to include all of the smaller suppliers of PSRBs active in E&W in the estimates because we did not receive responses from all CoPSO members. However, we consider that the inclusion of the remaining smaller suppliers would not materially alter the analysis as:
- (a) We show in Appendix B that an estimation of the shares of supply of each of the Parties, ATI, Landmark, franchise groups and the tail of smaller competitors based on the upstream supply of environmental search reports does not substantiate the Parties' claim that significant competitors are excluded from the estimation in Table 7.1 and Table 7.2.
 - (b) We show in Appendix B that our estimates based on downstream sales volume data are broadly consistent with the estimates in the Parties'

³⁴¹ Listed in D&D's response to the CMA's s.109 notice dated 23 December 2021, Annex DD003. We note that all the IPSA members listed in this Annex are also CoPSO members.

³⁴² Water companies are generally not registered with CoPSO. We also note that only ATI's brand InfoTrack and Landmark's brand OneSearch Direct are CoPSO members. Moreover, in an internal document of January 2019, D&D estimated that there are only approximately 80 search providers left in the UK, with membership numbers of the Search Code being out of date (D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, Annex DD-937).

³⁴³ We chose to exclude the 2017 volumes and shares from our analysis because data was not available for PSG as well as several smaller competitors, *inter alia*, because they were established after 2017.

³⁴⁴ We excluded the following four specialist providers: [REDACTED] (coal mining reports), [REDACTED] ('Interpretive metalliferous Mining Searches'), [REDACTED] ('Chancel and Ground Risk' reports), [REDACTED] (Electronic AML Certificates). We excluded the reseller [REDACTED].

³⁴⁵ [REDACTED].

internal documents. We show in Appendix B that our estimates based on downstream sales volume data are broadly consistent with the estimates in the Parties' internal documents.

- (c) We find that the addition of 23 small competitors at phase 2: (i) increased the estimated market share of the tail of smaller competitors ('Others' in Table 1) by only [0–5] percentage points compared with the phase 1 estimates, and (ii) reduced the Merged Entity's estimated market share by only [0–5] percentage points in 2020 when third-party owned franchisees are included.

7.24 Therefore, we have three sources of evidence (the upstream environmental reports, the downstream sales volumes data, and estimates from the Parties' internal documents) to confirm that our methodology for estimating total market size and shares of supply is appropriate, and we have found no evidence indicating that the missing small suppliers would have larger shares than those included in our estimates. On this basis, we consider that their inclusion would not materially change our estimates.

Table 7.1: Shares of supply of PSRBs in E&W (including third-party owned franchisees in Merged Entity)

Supplier	Volume (in thousands)				Share (%)			
	2018	2019	2020	2021	2018	2019	2020	2021
PIE / PSG Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
GlobalX	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SDG	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	N/A
<i>D&D Direct</i>	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Indirect	[X]	[X]	[X]	[X]	[0-5]	[5-10]	[5-10]	[5-10]
PSG Indirect	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
<i>D&D Indirect</i>	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[5-10]
<i>D&D (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[20-30]	[20-30]	[20-30]
tmConvey	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
CDS	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[10-20]
<i>TMG (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
<i>Combined</i>	[X]	[X]	[X]	[X]	[40-50]	[40-50]	[40-50]	[40-50]
InfoTrack	[X]	[X]	[X]	[X]	[5-10]	[10-20]	[10-20]	[10-20]
Search Acumen	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
<i>ATI (total)</i>	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[20-30]
OneSearch Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SearchFlow	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
<i>Landmark (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
<i>Others</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Total	1,147	1,202	1,236	1,451	100	100	100	100

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

Notes:

1. [X] data for SDG is not available for 2021 (marked as N/A for clarity). [X].
2. Data is not available for PSG before June 2018. The PIE/PSG figures for 2018 include only revenue and volumes for the period June-December 2018.
3. Index franchisees and PSG franchisees owned and operated by D&D are referred to as, respectively, Index Direct and PSG Direct. Index franchisees and PSG franchisees owned and operated by third parties are referred to as, respectively, Index Indirect and PSG Indirect. All D&D owned and operated businesses (ie PIE, GlobalX, SDG, Index Direct, and PSG Direct) are referred to as D&D Direct. Index Indirect and PSG Indirect are referred to collectively as D&D Indirect.
4. For the following suppliers, regulated and official Local Authority (LA) searches were used as a proxy for bundles: D&D, TMG, [X].
5. Some competitors may have included sales to resellers, which could have led to double counting and, thus, overestimation of their share and of the total size of the market.
6. 'Combined' figures include D&D's and TMG's brands, and all Index (Direct and Indirect) and PSG (Direct and Indirect) franchisees.

Table 7.2: Shares of supply of PSRBs in E&W (excluding third-party owned franchisees from Merged Entity)

Supplier	Volume (in thousands)				Share (%)			
	2018	2019	2020	2021	2018	2019	2020	2021
PIE / PSG Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
GlobalX	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SDG	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	N/A
D&D Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
tmConvey	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
CDS	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[10-20]
TMG (total)	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Combined	[X]	[X]	[X]	[X]	[30-40]	[30-40]	[30-40]	[30-40]
Index Indirect	[X]	[X]	[X]	[X]	[0-5]	[5-10]	[5-10]	[5-10]
PSG Indirect	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
D&D Indirect	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[5-10]
InfoTrack	[X]	[X]	[X]	[X]	[5-10]	[10-20]	[10-20]	[10-20]
Search Acumen	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
ATI (total)	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[20-30]
OneSearch Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SearchFlow	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Landmark (total)	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Others	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Total	1,147	1,202	1,236	1,451	100	100	100	100

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

Notes:

1. [X] data for SDG is not available for 2021 (marked as N/A for clarity). [X].
2. Data is not available for PSG before June 2018. The PIE/PSG figures for 2018 include only revenue and volumes for the period June-December 2018.
3. Index franchisees and PSG franchisees owned and operated by D&D are referred to as, respectively, Index Direct and PSG Direct. Index franchisees and PSG franchisees owned and operated by third parties are referred to as, respectively, Index Indirect and PSG Indirect. All D&D owned and operated businesses (ie PIE, GlobalX, SDG, Index Direct, and PSG Direct) are referred to as D&D Direct. Index Indirect and PSG Indirect are referred to collectively as D&D Indirect.
4. For the following suppliers, regulated and official LA searches were used as a proxy for bundles: D&D, TMG, [X].
5. Some competitors may have included sales to resellers, which could have led to double counting and, thus, overestimation of their share and of the total size of the market.
6. 'Combined' figures include D&D's and TMG's brands, and Index Direct and PSG Direct.

7.25 While we recognise there is some uncertainty about the exact size of the market, our estimates in Table 7.1 and Table 7.2 show the following:

- (a) The Merger combines two of the four largest suppliers to create a clear market leader in the supply of PSRBs in E&W, with a share of supply in 2021 of about [40–50%] when third party owned franchisees (ie D&D

Indirect) is included, and of about [30–40%] when it is excluded from the Merged Entity.

- (b) The four large national suppliers before the Merger each held relatively similar shares of supply as of 2021, ranging between [10–20%] or [10–20%] (depending on whether D&D Indirect shares are attributed to D&D) and [20–30]%.
- (c) The market is highly concentrated, with the Merged Entity, ATI, and Landmark together accounting for around [80–90%] of the market.³⁴⁶ Even if the D&D Indirect franchisees are excluded, the share of supply of the Merged Entity, ATI, and Landmark together still accounts for around [70–80%] of the market.
- (d) D&D's share of supply has fallen since 2018, if D&D Indirect is excluded; if included, D&D's share has been relatively constant. Both TMG and Landmark have lost share of supply since 2018, whilst ATI's share has grown.
- (e) In 2018, the Merged Entity's next largest competitor aside from ATI and Landmark was X-Press Legal with a market share of [5–10%] (see Appendix B, Table 1 and Table 2). However, since 2018 this competitor has lost market share. While X-Press Legal is still the largest of these smaller competitors, it now has a share of supply of only [0–5%], as discussed in more detail in paragraphs 7.135 to 7.138 below. In 2021, no competitor in the tail of smaller suppliers had a share of supply of more than [0–5%].
- (f) The tail of smaller suppliers for which we have data has collectively lost market share since 2018 (down from [20–30%] to [10–20%] in 2021). Their aggregate share decreased each year between 2018 and 2021 by about [0–5] to [0–5] percentage points (see also paragraphs 7.139 to 7.143 below).

Closeness of competition

- 7.26 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. The smaller the number of significant players, the stronger the *prima facie* expectation that any of the two firms are close competitors. In such a scenario, the CMA will require

³⁴⁶ See Table 1 in Appendix B.

persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.³⁴⁷

- 7.27 Before the Merger the Parties were two of the four main suppliers of PSRBs in E&W. As set out in this chapter, the evidence available to us shows that competition mainly takes place among few firms, with the other suppliers active in the market having a far less significant competitive presence.
- 7.28 In keeping with the approach set out in the CMA's guidance, we therefore consider that there is a strong *prima facie* likelihood that the two firms are close competitors and have considered whether there is persuasive evidence to suggest that they are not close competitors.
- 7.29 The Parties have commented that 'it is not credible to suggest that the Parties are particularly close competitors and there is no basis for the CMA to rely on the structural presumptions it identifies'.³⁴⁸
- 7.30 In relation to closeness of competition, the Parties submitted that they are not particularly close competitors, and that they focus on different parts of the market as evidenced by the low switching between them.³⁴⁹
- 7.31 By way of context to our assessment, we note that we are not seeking to rely on any 'structural presumption'. Instead, we believe that the evidence available to us in relation to the existing structure of the market (in which four firms account for the vast majority of supply), in conjunction with the change in market structure brought about by the Merger, provides important context, considered in the round with all of the other available evidence, for our assessment.
- 7.32 Moreover, as set out in paragraph 7.26 above, the issue is not whether the Parties are 'particularly' close competitors but whether they are sufficiently close competitors for the Merger to raise competition concerns. Our Merger Assessment Guidelines³⁵⁰ describe our approach to assessing this issue.
- 7.33 In assessing closeness of competition between the Parties, we have considered:
- (a) the types of PSRB customers and search requests served by the Parties;

³⁴⁷ MAGs, paragraph 4.10.

³⁴⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.9, and Appendix 1, paragraph 2.12.

³⁴⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.6-2.11, and Appendix 1, paragraphs 2.1-2.12.

³⁵⁰ MAGs, paragraph 4.10

- (b) evidence of switching between the Parties;
- (c) the Parties' submission that evidence of multi-sourcing shows they are not close competitors;
- (d) evidence from the Parties' internal documents; and
- (e) evidence from customers (including customer survey respondents) and competitors.

Types of PSRB customers and search requests served by the Parties

Parties' submissions

- 7.34 The Parties submitted that '... 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'.³⁵¹
- 7.35 The Parties have made the related submission that that there are three main customer groupings:
- (a) intermediaries, which exercise effective buyer power;
 - (b) large law firms, where the Parties hardly overlap; and
 - (c) smaller conveyancers, which 'have regional demands and hence are served by the multitude of smaller regional players which compete alongside the national providers'.³⁵²
- 7.36 At the site visit, the Parties described their business focus as follows:
- (a) D&D stated that 'Retailers target different types of customers. Dye & Durham targets small and medium conveyancers... Large law firms ... focus on commercial properties... Dye & Durham has little presence in this segment'.³⁵³

³⁵¹ [Parties' response to the Issues Statement](#), paragraph 4.2. Similarly, at phase 1, the Parties stated that '... the Parties themselves do not represent particularly close competitors. Dye & Durham's focus is on small residential conveyancers (e.g., a 'high street' conveyancer). In contrast, TMG's main customers are its prior Shareholders and large city law firms which, in the Parties' view, are likely to consider the TMG's service proposition to be better suited for more complex requirements' – see Response to the Enquiry Letter, paragraph 30.

³⁵² Response to the Issues Paper, paragraph 4.2.

³⁵³ D&D Site Visit slide pack, dated 3 February 2022, slide 11.

(b) TMG stated that 'TMG's clients are more targeted to large law firms than Dye & Durham. TMG's 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 lower profile in the residential segment. Commercial end consumers have different requirements than residential consumers: Preference for Official Local Authority Searches (as opposed to Regulated); Require efficient output that are able to be supplied quickly and in bulk; Value the service quality of the overall experience, including efficient billing and support; Large law firms and conveyancers have buyer power'.³⁵⁴

7.37 In their response to our working papers, the Parties submitted that residential and commercial demand also differed by the type of searches required:³⁵⁵

(a) TMG's core focus is as a retailer of PSRBs to large law firms and commercial conveyancers in E&W and Scotland. Its focus is on commercial transactions and the provision of OLAS and ODWS, which are overwhelmingly the preferred searches for commercial transactions.

(b) In contrast, D&D's core focus is on the provision of RLAS reports and RDWS reports for residential conveyancers in E&W. D&D has no material presence in the supply of PSRBs to large law firms and commercial conveyancers. D&D is not regarded as a credible alternative to TMG in this space. D&D is also not active in Scotland.

7.38 We note that the Parties provided an account of residential and commercial search requests at phase 1, in which the distinctions between the two appeared less clear-cut:

'While the market distinguishes between residential and commercial, the sets of standard enquiries in a LA search report (ie usually an LLC1 and a CON29R form) are the same for both residential and commercial properties. An RLAS for a commercial property will generally cover a wider geographic area around the property and provides greater level of detail than an RLAS for a residential property. This is also the case for an RDWS for a commercial property. The vast majority of RLAS and RDWS are for residential properties (c.90% in E&W). Demand and supply for both residential and commercial property searches tends to be

³⁵⁴ TMG Site Visit slide pack, dated 3 February 2022, slide 6.

³⁵⁵ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.6, and Appendix 1, paragraph 2.3.

through the same customers and suppliers/retailers. The spread of residential vs commercial will reflect the customers' respective businesses. For example, the smaller high street law firms and conveyancers will tend to deal with residential properties whereas larger law firms will tend to deal with commercial properties'.³⁵⁶

Our assessment of closeness of competition

7.39 As explained in Chapter 6, we currently consider that the impact of the Merger should be assessed in relation to the supply of PSRBs, without further dividing this product market between residential and commercial or by customer group. We found that all of the Parties' brands supply both residential and commercial reports, and that all of the Parties' brands serve small conveyancers, medium/large conveyancers, large law firms and intermediaries to some degree.

7.40 In the following we consider:

- (a) whether there are distinct categories of demand for search reports from different customer types, that is from (i) small to medium-sized conveyancers focused on residential transactions on the one hand and (ii) large law firms focused on commercial transactions on the other;
- (b) the Parties' respective presence in each of these categories; and
- (c) the potential for D&D to expand its presence in the supply of search services to large law firms.

Whether there are distinct categories of demand from different customer types

7.41 In order to explore the Parties' claims, the CMA requested sales data from the Parties, split between: '(i) small conveyancers (residential); (ii) large city law firms (residential); (iii) small conveyancers (commercial); and (iv) large city law firms (commercial)'.³⁵⁷ In order to respond to this request, the Parties categorised³⁵⁸ 'large' customers as being law firms in the 'Top 100' of a publicly available ranking by *The Lawyer*, 'small' customers as those who had completed up to 240 transactions in 2020, with the remaining conveyancers being categorised as 'medium', and a number of other customer types, including Panel Managers, being listed in their own categories.

³⁵⁶ Response to the Enquiry Letter, paragraph 11.9.

³⁵⁷ Parties response to the CMA's s.109 Notice dated 27 September 2021, question 12.

³⁵⁸ Parties response to the CMA's s.109 Notice dated 27 September 2021, question 12.

7.42 In particular, the Parties have provided customer lists showing sales revenues for each PSRB customer in E&W in 2020.^{359,360} We have considered whether the data indicates a clear distinction between small/medium conveyancers that purchase residential PSRBs and large law firms that purchase commercial PSRBs. To do this we assessed the combined revenues of the Parties by customer and PSRB type as shown in Table 7.3.

Table 7.3: Parties' combined 2020 sales revenues by customer type and PSRB type

<i>Customer type</i>	<i>Residential PSRBs</i>	<i>Commercial PSRBs</i>
Small	[REDACTED]	[REDACTED]
Medium	[REDACTED]	[REDACTED]
Top 100	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]

Source: D&D's response to CMA's s.109 Notice dated 23 December 2021, question 2. See also, TMG's response to CMA's s.109 Notice dated 23 December 2021, question 2.

7.43 In relation to the above data we note the following:

- (a) Residential PSRBs acquired by small and medium conveyancers and intermediary/others, accounted for £[REDACTED] million of the Parties' combined £[REDACTED] million revenues in 2020.
- (b) A majority of the revenues from the Parties' customers which are Top 100 law firms is also derived from the sale of residential PSRBs (£[REDACTED] million, compared to £[REDACTED] million from the sale of commercial PSRBs).
- (c) While demand for commercial PSRBs is highest from Top 100 law firms, small and medium firms also account for a substantial proportion of demand for commercial PSRBs (£[REDACTED] million out of a total £[REDACTED] million).

7.44 While this data relates only to the Parties and not the entire market, it does not support a clear division between demand for commercial PSRBs from Top 100 law firms on the one hand, and demand for residential PSRBs from small and medium firms on the other. That is, we do not see the Top 100 law firms accounting for a large majority of demand for commercial PSRBs.

7.45 We asked several law firms about their demand for PSRBs in relation to large commercial transactions, and how this differs from residential transactions. It emerged from these discussions that commercial searches tend to be substantially more expensive than residential searches (which are around £200 to £500) for a given property:

³⁵⁹ D&D response to CMA's s.109 Notice dated 23 December 2021, Annex 2.

³⁶⁰ TMG's response to CMA's s.109 Notice dated 23 December 2021, Annex 2.

- (a) Eversheds Sutherland told us that commercial property searches are more expensive than residential searches because they are backed up by a higher indemnity limit, so commercial searches could be priced at between £1,500 and £2,500 per property.³⁶¹
- (b) Mincoffs Solicitors said that the cost of searches for a transaction involving purchase of an industrial unit for £400,000, or a big commercial site for a £100 million development project, will range from £700 to £1,100 approximately.³⁶²

7.46 However, a property transaction by a large law firm can involve a large number of individual properties (whether residential or commercial), which may each require separate searches:

- (a) Eversheds Sutherland told us that when it prepared a certificate of title for a shopping centre, the search costs rose exponentially to around tens of thousands because of the local authority's division of the centre into parcels for each retail unit.³⁶³
- (b) Similarly, Devonshires told us that it sometimes sells or refinances a large portfolio of properties, for example several hundred for a housing association, in which case each property may require its own searches.³⁶⁴

7.47 The number of law firms engaged in such large projects may be even more limited than the Top 100 law firms. In particular Eversheds Sutherland told us that it faced competition from the top 50 law firms in real estate work, but there were five to ten law firms which regularly competed with Eversheds Sutherland on large commercial real estate work and which had the same resources and expertise.³⁶⁵

7.48 According to the customers we spoke to, the aspects that were important to be able to support customers engaged in large commercial transactions appeared to be efficiency and reputation:

- (a) [REDACTED] said that the size of the search report provider is not considered an issue so long as they have the technological infrastructure needed to action search requests with the source providers quickly and efficiently. [REDACTED].³⁶⁶

³⁶¹ Eversheds Sutherland call note, 23 February 2022, paragraph 10.

³⁶² Mincoffs Solicitors call note, 22 February 2022, paragraph 10.

³⁶³ Eversheds Sutherland call note, 23 February 2022, paragraph 10.

³⁶⁴ Devonshires call note, 25 February 2022, paragraph 2(c).

³⁶⁵ Eversheds Sutherland call note, 23 February 2022, paragraph 15.

³⁶⁶ [REDACTED] call note, [REDACTED], paragraph 7.

- (b) Mincoffs Solicitors told us that for commercial transactions, D&D is reliable for completing a range of searches in a short period of time and the D&D business contact is efficient and effective at dealing with all enquiries. Mincoffs Solicitors saw D&D's competitors as all very similar.³⁶⁷
- (c) Eversheds Sutherland look for search providers who have sufficient reputation in the market and their representative said 'I will only ever stay at the top with those who we consider to be market leaders.... or the longest established or just the ones we are used to or the ones we are set up with'. For Eversheds Sutherland, the options are TMG, SearchFlow (Landmark) and InfoTrack (ATI). Their representative would not choose D&D and 'have not considered them as a search provider', adding 'they have not come across my radar'.³⁶⁸

7.49 Taking this evidence in the round, we consider that there appears to be a difference between (on the one hand) search services for very large multi-unit transactions carried out by some of the largest law firms, and (on the other hand) the wider demand for residential or commercial PSRBs from other customers. Moreover, this top-end demand appears to be narrower than the categories of 'commercial', 'Top 100', or even 'commercial top 100'.

The Parties' presence by customer type and PSRB type

7.50 Table 7.4 sets out how the Parties' 2020 sales revenues were split between customer type and PSRB type.

Table 7.4: Parties' 2020 sales revenues by customer type and PSRB type

(%)

Customer type	D&D			TMG		
	Residential PSRBs	Commercial PSRBs	Total	Residential PSRBs	Commercial PSRBs	Total
Small	[X]	[X]	[X]	[X]	[X]	[X]
Medium	[X]	[X]	[X]	[X]	[X]	[X]
Top 100	[X]	[X]	[X]	[X]	[X]	[X]
Panel	[X]	[X]	[X]	[X]	[X]	[X]
Other	[X]	[X]	[X]	[X]	[X]	[X]
All customers	[X]	[X]	100	[X]	[X]	100

Source: D&D's response to CMA's s.109 Notice dated 23 December 2021, question 2. See also, TMG's response to CMA's s.109 Notice dated 23 December 2021, question 2.

7.51 Table 7.4 shows that the Top 100 law firm category accounted for a substantially larger share of TMG's business ([X]) than D&D's business

³⁶⁷ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

³⁶⁸ Eversheds Sutherland call note, 23 February 2022, paragraph 13.

([REDACTED]). We note that this was the case for the sale of both residential and commercial PSRBs. However, we also note the following:

- (a) The evidence does not support the Parties' submission that 'TMG's main business is the supply of official searches to large city law firms, focusing more on commercial property transactions.' In fact, TMG's business is not primarily focused on the Top 100 law firms (other customer types make up a [REDACTED] ([REDACTED]) of its business by revenue), nor on the sale of commercial searches (residential PSRBs account for [REDACTED] of its business by revenue).
- (b) TMG has a substantial presence serving small customers ([REDACTED] of its business by revenue) and medium customers ([REDACTED]).
- (c) D&D has a material presence in the sale of commercial PSRBs, accounting for [REDACTED] of its revenues.
- (a) Both Parties have a material presence in serving residential demand through Panel Managers (including a large proportion of TMG's business for 'other' customer types, consisting of referrals from the three estate agents which are TMG's former Shareholders).

7.52 Our current view is that this evidence is not consistent with there being very limited overlap between the Parties' customers.

7.53 The Parties did not comment directly on this evidence in their response to our working papers. However, they submitted that: 'While TMG owns CDS, which supplies RLAS and RDWS reports, including to residential properties, this is not the core focus of the group'.³⁶⁹ We note that TMG's presence in the supply of reports for residential properties is not limited to those supplied by CDS. Indeed, in 2021, tmConvey's residential revenues exceeded £[REDACTED] million, more than double its commercial revenues (£[REDACTED] million) and substantially more than CDS's residential revenues (£[REDACTED] million).³⁷⁰ TMG further submitted that of tmConvey's £[REDACTED] million residential revenues in 2021 £[REDACTED] million relate to sales to TMG's former shareholders, and £[REDACTED] million revenues relate to sales to Top 100 law firms.³⁷¹ However, we consider that, even excluding sales to these two customer groups, tmConvey's remaining residential revenues from sales to small and medium/large conveyancers and intermediaries, around £[REDACTED] million, are still significant.

³⁶⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1 paragraph 2.3.3.

³⁷⁰ TMG's response to CMA's s.109 Notice dated 23 December 2021, Annex TM001.

³⁷¹ TMG response to provisional findings put back request sent on 11 May 2022.

7.54 In addition, the Parties' submission that TMG is focused on official searches for commercial transactions, while D&D is focused on regulated searches, is not supported by the evidence. As set out in Table 7.5, each of the Parties' sales are split between RLAS and OLAS with a substantial proportion in each category. While for each Party the relative proportion of RLAS and OLAS varies by brand, each brand provides substantial volumes of both types of searches.

Table 7.5: Parties' proportion of RLAS and OLAS

			(%)
<i>D&D brand</i>	<i>Proportion of RLAS</i>	<i>Proportion of OLAS</i>	<i>Total</i>
PIE/PSG	[70-80]	[20-30]	100
GlobalX	[40-50]	[50-60]	100
Index Direct	[60-70]	[30-40]	100
<i>TMG brand</i>	<i>Proportion of RLAS</i>	<i>Proportion of OLAS</i>	<i>Total</i>
tmConvey	[40-50]	[50-60]	100
CDS	[70-80]	[20-30]	100

Source: D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Table 4; TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022 Table 3.

7.55 TMG submitted that the proportion of tmConvey's sales that are RLAS is only [REDACTED] excluding sales to former shareholders, and [REDACTED] when also excluding intermediaries.³⁷² However, we consider that this does not undermine the point that TMG (including both tmConvey and CDS) provides substantial volumes of RLAS.

7.56 In summary, the Parties' submissions as to the differences between their respective businesses are not supported by the evidence available to us. Both Parties predominantly provide residential PSRBs to small, medium, and large conveyancers and intermediaries, while earning the remainder of their PSRB revenues from the sale of commercial PSRBs to small, medium, and large conveyancers (and, to a lesser extent, intermediaries). The Parties have not presented evidence that, within either the residential or the commercial segment, their respective PSRB services differ from one another in their characteristics such that they would not be close substitutes. However, we recognise that D&D currently has a limited presence in serving the segment of the Top 100 law firms, which we consider further below.

Prospective expansion by D&D into serving large transactions

7.57 As discussed above, our customer engagement indicated that the property business of some Top 100 law firms is predominantly or exclusively focused

³⁷² TMG response to provisional findings put back request of 11 May 2022.

on large transactions, including multi-unit transactions or refinancing, which entail a large volume of searches.³⁷³

- 7.58 The evidence we have received indicates that D&D is not currently perceived as a particularly strong competitive option by this customer group. In particular:
- (a) Out of the TMG customers we spoke to in this category one was not aware of D&D;³⁷⁴ one did not consider D&D to be among the credible alternative search providers for its requirements;³⁷⁵ and one had used D&D in the past, but it was not happy with how its account had been handled and had stopped using D&D.³⁷⁶ Eversheds Sutherland explained that it perceives D&D as a residential search provider.³⁷⁷
 - (b) ATI told us that that the strongest competitors in the commercial search sector include TMG and Landmark, as they have built their reputations up over a long time and therefore law firms feel comfortable using them.
 - (c) As shown in Table 7.4 above, only a small proportion of D&D's revenues are from sales to Top 100 law firms ([REDACTED]%).
 - (d) A sales 'Training Manual' document for PIE's 'Brighter Law Solutions'³⁷⁸ dated December 2021 states that the [REDACTED].³⁷⁹ [REDACTED].³⁸⁰
- 7.59 We found a few internal documents that may suggest that some of D&D's brands may have expanded in the commercial segment and targeted customers with bigger spend.^{381,382,383} However, D&D provided alternative explanations for these documents.³⁸⁴
- 7.60 Considering this evidence in the round, we consider that D&D currently has a relatively limited presence in relation to the Top 100 law firms and serving large transactions. We have found only limited evidence suggesting that D&D may have expanded in this segment absent the Merger and we therefore do

³⁷³ We understand that while the customers in these transactions are typically corporate entities (including commercial firms and Housing Associations), the property itself may be either commercial or residential.

³⁷⁴ Devonshires call note, 25 February 2022, paragraph 11.

³⁷⁵ Eversheds Sutherland call note, 23 February 2022, paragraph 13.

³⁷⁶ [REDACTED] call note, [REDACTED], paragraph 4.

³⁷⁷ Eversheds Sutherland call note, 23 February 2022, paragraph 11.

³⁷⁸ The document explains that 'Brighter Law Solutions offer a suite of marketing products and services to help conveyancers maximize their business'. See also [Brighter Law | poweredbypie Group](#).

³⁷⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2726, page 6.

³⁸⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2467, page 40.

³⁸¹ D&D's response to the Phase 2 Opening Letter, Annex DD112, page 4.

³⁸² D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2726, page 37.

³⁸³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2467, page 40.

³⁸⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.4.3; Notes of a hearing with D&D held at the CMA, pages 55-59.

not consider that the Parties compete closely in this segment (or would compete more closely with each other in future). However, based on the revenues of ATI, D&D Direct, Landmark and TMG (see Appendix B, Table 9), we estimate that this segment (Top 100 law firms) accounts for only [10–20%] of the PSRB market (by revenue). Therefore, we do not consider that the fact that the Parties do not compete closely in this segment undermines our view that both Parties have a significant presence in the supply of PSRBs in the market generally, including to conveyancers ranging from small to large, and to Panel Managers, both for residential and commercial transactions (see paragraph 7.55).

Switching estimates

Parties' submissions

7.61 The Parties submitted³⁸⁵ that:

‘An analysis of the Parties’ documents that track their lost customers during the ordinary course of business shows that losses from each Party to the other are low. Specifically:

- only [10–20%] of PIE’s lost customers went to TMG/CDS;
- only [0–5%] – [10–20%] of tmConvey’s lost customers went to D&D; and
- only [5–10%] – [10–20%] of CDS’s lost customers went to D&D’.

7.62 The Parties claimed that this low degree of switching between the Parties ([0–5%] to [10–20%]) is very different from what would be expected were the market one with just four credible providers ([30–40%]). The Parties submitted that each Party’s strongest rival appears to be ATI and that important competition also comes from Landmark, the Index Indirect franchisees, and other smaller suppliers (which the Parties described as ‘regional experts’), all of which won significant numbers of customers from the Parties.³⁸⁶

7.63 In their response to our working papers, the Parties submitted that the switching rates presented in the customer survey, based on the Parties’ own internal documents, and in an analysis carried out by RBB using the Parties’ sales data are at most 24% and in most cases below 17%, implying that the Merger is not a ‘4 to 3’, with the switching rates being more in line with a ‘7-6’

³⁸⁵ D&D response to the CMA’s s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2866.

³⁸⁶ D&D response to the CMA’s s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2866.

and that the Parties are not close competitors.³⁸⁷ The Parties submitted that three sets of estimates from three different sources (namely the customer survey responses, the Parties' internal documents, and RBB's estimates) covering in total 14 different data points, illustrate that the Merger is not a '4-3' and the Parties are not particularly close competitors.³⁸⁸

Our assessment

7.64 We have considered the same three sets of estimates of the switching rates between the Parties and between the Parties and their competitors:³⁸⁹

- (a) data used by each of D&D and TMG in the ordinary course of business (see paragraph 7.61 above), but which only include customers for which the Parties could identify the competitor the customers switched to (covering 2017 to 2021);
- (b) customer survey data (covering switching since January 2020); and
- (c) RBB's estimates based on RBB's analysis of the Parties' sales volume data (covering the second half of 2021).³⁹⁰

7.65 We note that the estimates based on the customer survey data and RBB's estimates are subject to important limitations, and we have therefore not relied upon them in our assessment. In particular:

- (a) The estimates based on the customer survey data are based on a very low number of respondents – 21 for D&D and five for TMG (see Appendix D). We consider that any inferences about the Parties' customers' switching patterns from this data would be unreliable.³⁹¹
- (b) RBB's estimates only cover the second half of 2021 – that is, mainly after D&D acquired TMG in July 2021 (see Chapter 2) – and are based on a low number of customer losses – between [X] and [X] (see Appendix D). Moreover, the estimates are not based on a contemporaneous record of customers lost and won by each Party but instead on a comparison of each Party's customers' sales data (see Appendix D).

³⁸⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.7.

³⁸⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 2.8-2.9

³⁸⁹ We have considered survey respondents' feedback on good and best alternatives to D&D and TMG separately in paragraphs 7.88 to 7.94 below.

³⁹⁰ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2865. See also, TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Annex TM2745. See also D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, question 12, Tables 3-6.

³⁹¹ See Appendix E, paragraph 12.

- 7.66 The data used by D&D and TMG in the ordinary course of business is also subject to limitations. In particular:
- (a) The customer losses recorded by D&D, as noted in Appendix D, vary widely by year. Moreover, the estimates include only customers for which D&D was able to identify the competitor the customers switched to (see Appendix D) and exclude all other customers who switched.
 - (b) In relation to TMG's data, TMG submitted that, while its board packs (which record customer losses) are prepared with the intention of capturing all lost customers, recording lost customers is not always straightforward as clients often do not notify TMG that they are switching, and TMG only observes they have done so once their purchases decline.³⁹² Moreover, the estimates include only customers for which TMG was able to identify the competitor the customers switched to (see Appendix D) and exclude all other customers who switched.
- 7.67 We note that some features of the market, such as customers' multi-sourcing and the fact that customers generally do not give notice before switching suppliers,³⁹³ make tracking switching in the PSRB market difficult.
- 7.68 Despite these limitations the Parties' datasets include many more lost customers than the customer survey switching data and RBB's estimates, cover a longer period of time (from 2017 to 2021), and are used by the Parties in the ordinary course of business. Therefore, we consider the Parties' switching data to be the best switching evidence available and consider it appropriate to focus on it as an indication of closeness of competition between the Parties and with other competitors.
- 7.69 Table 7.6 and Table 7.7 below include the results of the analysis of D&D's and TMG's switching data. Detailed tables are included in Appendix D.

³⁹² TMG's response to CMA's s.109 Notice (RFI6) issued on 24 March 2022, paragraph 1.1.

³⁹³ D&D told us that 'Customers, when they switch away, do not phone you up to tell you that is what they are doing... Because of the simplicity of switching, they do not have to close down any account or change anything. Sometimes they just go' – see Notes of a hearing with D&D held at the CMA, page 39.

Table 7.6: Switching estimates by number of customers lost – summary table

(%)

D&D's data (2017-2021)

Customers switching from...	Proportion of customers switching to...						Total
	TMG	D&D	ATI	Landmark	Other	Index Indirect franchisees	
PIE/PSG	[10-20]	[3]	[40-50]	[10-20]	[10-20]	[10-20]	100

TMG's data (2017-2021)

Customers switching from...	Proportion of customers switching to...						Total
	TMG	D&D	ATI	Landmark	Other	Index Indirect franchisees	
tmConvey	[3]	[10-20]	[50-60]	[20-30]	[5-10]	[3]	100
CDS	[3]	[10-20]	[70-80]	[0-5]	[5-10]	[3]	100
TMG (total)	[3]	[10-20]	[50-60]	[10-20]	[5-10]	[3]	100

Source: D&D response to RFI3 of 15 February 2022, Annex DD2865, TMG response to RFI3 of 15 February 2022, Annex TM2745.

Note: See Appendix D for further information.

Table 7.7: Switching estimates by revenues lost – summary table

(%)

D&D's data (2017-2021)

Customers switching from...	Proportion of revenues switching to...						Total
	TMG	D&D	ATI	Landmark	Other	Index Indirect franchisees	
PIE/PSG	[20-30]	[3]	[40-50]	[10-20]	[5-10]	[10-20]	100

TMG's data (2017-2021)

Customers switching from...	Proportion of revenues switching to...						Total
	TMG	D&D	ATI	Landmark	Other	Index Indirect franchisees	
tmConvey	[3]	[10-20]	[50-60]	[10-20]	[10-20]	[3]	100
CDS	[3]	[20-30]	[60-70]	[5-10]	[0-5]	[3]	100
TMG (total)	[3]	[10-20]	[50-60]	[10-20]	[10-20]	[3]	100

Source: Annex DD2871 of D&D's response to RFI4; Annex TM2749 of TMG's response to RFI4.

Note: See Appendix D for further information.

7.70 We consider that the switching estimates reported in the Tables above suggest material switching between the Parties, consistent with them being close competitors with one another. This is especially the case when customer switching is weighted by revenues, which we consider to be a better indicator of the competitive constraint the Parties provide on each other. This is because the loss of revenues is likely to reflect the loss in profits that would occur if customers switch to the other Party in response to a price increase or deterioration in quality. We consider that the estimates indicate that:

- (a) ATI won the highest share of revenues (and customers) lost by each Party between 2017 and 2021.
- (b) TMG won the second highest share of revenues lost by D&D and the third highest share of customers lost by D&D. D&D won the second highest

share of revenues lost by TMG and the second highest share of customers lost by TMG.

- (c) Landmark won the third highest share of revenues lost by each Party (although it won almost as much of TMG's lost revenue as D&D) and the second highest share of customers lost by each Party.
- (d) Other, smaller competitors also won a material proportion of revenues (and customers) lost by each Party, but lower than the proportion won by each of ATI, the other Party, and Landmark.
- (e) Index Indirect franchisees also won a material proportion of revenues (and customers) lost by D&D (we note D&D only acquired Index in September 2020), but lower than the proportion won by ATI and TMG (and similar to the proportion won by Landmark).

7.71 As the Parties have submitted, in recent years ATI has accounted for a significant proportion of customer switching from each of the Parties. ATI entered the UK market in 2015³⁹⁴ and has grown rapidly. The Parties told us that its revenues grew 60% year-on-year from 2018 to 2020.³⁹⁵ ATI told us that it entered the UK market with an innovative offering and this was the reason for its rapid growth but that its competitors had since developed similar offerings.³⁹⁶ ATI also noted that while it is still expanding rapidly, this growth has slowed a fraction recently as it moves towards targeting larger firms who are slower to change suppliers.³⁹⁷

7.72 We have considered whether the rate of switching between D&D and TMG in recent years is an indicator of their closeness of competition. In this context, the fact that ATI has accounted for a substantial share of switching away from D&D and TMG reflects ATI's recent market growth, at the expense of the other incumbents, and may have led to a higher than usual overall rate of switching away from each of the Parties.³⁹⁸ In our view, this makes it difficult to interpret the switching rates between D&D and TMG (expressed as a percentage of total switching) cited by the Parties as being a precise indicator of their closeness of competition in future periods.

7.73 The Parties have commented that '[the CMA] asserts that switching to ATI should be discounted due to ATI's recent market growth', and that '...the basis for the assertion that ATI is expected to stop growing and winning business

³⁹⁴ ATI call note, 16 February 2022, paragraph 1.

³⁹⁵ [Parties' response to the Issues Statement](#), paragraph 3.8.2.

³⁹⁶ ATI call note, 16 February 2022, paragraph 4.

³⁹⁷ ATI call note, 16 February 2022, paragraph 21.

³⁹⁸ We recognise that ATI is an important competitor, and this is reflected in its market share (see paragraphs 7.9 to 7.25 above) and in the following section on remaining competitive constraints.

from the Parties in the future is unclear'.³⁹⁹ We have not asserted either of these points. We recognise that ATI is an important competitor and expect it will continue to seek to develop and grow its business. However, there is some evidence that its growth is slowing and there is limited evidence to suggest that it will continue to increase its market share in future years. In any event, we consider that the Parties' data suggests that switching between TMG and D&D would still be material in the absence of the Merger under a wide range of assumptions about ATI's future performance.

- 7.74 In relation to the Parties' submission that a range of estimates indicate that the Parties are not particularly close competitors (see paragraphs 7.34 to 7.38), we have focused our analysis on the switching data based on the Parties' own data, and we consider that any inference made from the remaining estimates would not be reliable for the reasons set out in paragraphs 7.39 to 7.60 above. The Parties' own data indicates that each Party competes with ATI, the other Party and Landmark. The data also indicates that each Party competes with other, smaller competitors, but these smaller competitors attract fewer switching customers (and less revenue) than ATI, the other Party and Landmark. We therefore do not agree with the Parties' submission that the rates of switching show them to be relatively distant competitors. As set out above (at paragraph 7.31) we are not seeking to apply any structural presumption and do not need to show that the switching between the Parties exceeds any particular threshold.
- 7.75 In summary, we note that the switching data available to us has some limitations and should be interpreted with caution. However, in our view the data is consistent with the Parties being close competitors and does not support the Parties' suggestion⁴⁰⁰ that they are not sufficiently close competitors for the elimination of competition between them not to raise competition concerns. The fact that ATI appears to have acquired a disproportionate share of customers who have switched from the Parties in recent years is not evidence that the Parties are not also close competitors to one another. The impact of the constraint offered by ATI on the assessment of the Merger is considered in detail later in this chapter (see paragraphs 7.109 to 7.113).

³⁹⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.10.

⁴⁰⁰ [Parties' response to the Issues Statement](#), paragraph 2.3.1.

Multi-sourcing as evidence of closeness of competition

- 7.76 During our phase 2 inquiry, the Parties submitted an updated analysis by RBB relating to multi-sourcing.⁴⁰¹
- 7.77 RBB calculated that in 2019-2021 around [X]% of D&D's sales were to customers who were also served by TMG, and that [X]% of TMG's sales were to customers who were also served by D&D.
- 7.78 RBB considered that this was a relatively small overlap in terms of common customer volumes, given the high degree of multi-sourcing. RBB explained this by noting that if all customers were purchasing equally from three suppliers, and choosing randomly between suppliers, then with four suppliers in the market one would expect the rate of overlap between any two suppliers to be 67%,⁴⁰² which is much higher than the 30% observed for the Parties. RBB noted that, under these assumptions, a comparable rate of overlap to that observed would require there to be seven suppliers. RBB inferred that the low level of common customers suggested either that the Parties were relatively distant competitors and/or that there was a broad range of competitive alternative suppliers.^{403,404}
- 7.79 RBB's estimated [X]% overlap between the Parties appears broadly consistent with the customer survey results.⁴⁰⁵ However, we note that RBB's assumption that all customers triple-source (ie purchase equally from three suppliers) is challenged by robust evidence from our customer survey, which indicates that over a two-year period 35% of respondents used only a single supplier, and the average number used over the two-year period was well below three.⁴⁰⁶ Also, we note that, among respondents to our customer survey, the number of the Parties' common customers was material but somewhat less than the number of common customers between each Party and ATI, and between each Party and Landmark.⁴⁰⁷

⁴⁰¹ RBB Report of 29 October 2021, titled 'Evidence on market size and Multi-sourcing – update with 2021 data' dated 24 February 2022, Annex DD2869 (**RBB Report**).

⁴⁰² If there are four firms in the market, A, B, C and D, a customer purchasing from supplier A could choose the combinations ABC, ABD or ACD. Of these, B appears alongside A in two out of the three possible combinations (67%), and similarly for other combinations.

⁴⁰³ RBB Report, section 3.2.

⁴⁰⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.10.3.

⁴⁰⁵ Among the respondents, there were 24 common customers between the Parties, compared with 89 total D&D customers and 87 total TMG customers.

⁴⁰⁶ The average number of suppliers used was 2.2 if all D&D brands (including Index and PSG) are counted as one supplier. This increases to 2.4 if all Index and PSG volume is for franchisees (rather than direct sales by D&D under the Index and PSG brands) and Index and PSG franchisees are counted separately from D&D.

⁴⁰⁷ There were 24 common customers between the Parties. This compared to 29 between D&D and ATI and 27 between TMG and ATI; and 37 between D&D and Landmark and 34 between TMG and Landmark.

7.80 Overall, we do not consider we can place weight on RBB's conclusion based on the overlap analysis. This is because the inferences made about closeness of competition depended on specific assumptions, for example that customers purchased equally from a given number of alternative suppliers and were triple-sourcing, which are not supported by evidence.⁴⁰⁸ Furthermore, we do not consider that the extent of overlap in customer purchases between two suppliers is necessarily indicative of the closeness of competition between them. As explained in Chapter 6, customers multi-source for a variety of reasons.

Evidence from internal documents

7.81 We have considered whether the Parties' internal documents provide evidence as to whether the Parties are close competitors.

D&D internal documents

7.82 We have found D&D documents indicating that D&D considers TMG as one of its key competitors. For example:

- (a) A June 2021 D&D strategy slide pack⁴⁰⁹ identifies competitors in 'Real Estate UK Residential' as InfoTrack, SearchFlow and TMG (slide 42).
- (b) Another June 2021 D&D strategy slide pack⁴¹⁰ compares D&D's product features with those of InfoTrack, SearchFlow and TMG and notes that [REDACTED] (slide 5).
- (c) A January 2021 D&D slide pack asks, 'Out of all our competitors, who are the biggest threat to us?'. TMG is listed as one of the biggest threats to PIE, PSG and D&D, as well as [REDACTED] and [REDACTED].⁴¹¹

⁴⁰⁸ In relation to multi-sourcing, RBB's evidence (RBB Report, Table 3), from which it inferred triple-sourcing, depends on the assumption that the ratio of PSRBs to property transactions (multiplier) for 2019-2021 was 1.7, whereas our estimated market size implies a smaller multiplier of 1.09. As noted above, our survey indicates that on average customers were purchasing from fewer than three suppliers.

⁴⁰⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See questions 10, 11 and 13, Annex DD2284.

⁴¹⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD2303.

⁴¹¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide 9, Annex DD1911. In the 12 April 2022 D&D Hearing, D&D noted that this presentation, judging by the style and format, was produced prior to the acquisition of PIE by D&D (see page 54 of the transcript). However, we note that slide 12 shows PIE/PSG as being part of the D&D group. We also note that an email shows that the slide pack was created by [REDACTED], Internal Account Manager at D&D, and emailed to other D&D staff on 11 January 2021 (Annex 1909), which is after D&D's acquisition of PIE in September 2020.

- (d) An August 2020 presentation prepared for the D&D board discussing the potential acquisition of PIE, which includes a competitive assessment, and lists TMG as one of the four PIE competitors considered⁴¹²
- (e) D&D's document '[REDACTED]' dated April 2021 explains that the largest search platforms include D&D, TMG, Landmark, and ATI.⁴¹³
- (f) D&D's document 'Acquisition Review' dated February 2021 lists D&D, [REDACTED] as 'Key Players' among search platforms.⁴¹⁴

TMG internal documents

7.83 We have also found TMG documents indicating that TMG considers D&D as one of its key competitors. For example:

- (a) A CDS (owned by TMG) internal document from May 2021 identifies D&D [REDACTED] a list of competitors, which also includes InfoTrack (ATI), SearchFlow (Landmark) and 'Small independent search companies'.⁴¹⁵
- (b) A TMG document which provides a briefing on D&D as background for their potential acquisition of TMG states that '[REDACTED]'. The document also notes that [REDACTED].⁴¹⁶
- (c) A December 2019 TMG presentation prepared to give an assessment of the competitive landscape for a 'managers meeting' lists PIE/PSG as one of four competitors.⁴¹⁷
- (d) Slides from a November 2019 TMG sales meeting asks the question 'What are the key messages when selling against our competitors?' and lists SearchFlow, Search Acumen, InfoTrack and PIE/PSG as competitors.⁴¹⁸

⁴¹² Response to Question 10 of s.109 Notice dated 23 December 2021, Annex DD116, slide 28. Other competitors listed include SearchFlow (Landmark), Infotrack (ATI), and Search Acumen (ATI).

⁴¹³ Response to Enquiry Letter, Annex 23.07 pages 4 and 10.

⁴¹⁴ Response to Enquiry Letter, Annex 23.05, page 4.

⁴¹⁵ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex TM1708, slide 40.

⁴¹⁶ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 pages 1-2, Annex TM015. TMG noted during that this was a document for former shareholders and that the documents is 'very specifically about the vertical market rather than anything else' and that 'in other documents there are plenty of representations to other [major horizontal competitors]' (TM Group Hearing Transcript, pages 46-47).

⁴¹⁷ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide Annex TM526. Prepared by Bobby Brittain and sent to Kate Barlow. The other competitors being SearchFlow, Infotrack and Search Acumen.

⁴¹⁸ TMG response to CMA's s.109 Notice dated 23 December 2021, internal document entitled 'Sales Meeting' dated 7 November 2019, slide 5. Annex TM022.

(e) TMG's document '2020 and beyond' dated June 2018 lists D&D, ATI, and Landmark as TMG's 'Core Market Competitors'.⁴¹⁹

7.84 Other internal TMG communications also recognise D&D and its franchisees as a competitor:

(a) A TMG SWOT analysis notes, [REDACTED]: '[REDACTED]'.⁴²⁰

(b) A May 2021 TMG email identifies twelve competitor brands, of which four are D&D brands (PIE/PSG, HomeInfoUK, Brighter Law, and Index).⁴²¹

(c) A TMG 'board report' dated March 2020 notes that 'Index are now selling themselves as 'the PSG of 10 years ago' and winning on personal service'.⁴²²

7.85 A number of email exchanges internally within TMG and between TMG and its customers refer to D&D as a competitor, for example:⁴²³

(a) [REDACTED]^{424,425,426}

(b) [REDACTED]⁴²⁷

(c) [REDACTED]⁴²⁸

7.86 Therefore, evidence from a internal documents from different parts of both businesses shows that the Parties see each other as close competitors.

⁴¹⁹ Response to the Enquiry Letter, Annex 20.07, page 19

⁴²⁰ Response to the Enquiry Letter, Annex 20.8.

⁴²¹ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex TM1524. Other competitors included are SearchFlow (owned by Landmark), Search Acumen (owned by ATI), Infotrack (owned by ATI), STL (owned by ATI), Searches UK, ETSOS (owned by Landmark) and Geodesys.

⁴²² D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

⁴²³ See also [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022.

⁴²⁴ [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

⁴²⁵ A Chancel search is carried out by a solicitor during a domestic conveyance to establish whether or not the property a buyer is proposing to purchase might be affected by a potential "Chancel Repair" obligation to the local Parish Church.

⁴²⁶ [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

⁴²⁷ [REDACTED].

⁴²⁸ TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

Evidence from customers and competitors

Customer feedback

Customer calls

- 7.87 We had calls with several customers of the Parties. In relation to whether these customers would see the Parties as alternatives to each other:
- (a) LMS told us that before the Merger it would have considered D&D as an alternative to TMG.⁴²⁹
 - (b) [REDACTED] said that if [REDACTED] were no longer available or satisfactory, it would consider [REDACTED] or a panel arrangement.⁴³⁰
 - (c) The large law firms Eversheds Sutherland and Devonshires did not identify D&D as a possible alternative to TMG, reflecting D&D's limited presence in serving Top 100 Law Firms engaged in large transactions.⁴³¹

Customer survey responses

- 7.88 In our customer survey, the Parties' customers were asked about good and best alternatives for the supply of PSRBs. Out of the 83 D&D customer respondents, 37 identified one or more suppliers who would be a good alternative to D&D and 47 out of the 87 TMG customer respondents identified one or more suppliers who would be a good alternative to TMG. While the bases for these questions are smaller than the 100 that we generally aim at, we assess the responses as likely to be at least indicative of the views of the respective customer bases.⁴³²
- 7.89 Figure 7.1 and Figure 7.2 below illustrate how many times each supplier was identified as the best alternative to, or a good alternative to, D&D by D&D customers. It is not possible from the survey responses to ascertain whether references to Index and PSG refer to Index Indirect and PSG Indirect franchisees or to Index Direct and PSG Direct franchisees.⁴³³ On this basis, we have presented the survey responses in two separate charts; Figure 7.1 assumes that Index and PSG refer to Index Indirect and PSG Indirect franchisees and so shows them separately, while Figure 7.2 assumes Index

⁴²⁹ [REDACTED] call note, [REDACTED], paragraph 22.

⁴³⁰ [REDACTED] call note, [REDACTED], paragraph 7.

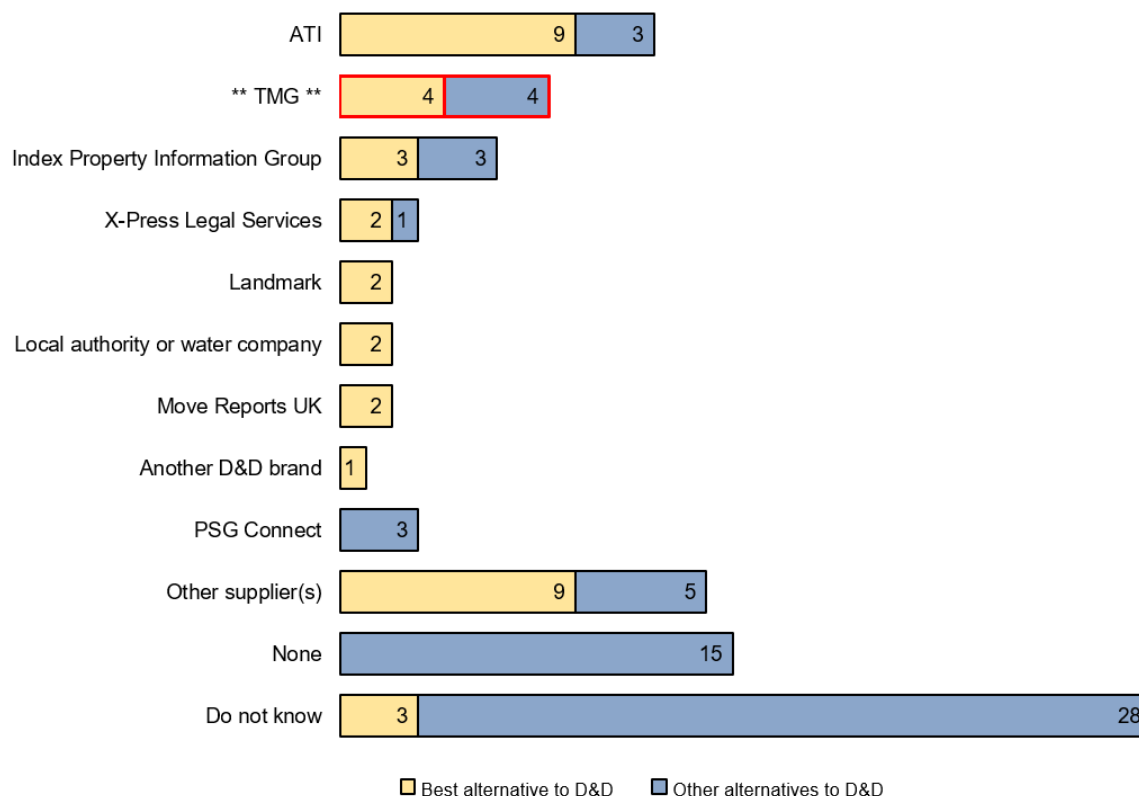
⁴³¹ Eversheds Sutherland call note, 23 February 2022, paragraph 13. See also, Devonshires call note, 25 February 2022, paragraph 11.

⁴³² See Appendix E, paragraph 11

⁴³³ We did not capture this in the customer survey as we considered that respondents would, most likely, think of alternatives in terms of the brands available, rather than whether they are owned by D&D or a third party.

and PSG refer to Index Direct and PSG Direct franchisees and so shows them together with D&D brands. In reality, the balance of Direct and Indirect franchisees could be anything in between the two positions.

Figure 7.1: Best and other good alternative suppliers to D&D (with Index and PSG shown separately and TMG highlighted)

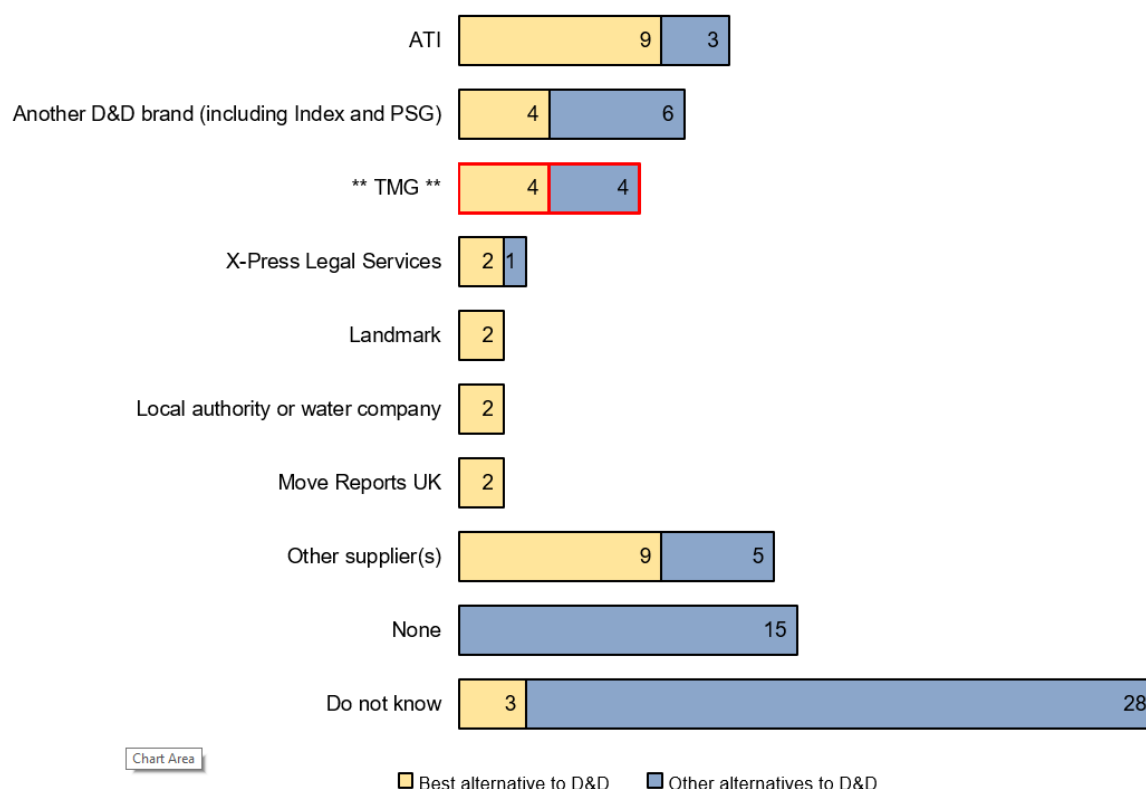


Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and The Search Bureau.
2. Ten mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

Figure 7.2: Best and other good alternative suppliers to D&D (with Index and PSG shown as part of D&D and TMG highlighted)



Source: CMA analysis of customer survey responses.

Notes:

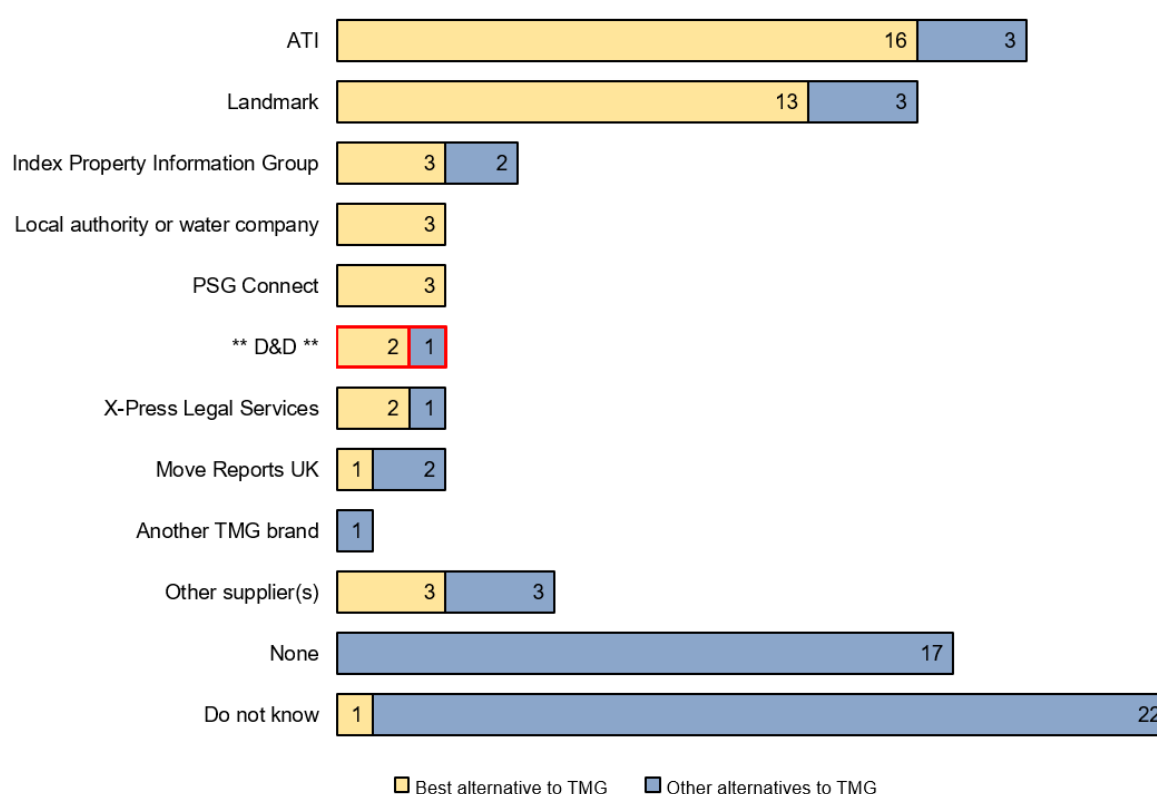
1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and The Search Bureau.
2. Ten mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

7.90 As illustrated by Figure 7.1 and Figure 7.2 above, the most frequent response to being asked about good alternatives to D&D was either 'Do not know' or 'None'. Aside from these answers, ATI was the competitor most often identified as a good/best alternative to D&D. TMG ranks second in the list of competitors most often identified as good/best alternative to D&D in Figure 7.1 and third in Figure 7.2. The second competitor identified in Figure 7.2 is D&D itself (together with the PSG Index franchisees).

7.91 We note that for the purpose of our analysis, intra-company competition (ie competition between different D&D brands) is not relevant, as we are examining the competition between the Parties and (in the next section) the competitive constraints exercised by the Parties' independent competitors. The fact that other D&D brands are identified as good alternatives to D&D in Figure 7.1 and especially in Figure 7.2 is therefore not relevant to our analysis. The relative position of the D&D Indirect franchisees is relevant but, as noted above, we are not able to determine from the survey whether or to what extent references to Index and PSG are references to Index Indirect and PSG Indirect franchisees or Index Direct and PSG Direct franchisees.

- 7.92 As will be discussed below, in paragraphs 7.168 to 7.207, we consider that Index Indirect and PSG Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. On this basis, even if the survey respondents were referring to Index Indirect and PSG Indirect franchisees as their good/best alternative, these would not be not fully independent alternatives for the purposes of our assessment.
- 7.93 Other suppliers, including X-Press Legal, Landmark, Move Reports UK, a local authority and a water company, were also identified as alternatives to D&D by some customers.
- 7.94 Figure 7.3 and Figure 7.4 below illustrate how many times each supplier was identified as the best alternative to, or a good alternative to, TMG by TMG customers. Figure 7.3 assumes that Index and PSG refer to Index Indirect and PSG Indirect franchisees, while Figure 7.4 assumes Index and PSG refer to Index Direct and PSG Direct franchisees.

Figure 7.3: Best and other good alternative suppliers to TMG (with Index and PSG shown separately and D&D highlighted)

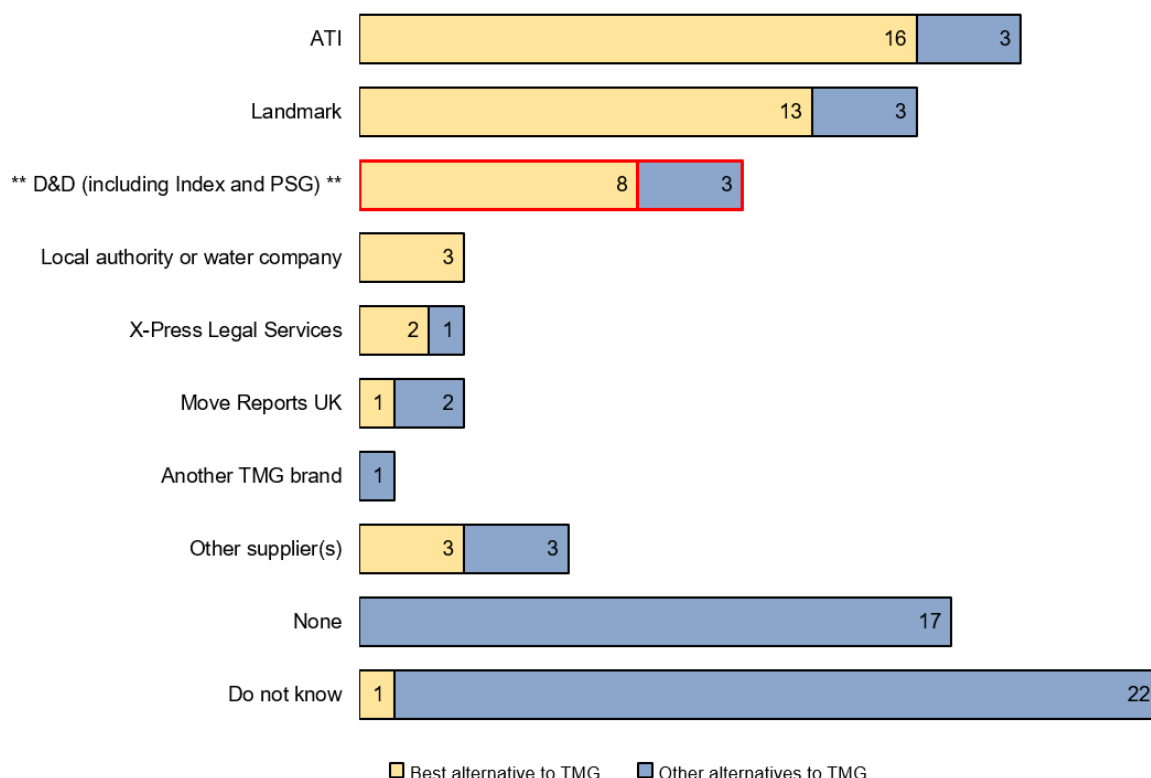


Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and ISA Yorkshire.
2. Two mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

Figure 7.4: Best and other good alternative suppliers to TMG (with Index and PSG shown as part of D&D and highlighted)



Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and ISA Yorkshire.
2. Two mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

7.95 As illustrated by Figure 7.3 and Figure 7.4 above, the most frequent response to being asked about good alternatives to TMG was either 'Do not know' or 'None'. Aside from these answers, ATI was the competitor most often identified as a good/best alternative to TMG, followed by Landmark.

7.96 As discussed in paragraph 7.89 above, we cannot determine whether the mentions of Index and PSG as alternatives to TMG refer to Index Indirect and PSG Indirect franchisees or Index Direct and PSG Direct franchisees. If the former, then D&D is mentioned infrequently. If the latter, then D&D is the third most frequently identified. Since we do not know, we cannot draw any conclusions about whether D&D is considered as a significant alternative by TMG's customers from this data.

7.97 Other providers, including a local authority or water company, X-Press Legal, Move Reports UK and other suppliers, were also identified as alternatives to TMG by some customers.

7.98 We consider that these results suggest that ATI is the competitor most often considered as an alternative supplier by both D&D's and TMG's customers. This is consistent with the switching evidence presented above (see paragraphs 7.64 to 7.75) The results also suggest that TMG is the second most common competitor considered as an alternative by D&D's customers, and that Landmark is the second most common competitor considered by TMG's customers. Finally, the results suggest that smaller suppliers are also considered as a valid alternative by some customers of both Parties.

Competitor feedback

7.99 We asked the Parties' large competitors who they consider to be the closest competitors of each Party.

7.100 [X] submitted that it considers that:⁴³⁴

- (a) D&D's closest competitors include TMG (especially CDS), [X] and, to a lesser extent, Legal Bricks and X-Press Legal; and
- (b) TMG's closest competitors include D&D (especially for CDS), [X] (especially for tmConvey) and, to a lesser extent (and for CDS only), X-Press Legal and Legal Bricks.

7.101 [X]:⁴³⁵

- (a) [X]; and
- (b) [X].

7.102 We asked smaller competitors via a questionnaire who they considered to be the closest competitors for each Party (see Appendix C, paragraphs 2 to 4).

- (a) The most frequently mentioned close competitors to D&D included ATI, TMG and Landmark. Competitors mentioned less frequently included X-Press Legal and Searches UK, amongst others.
- (b) Similarly, the most common close competitors for TMG included ATI, D&D and Landmark. Less frequently mentioned competitors included X-Press Legal and Searches UK, amongst others.

⁴³⁴ Competitor response to the phase 2 competitor questionnaire, questions 9-10.

⁴³⁵ [X].

Our current view on closeness of competition

7.103 Our Merger Assessment Guidelines make clear that the merger firms need not be each other's closest competitors for unilateral effects to arise. 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.⁴³⁶

7.104 Having taken into account the evidence set out above in the round, we consider that the Parties are close competitors. In particular, we note that:

- (a) Both Parties have a significant presence in the supply of PSRBs to conveyancers ranging from small to large, and to Panel Managers, both for residential and commercial transactions, albeit that TMG is stronger than D&D in the supply of PSRB services to support large transactions led by the Top 100 law firms.
- (b) The available evidence on customer switching between the Parties, which we interpret with caution, supports the view that the Parties are close competitors. Each of the Parties appears to have won a material proportion of the revenues (and customers) lost by the other.
- (c) It is clear from the Parties' internal documents that each Party sees the other as a key competitor. These internal documents show that the Parties monitor each other and recognise one another as important competitors, and this is also evident from their exchanges with customers.
- (d) Our engagement with customers through calls and the customer survey suggests that a material proportion of D&D's customers see TMG as an alternative to D&D. We cannot determine from the customer survey results whether a material proportion of TMG's customers see D&D as an alternative to TMG.
- (e) Competitors consider that D&D and TMG are among each other's closest competitors.

Remaining competitive constraints

7.105 In this section we consider the remaining competitive constraints on the Merged Entity. Our Merger Assessment Guidelines state that the concern under a horizontal unilateral effects theory of harm relates to the elimination of a competitive constraint by removing an alternative that customers could

⁴³⁶ MAGs, paragraph 4.8.

switch to. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the Merged Entity post-merger. 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.⁴³⁷

7.106 The Parties have submitted that:

'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'.⁴³⁸

7.107 In the following, we consider:

- (a) the constraints on the Merged Entity from the other two large suppliers, ATI and Landmark;
- (b) the constraints on the Merged Entity by smaller suppliers;
- (c) whether the Merged Entity will face a competitive constraint from D&D's franchisees; and
- (d) whether intermediaries exert competitive constraint on the Merged Entity to offset the loss of competition.

7.108 When considering these constraints, we have taken into account, together with the rest of the evidence, the Merged Entity's and its competitors' market positions as described by the shares of supply estimates in paragraphs 7.9 to 7.25 above.

Large PSRB suppliers (ATI and Landmark)

7.109 The Parties compete with two other large PSRB suppliers, ATI and Landmark. The Parties, ATI and Landmark all have a national offering, multiple brands, relatively similar shares of supply ranging between [10–20%] or [10–20%]

⁴³⁷ MAGs, paragraph 4.3.

⁴³⁸ Parties' response to the Issues Statement, paragraph 2.1.

(depending on whether D&D Indirect's share is attributed to D&D)⁴³⁹ and [20–30%], substantial shares in both the residential and commercial segments (see Chapter 6), and all serve all customer groups to some extent (see Chapter 6).

7.110 As explained in Chapter 6, these suppliers also integrate their PSRB ordering platforms with ancillary services used by conveyancers and with platforms provided by a number of case management software suppliers, and increasingly they themselves offer these services to conveyancers. D&D, ATI and Landmark are also all vertically integrated with environmental search report providers (see Tables 7.3 and 7.4).

7.111 As set out in paragraphs 7.9 to 7.25 above, ATI is a relatively recent entrant to the market and has gained significant market share over the past few years. Landmark is a well-established provider, although it has lost market share to some extent in recent years.

7.112 The Parties submitted that they consider ATI and Landmark as credible competitors, with ATI being a 'particularly formidable competitor'.⁴⁴⁰

7.113 In assessing the strength of competitive constraint from these suppliers we have considered:

- (a) the market shares of ATI and Landmark;
- (b) the views of ATI and Landmark;
- (c) switching estimates between the Parties and these suppliers;
- (d) discussion of these suppliers in the Parties' internal documents; and
- (e) customer views.

Market shares of ATI and Landmark

7.114 As shown in Table 7.1 and Table 7.2, we estimate that ATI's and Landmark's shares in 2021 were around [20–30%] and [10–20%], respectively. We also estimate that ATI's share increased significantly between 2018 and 2021.

⁴³⁹ See paragraph 7.25(b) above.

⁴⁴⁰ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1 paragraph 5.1.

Views of ATI and Landmark

- 7.115 ATI told us that it plans to continue to invest in its technology and service over the coming years. ATI said that while its UK business was still expanding rapidly, growth had slowed a fraction as it moved towards larger firms who are slower to change suppliers.⁴⁴¹
- 7.116 ATI rated TMG as [X] out of 5 on closeness of competition to ATI,⁴⁴² noting that it was 'No. 1 / No. 2 in market'. It gave SearchFlow (owned by Landmark) the same rating for the same reason. However, it rated CDS (owned by TMG) and D&D brands (Index, PSG, PIE) as [X] out of 5 on closeness of competition, noting that each of these 'Produces their own Regulated Property Search ("RLAS") [...]. Large number of smaller conveyancing firms. Very strong local presence due to franchise model'.⁴⁴³
- 7.117 [X] described [X]. Landmark identified TMG, ATI, and D&D as 1 out of 5 for closeness of competition, noting for each of them that this was due to their 'similar offering and target customers' and their high market share.⁴⁴⁴
- 7.118 Both ATI and Landmark said they considered competitor prices alongside other factors, when setting their own prices for search reports and bundles.⁴⁴⁵ Landmark commented that 'Normally competitor pricing is unknown and can only be ascertained indirectly from customer and prospect conversations. If a competitor price rise were to occur, we would observe the willingness of their customers to accept the price increase. Additionally, we monitor ATI's, TMG's, and D&D's reactions to any one price move (if known)'.
- 7.119 [X].⁴⁴⁶ [X] expect that the Merger will reduce competition in the market.⁴⁴⁷

Switching estimates

- 7.120 As noted earlier, the switching estimates based on the Parties' internal records indicate that ATI won the highest share of revenues (and customers) lost by each Party in the last few years, and that Landmark also attracted a material share of customer switching (see paragraphs 7.66 to 7.70 above).

⁴⁴¹ ATI call note, 16 February 2022, paragraph 21.

⁴⁴² Where 1 = 'closest competitor' and 5 = 'remote competitor'.

⁴⁴³ ATI response to competitor questionnaire, question 7.

⁴⁴⁴ Landmark response to competitor questionnaire, questions 6 and 7.

⁴⁴⁵ ATI response to competitor questionnaire, question 10(a). Landmark response to competitor questionnaire question 11(a).

⁴⁴⁶ [X].

⁴⁴⁷ Competitor response to the phase 2 competitor questionnaire, question 12.

Discussion of ATI and Landmark in Parties' internal documents

7.121 As set out in paragraphs 7.81 to 7.85 above, each Party's internal documents identify ATI and Landmark (and/or their brands) among their key competitors (together with the other Party).

Customer views of ATI and Landmark

7.122 [X] said it had switched from [X] to [X] because of poor service, but also that it would consider TMG, SearchFlow and InfoTrack as options.⁴⁴⁸

7.123 [X] said that its current suppliers are TMG and Search Acumen (owned by ATI) and that while SearchFlow provides equivalent services to TMG and Search Acumen, [X] is currently happy with the service it receives and is therefore not looking to add another provider.⁴⁴⁹

7.124 Hugh James told us it had recently begun using InfoTrack.⁴⁵⁰ It said that CDS (owned by TMG) is a conventional search provider, whereas InfoTrack provides a more innovative technology-focused offering.⁴⁵¹ [X].⁴⁵² InfoTrack also provides a reporting system which gives an overview of items which require manual review as well as other useful services. These additional benefits come at little extra cost in comparison to using other search providers but provide an incentive for Hugh James to use InfoTrack as much as possible.⁴⁵³

7.125 Mincoffs Solicitors told us that it found InfoTrack especially useful for complex transactions (eg those including additional small parcels of land) for which often additional queries are required.⁴⁵⁴ Moreover, it views InfoTrack to have a good onboarding system that integrates with theirs for anti-money-laundering checks.⁴⁵⁵

7.126 Simply Conveyancing considered OneSearch Direct but not InfoTrack in its latest review of search providers.⁴⁵⁶

7.127 [X] told us that besides D&D, InfoTrack and Landmark stand out in terms of offering scale.⁴⁵⁷ [X] also said that InfoTrack, amongst others, has carved out

⁴⁴⁸ [X] call note, [X], paragraphs 11 and 13.

⁴⁴⁹ [X] call note, [X], paragraphs 4 and 6.

⁴⁵⁰ Hugh James call note 3 March 2022, paragraph 3.

⁴⁵¹ Hugh James call note 3 March 2022, paragraph 4.

⁴⁵² Hugh James call note 3 March 2022, paragraph 5.

⁴⁵³ Hugh James call note 3 March 2022, paragraph 5.

⁴⁵⁴ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

⁴⁵⁵ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

⁴⁵⁶ Simply Conveyancing call note, 11 March 2022, paragraph 9.

⁴⁵⁷ [X] call note, [X], paragraph 19.

a niche and targets specialist conveyancing firms who have different technology needs compared to national providers.⁴⁵⁸

7.128 [X] had considered companies owned by Landmark (eg SearchFlow) but did not appoint them because [X] directly competed with companies in the same group.⁴⁵⁹ [X] also considered InfoTrack; however, InfoTrack was not able to remove some of the additional features of its searches that [X] did not require or that would compete directly with their own products.⁴⁶⁰

7.129 As noted in paragraphs 7.88 to 7.97, ATI was the most cited alternative by both D&D's and TMG's customers amongst respondents to the customer survey. Landmark was the second most cited alternative to TMG identified by TMG's customers who responded to the customer survey, but it was not among the most significant alternatives to D&D cited by D&D's customers.

Our assessment

7.130 Our current view is that the evidence set out above indicates that ATI and Landmark are each effective competitors to the Parties, with ATI having been a particularly effective and successful competitor in recent years. We consider that both ATI and Landmark are likely to remain effective competitors to the Parties for the foreseeable future.

Smaller competitors

7.131 The Parties submitted⁴⁶¹ that smaller competitors exert a significant competitive constraint. In particular, the Parties said that:

- (a) Size does not give national competitors a material advantage, as there are no economies of scale.
- (b) Smaller retailers can replicate national coverage, either through interaction facilitated by IPSA with search providers, or through 'development of a franchise network or relationships with independent search agents'.
- (c) Competition for small and medium customers, where the Parties mostly overlap, takes place at a local or regional level, where 'the Merged Entity

⁴⁵⁸ [X] call note, [X], paragraph 31.

⁴⁵⁹ [X] call note, [X], paragraph 13.

⁴⁶⁰ [X] call note, [X], paragraph 12.

⁴⁶¹ Parties' response to the Issues Statement, paragraphs 3.2 to 3.7.

will face competition from a significant number of strong regional competitors’.

- (d) Individual property purchasers usually choose local conveyancers, and these conveyancers ‘tend to value the regional expertise and relationships they have with regional providers of PSRBs (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)’.
- (e) ‘[W]ithin 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 PSRBs’.

7.132 In response to our working papers, the Parties submitted that they face considerable competition from a range of ‘regional experts’, who together account for 20–30% of the market.⁴⁶² The Parties further submitted that these competitors compete intensely within their regions and, collectively, they amount to a significant competitive force.⁴⁶³ In particular, the Parties submitted that:⁴⁶⁴

- (a) National coverage is only a significant consideration for the largest law firms, conveyancers, and intermediaries.
- (b) Most competition for residential conveyancing transactions and for small and medium customers takes place on a local or regional basis. Small and medium customers tend to value the regional expertise and relationships they have with regional providers of PSRBs, which includes them often having close relationships with the local authorities.
- (c) The importance of regional expertise is borne out by the data, including the market share estimates, the customer survey data, and the fact that new smaller and regional suppliers continue to enter the market and register as new members of CoPSO.

⁴⁶² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.3.

⁴⁶³ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.4.

⁴⁶⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.5-5.8.

- (d) 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.

7.133 In assessing competition from smaller PSRB suppliers, we have considered the competitive constraint from:

- (a) X-Press Legal (the largest of the smaller PSRB providers); and
- (b) the remaining smaller PSRB suppliers.

7.134 In our analysis, we have considered:

- (a) market share trends;
- (b) switching estimates between the Parties and smaller suppliers;
- (c) discussion of smaller suppliers in the Parties' internal documents;
- (d) the views of smaller suppliers on their ability to compete with the Parties;
- (e) the views of ATI and Landmark on the constraint from smaller suppliers;
- (f) whether smaller suppliers can compete against the Parties on price;
- (g) whether vertical integration in the supply of environmental searches limits the ability of smaller suppliers to compete; and
- (h) the views of customers on the smaller suppliers' ability to compete with the Parties.

Competitive constraints from X-Press Legal

7.135 X-Press Legal is the largest of the smaller PSRB providers with [0–5%] market share (see Table 7.1 and Table 7.2). The market share of X-Press Legal has declined in the last few years from [5–10%] in 2018 to [0–5%] in 2021.

7.136 The Parties' internal documents refer to very few PSRB providers outside of each other, ATI, and Landmark. X-Press Legal is one of the very few smaller providers that is mentioned occasionally in the Parties' documents.⁴⁶⁵ Even so, X-Press Legal is mentioned relatively rarely by the Parties, in comparison

⁴⁶⁵ See D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide 29, Annex DD2467.

to references to the other Party, ATI and Landmark. The references to X-Press Legal tend to highlight its limitations as a competitor to the Parties.

(a) A competitor report submitted by D&D for Index gives an overview of D&D's assessment of X-Press Legal as a competitor to Index. [REDACTED].⁴⁶⁶

(b) A TMG internal document⁴⁶⁷ refers to X-Press Legal and notes that [REDACTED].

7.137 X-Press Legal was considered as an alternative to D&D and TMG by a few customer survey respondents, but it did not appear as one of the most frequently-mentioned alternatives to either Party (see paragraphs 7.88 to 7.97).

7.138 [REDACTED]⁴⁶⁸

Competitive constraints from the remaining smaller competitors

Market share trends

7.139 The Parties submitted that, on the basis of the estimates based on environmental reports data (see Appendix B), which the Parties consider a more reliable measure than the estimates based on competitors' data, smaller suppliers have a combined share of 20-30%, and that this indicates that smaller competitors form a strong collective competitive constraint. The Parties also submitted that this aggregate share exceeds that of each of Landmark, TMG and D&D Direct, and that this is inconsistent with a claim that the Merger is a '4-3'.⁴⁶⁹

7.140 As set out in Table 7.1 and Table 7.2 we estimate that the smaller suppliers who responded to our investigation (including X-Press Legal) had an aggregate market share of around [10–20%] in 2021. According to the shares based on environmental search report data (see Table 7.1 and Table 7.2), the aggregate share of all smaller suppliers was [20–30%]. However, we estimate that none of the smaller suppliers had an individual share larger than [0–5%]. These smaller competitors include both small suppliers that compete nationally and small suppliers that compete only locally (see Chapter 6). We recognise that some of these competitors may have a larger share in specific

⁴⁶⁶ See D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, internal document entitled 'Brief market competitor report', dated 16 January 2019, slide 29, Annex DD929.

⁴⁶⁷ See TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 internal document entitled 'Competitor Analysis', dated 14 January 2022, page 5, Annex TM2653. TMG told us that this document was part of a national sales meeting, and it may have never been presented – see Notes of a hearing with TMG held at the CMA, page 55.

⁴⁶⁸ [REDACTED].

⁴⁶⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 3, paragraphs 1.1-1.3.

regions of E&W than is reflected in their national share. However, we have not seen evidence suggesting that any of the smaller competitors has a particularly large share in any specific region.

- 7.141 Moreover, we estimate that the smaller suppliers have steadily lost market share in recent years, with the aggregate share of the smaller suppliers who responded to our investigation (including X-Press Legal) falling from [20–30%] in 2018 to [10–20%] in 2021.
- 7.142 Furthermore, there have only been negligible increases in the individual shares of smaller competitors (among those who responded to our investigation) between 2018 and 2021. We estimate that the individual share that increased the most, [X] share, only increased from [0–5%] to [0–5%], ie less than 1 percentage point over three years.
- 7.143 We consider that these estimates show that, in aggregate, the smaller suppliers currently compete for a material share of customers and sales in the PSRB market. However, the estimates also indicate that the smaller suppliers' aggregate share has been diminishing in the last few years. As explained in Chapter 6, this trend may be linked to technological changes in the market, as smaller search providers may struggle to replicate the range of services or other features offered by the large national providers, or for other reasons.

Switching estimates

- 7.144 The switching estimates based on the Parties' internal records indicate that each Party lost a number of customers (and revenues) to smaller suppliers (in aggregate)⁴⁷⁰ between 2017 and 2021, although fewer than to ATI, the other Party or Landmark (see paragraphs 7.66 to 7.70 above).⁴⁷¹

Internal documents

- 7.145 The Parties' analysis of competitors in their internal documents is largely focused on one another and ATI and Landmark (see paragraphs 7.81 to 7.85). Discussion of smaller competitors is very limited – see, for example, paragraphs 7.83(a) and 7.83(d). Moreover, some documents note the challenges these competitors face and their limitations as a competitive threat, especially in the future. For example:

⁴⁷⁰ The smaller suppliers the Parties lost customers to according to the Parties' data include [X] (see Appendix D).

⁴⁷¹ Note that for TMG's CDS brand, more customers (7%) switched from CDS to the 'Other' category (i.e. small suppliers) than switched from CDS to Landmark (4%).

- (a) A March 2020 PIE presentation to D&D notes that: '[REDACTED]'.⁴⁷²
- (b) A June 2021 D&D strategy slide pack⁴⁷³ states that there are 'Minimal new but small entrants into the market. The dominant players limit the penetration any new players can make. Automation, consolidation and up-front data will dominate the market for the next year or so' (slide 7).
- (c) A TMG internal document is largely dismissive of 'small regional' competitors [REDACTED].⁴⁷⁴

7.146 As set out in Chapter 6, the Parties' internal documents also reflect that large PSRB suppliers benefit from economies of scale, which we note is a potential source of competitive disadvantage to smaller suppliers.

7.147 We asked the Parties to provide any internal documents that illustrate that they consider smaller suppliers as a competitive constraint. In response, D&D provided a limited number of internal sales team updates and emails.⁴⁷⁵ Some of these documents indicate that D&D has on occasion lost customers to, or won customers from, smaller suppliers.⁴⁷⁶ Similarly, TMG provided a list of [REDACTED] customer losses to smaller suppliers (in [REDACTED] of the [REDACTED] cases TMG lost only part of the customer's business),⁴⁷⁷ and an unsuccessful attempt to win business from [REDACTED].⁴⁷⁸ We consider that this evidence is consistent with the position that there is some switching between the Parties and smaller suppliers (as shown in paragraphs 7.66 to 7.70 above) but it does not show that smaller competitors are a significant consideration within the Parties' competitive strategy. We therefore do not consider that the Parties' internal documents show that the Parties consider smaller suppliers to be a significant competitive constraint, either individually or in aggregate, especially given the documents suggest that smaller competitors may struggle to compete in the future due to the trend towards greater digitisation and other market developments.

⁴⁷² D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See internal document entitled 'Project Cubed – Trading Update', dated 17 March 2020. Slide 5, Annex DD1268.

⁴⁷³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD2303.

⁴⁷⁴ See TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 internal document entitled 'Competitor Analysis', dated 14 January 2022, page 6, Annex TM2653. TMG told us that this document was part of a national sales meeting, and it may have never been presented – see Notes of a hearing with TMG held at the CMA, page 55.

⁴⁷⁵ D&D's response to Main Party Hearing follow-up questions, paragraphs 7.1-7.7.

⁴⁷⁶ In particular: Annex 03 indicates that D&D may have lost a customer to [REDACTED]; Annex 04 indicates that D&D lost a customer to [REDACTED] and '[REDACTED]'; Annex 05 and Annex 06 indicate that D&D won a customer from [REDACTED]; Annex 07 indicates that D&D tried to win a customer from [REDACTED] by [REDACTED]; Annex 08 indicates that D&D lost a customer to an [REDACTED].

⁴⁷⁷ The smaller suppliers include: [REDACTED].

⁴⁷⁸ TMG's response to Main Party Hearing follow-up questions, paragraphs 4.1-4.3.

Views of ATI [REDACTED]

7.148 ATI suggested that its fast growth is due to an innovative offering which smaller search providers would struggle to replicate, and as a result the long tail of smaller search providers can no longer offer what they need to in order to compete.⁴⁷⁹ ATI also submitted that regional suppliers do not represent a competitive constraint for its business because they ‘do not have the financial resources to compete in this marketplace, which is currently being digitised’ and ‘Medium, Large and City Law conveyancing firms require national presence through one point of contact’.⁴⁸⁰

7.149 [REDACTED]⁴⁸¹

Views of smaller suppliers

7.150 We sent a questionnaire to 84 smaller suppliers of searches and received 40 responses. The responses are set out in more detail in Appendix C. The views expressed suggest that the balance of power in the market has increasingly shifted towards the large suppliers ATI, Landmark, TMG and D&D at the expense of smaller suppliers. The smaller suppliers considered that they were restricted in the range of customers they could credibly compete for, and in their ability to compete against the large suppliers in general. They faced disadvantages with regard to their technology offerings, pricing, and lack of vertical integration.

7.151 We have found little evidence that any ability these smaller suppliers would have to group together could replicate the national coverage of the Parties (and ATI and Landmark). For example, IPSA told us that IPSA members can obtain searches outside the area they cover through IPSA, and that the newly launched ‘IPSA Searches’ operates as a gateway website to reach smaller local search firms.⁴⁸² However, IPSA explained that IPSA members do not have common portals, ordering platforms, software systems or billing systems like the big national competitors.⁴⁸³

7.152 Moreover, IPSA told us that the market will shift towards new technologies such as case management systems and integrated portals, and that local firms are not as prepared to adapt as the large, national PSRB suppliers.⁴⁸⁴ For example, while a small supplier may outsource anti-money laundering and

⁴⁷⁹ ATI call note, 16 February 2022, paragraphs 8 and 15.

⁴⁸⁰ Competitor response to the phase 2 competitor questionnaire, question 8.

⁴⁸¹ [REDACTED].

⁴⁸² IPSA call note, 14 April 2022, paragraphs 4-6.

⁴⁸³ IPSA call note, 14 April 2022, paragraphs 4-6.

⁴⁸⁴ IPSA call note, 14 April 2022, paragraphs 13-14.

ID checking to another firm, a client would need to exit the small supplier's website and log to a new one to use these services, while customers of large, national providers would not need to.⁴⁸⁵ IPSA further explained that an IPSA member's typical client would be a high-street legal firm or estate agent that either already have such software or are the kind of firm that sees no need for a case management system or a digital onboarding service.⁴⁸⁶

7.153 IPSA told us that IPSA members' selling point is that they are local companies and do not have call centres and centralised billing,⁴⁸⁷ potentially suggesting smaller suppliers may be able to provide a more personalised service than the large, national suppliers. However, we have found little evidence that the smaller suppliers have any substantial competitive advantages arising from regional expertise or relationships with local authorities and we estimate that the smaller suppliers' aggregate share has been decreasing in recent years (see paragraph 7.140). We also note that D&D submitted that 'D&D organises certain of its sales managers into local and regional teams ensuring it competes effectively for local and regional customers'.⁴⁸⁸ Similarly, TMG submitted that CDS has regional account managers and regional sales teams.⁴⁸⁹

- *Ability to serve different customers*

7.154 We asked smaller competitors if there were any customer types they did not serve, and the reason for this. Most smaller competitors informed us that they were unable to compete in serving Top 100 law firms, larger national conveyancers, and panels. Barriers included reach, reputation, marketing budgets, the referrals process, price/margins, and exclusive contracts. One smaller supplier noted that it could reach larger firms through panels.

7.155 Some smaller suppliers considered that they were at a competitive disadvantage against larger providers in general and not just when competing for business from larger conveyancing firms or panels, because they were unable to achieve economies of scale. Some smaller PSRB suppliers focused on technology and product features as particular barriers to competing against large PSRB suppliers.

⁴⁸⁵ IPSA call note, 14 April 2022, paragraphs 13-14.

⁴⁸⁶ IPSA call note, 14 April 2022, paragraphs 12.

⁴⁸⁷ IPSA call note, 14 April 2022, paragraph 5.

⁴⁸⁸ D&D's response to Main Party Hearing follow-up questions, paragraph 7.1. We also note that in some regions D&D directly owns and operates some Index or PSG franchisees.

⁴⁸⁹ TMG's response to Main Party Hearing follow-up questions, paragraphs 4.1-4.2.

- *Vertical integration*

7.156 A further challenge identified by smaller competitors is their lack of vertical integration and reliance on larger suppliers for upstream products and particularly environmental searches.

7.157 We note that the Merger has not increased concentration in the supply of environmental searches, as TMG was not present in this upstream market. Furthermore, as set out in Appendix B, Groundsure, owned by ATI, is the market leader in this segment, followed by Landmark. D&D's environmental search business FCI currently accounts for only [5–10%] of this market, and we note that D&D itself relies on Groundsure and Landmark for the majority ([80–90%]) of its environmental searches. We discuss vertical integration as a recent market trend in Chapter 6.

7.158 Our current concern in relation to the Merger is the consolidation of the PSRB market among three large players. We consider that being vertically integrated with upstream providers may be an advantage – for example, in terms of reliability of the supply of upstream reports or protection from sudden cost increases. We have therefore considered it, to the extent appropriate, in assessing the competitiveness of PSRB suppliers, although we have not placed significant weight on this factor.

Customer views of smaller suppliers

- *Feedback from customer survey respondents*

7.159 Some customer survey respondents identified smaller competitors as good alternatives to the Parties, but no individual smaller supplier scored highly (see paragraphs 7.88 to 7.97).

7.160 In relation to regional expertise and national coverage, among respondents to our customer survey we note the following:⁴⁹⁰

(a) Only three of the 170 survey respondents (2%) mentioned local/regional expertise as one of the three most important factors when choosing a provider, all of whom were in the lower half of survey respondents by transaction volume, and none said it was the most important factor.

(b) On the other hand, 11 survey respondents (spanning all customer groups apart from large law firms) out of 60 who were buying from one supplier

⁴⁹⁰ As explained in Appendix E, paragraph 10, we assess that where the number of respondents is the full sample of 170 respondents (or generally above 100), we can place full evidential weight on the survey findings.

agreed that one reason for this was that the supplier specialised in the local area or region in which their business conducted conveyancing, while 23 survey respondents out of 110 who were buying from more than one supplier agreed that one reason for this was that their business used different suppliers for the conveyancing they conducted in different local areas or regions.

- (c) None of the survey respondents mentioned national coverage as one of their three most important factors when choosing a supplier.

7.161 In summary, only a few of the survey respondents placed significant weight on regional or local expertise. However, national coverage did not appear as a significant consideration either.

- *Feedback from Panel Managers*

7.162 The Panel Managers we spoke to generally confirmed that smaller suppliers were not suitable for their requirements, because they did not have the same buying power (when purchasing searches from compilers), scale or ability to handle large volumes as the national suppliers:

- (a) [X] said that ‘The benefit to [X] of working with TMG is their ability to access and compile bespoke search packages, they clearly have greater buyer power than we have in the market because they are buying not just for us but for many other companies’.⁴⁹¹ [X] gets the ‘benefit of volume buying’. In addition, [X] said it was difficult for it to buy from smaller suppliers due to the associated cost of integration that would have to be put in place for the arrangement to work efficiently, so there would need to be a compelling reason to connect with such a supplier.⁴⁹²
- (b) [X] said that there are a small handful of generalist providers, and also a ‘broader church of niche providers’. While the latter can theoretically offer the same generalist service as [X] (which was selected for national coverage, breadth of offer and price), in practice they can’t necessarily handle the large volumes that [X] requires.⁴⁹³ [X] had previously gone to smaller suppliers and the service from them had not been good. [X] considered that not that many PSRB suppliers could provide the coverage they would need as a national business, and that aggregating smaller

⁴⁹¹ [X] call note, [X], paragraph 14.

⁴⁹² [X] call note, [X], paragraph 21.

⁴⁹³ [X] call note, [X], paragraph 7.

suppliers to achieve national coverage would have significant cost implications and would pose a significant distraction for [REDACTED].⁴⁹⁴

- (c) [REDACTED] said that ‘when choosing a search provider, it wants to ensure a continuity of supply and, of the providers available in the market, InfoTrack, D&D and Landmark stand out in terms of offering scale (ie supporting high volumes of transactions)’.⁴⁹⁵ [REDACTED] needs thousands of searches to be completed every year, and this will mean that smaller providers will very rarely be able to fulfil the size of these orders.⁴⁹⁶ [REDACTED].⁴⁹⁷
- (d) [REDACTED] was to some extent an exception, in that it has arrangements with Searches UK, PALI, and has begun negotiations with [REDACTED].⁴⁹⁸ However [REDACTED] also told us that it values PIE and CDS for their tight integration with its service and their advanced technology.⁴⁹⁹

Our assessment of competition from smaller suppliers

7.163 The evidence shows that there are a number of small suppliers who collectively have a material presence in the PSRB market, compete for customers, and attract customers who switch. We have therefore considered the constraint they are likely to impose, both individually and in aggregate, on the Merged Entity.

7.164 In general, we consider that the aggregate constraint exerted by several very small competitors is not equivalent to the competitive constraint exerted by a single large competitor for the following reasons:

- (a) First, a large competitor with a large individual market share has shown its ability to win customers from competitors in the past which, in turn, shows that a supplier is an effective option for customers. A small competitor with a small individual market share does not demonstrate this capacity.
- (b) Second, a group of small competitors would need to coordinate their strategies in order to provide an equivalent competitive constraint to a single large competitor. It is unlikely that a large number of small competitors would be able to do this effectively, or that it would be lawful for them to do so.

⁴⁹⁴ [REDACTED] call note, [REDACTED], paragraph 7.

⁴⁹⁵ [REDACTED] call note, [REDACTED], paragraph 19.

⁴⁹⁶ [REDACTED] call note, [REDACTED], paragraph 14.

⁴⁹⁷ [REDACTED] call note, [REDACTED], paragraph 31.

⁴⁹⁸ [REDACTED] call note, [REDACTED], paragraphs 9 and 11.

⁴⁹⁹ [REDACTED] call note, [REDACTED], paragraph 29.

- (c) Third, a small competitor is generally only capable of attracting and serving fewer customers for reasons of both capacity and marketing reach, which means, for example, that an innovation on the part of a small competitor is unlikely to elicit the same strength of competitive response from the Merged Entity as an equivalent innovation from a large competitor.
- (d) Finally, if economies of scale are a feature of the market, small competitors cannot internalise their combined costs in the same way as a single large competitor can realise economies of scale.

7.165 We consider that the specific evidence in relation to this PSRB market, taken in the round, does not show that the smaller suppliers, either individually or in aggregate, exercise or will in future exercise an effective competitive constraint on the Parties. The individual shares of each of the smaller suppliers are very low (less than [0–5%]) and their aggregate share has diminished over the last few years. At an individual level, no small supplier has increased its market share by more than 1 percentage point over three years (since 2018) (see paragraph 7.142), suggesting that individually the smaller competitors have an immaterial impact on competition at the national level. The switching estimates and the survey results suggest that the constraint exerted by smaller suppliers in aggregate is less significant than both the constraint the Parties exert on each other and the constraint exerted on them by ATI and Landmark.

7.166 Moreover, we note that the smaller suppliers tend to serve small, regional or local conveyancers focused on residential transactions, and are generally unable to compete for larger conveyancers, Top 100 law firms and panel work. In addition, the smaller suppliers face significant competitive disadvantages relative to the largest national providers. These include the lack of economies of scale, lack of vertical integration, and smaller marketing and IT budgets. The references to smaller suppliers that we have seen in the Parties' internal documents do not support the claim that they are a significant competitive constraint to the Parties.

7.167 Finally, as noted in Chapter 6, we have evidence that the market for PSRB supply is becoming increasingly digitised and ancillary services have become an important component of the offering of the Parties and its main competitors. We consider that as these trends continue (and potentially accelerate), the smaller suppliers will struggle to match the evolving needs of customers, as is also reflected in the Parties' own internal documents and evidence from smaller suppliers themselves. We consider that, as a result, any competitive constraint that the smaller suppliers exert on the large national suppliers is likely to decrease rather than increase in the future.

D&D's franchisees

7.168 As set out in paragraphs 7.9 to 7.25 above, we estimate that in 2021 D&D generated about [30–40%] of its sales volume through franchisees owned and operated by third parties (ie Index Indirect and PSG Indirect). We also note that Index Indirect's aggregate share increased from [0–5%] in 2018 to [5–10%] in 2021, and that PSG Indirect's share has remained relatively stable at around [0–5%].

7.169 The Parties submitted⁵⁰⁰ that the D&D Indirect franchisees are credible competitors, and in particular that:

- (a) 'Index and PSG franchisees operate independently from D&D and have every 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'.
- (b) D&D cannot influence the commercial strategies or objectives of the D&D Indirect franchisees, such as through contractual obligations, equity interest or board presence.
- (c) While D&D provides a recommended maximum price, D&D Indirect franchisees determine their own prices and may reduce prices below the maximum recommended in order to attract customers.
- (d) D&D has lost a significant number of customers to Index Indirect over the years, which is conclusive evidence that the franchisees compete vigorously with D&D and have incentive to do so.
- (e) If D&D loses business to a D&D Indirect franchisee, it loses [X%] of its revenues from the lost business, which is not materially different from what it would lose to any other rival.

7.170 In response to our working papers, the Parties submitted that the D&D Indirect franchisees are an important competitive constraint, which is material and will constrain the Merged Entity.⁵⁰¹ In particular, the Parties submitted that:⁵⁰²

⁵⁰⁰ Parties' response to the Issues Statement, paragraphs 3.20-3.23.

⁵⁰¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.32-2.34.

⁵⁰² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.9-5.14.

- (a) the D&D Indirect franchisees have the incentive to compete with D&D, because they do not gain anything when D&D serves customers directly;
- (b) D&D has the incentive to compete against the D&D Indirect franchisees, as it loses up to [REDACTED]% of its revenue net of variable costs when losing a customer to the franchisees;
- (c) D&D loses meaningful volumes to the D&D Indirect franchisees, as shown by the switching data and the survey results; and
- (d) the clauses in the franchise agreements are consistent with standard franchise models and do not materially affect competition between D&D and franchisees.

7.171 In this section we consider the Parties' submissions on these points and set out relevant evidence as regards the relationship of D&D with the D&D Indirect franchisees, including relevant terms of the standard Index and PSG franchise agreements, the views of D&D Indirect franchisees, evidence of competition with D&D Indirect franchisees from D&D's internal documents, evidence of customer switching between D&D and the D&D Indirect franchisees, survey evidence, and views of competitors.

Relationship between D&D and the D&D Indirect franchisees

7.172 The D&D Indirect franchisees rely on D&D for a number of aspects of their market presence. In particular:

- (a) Franchisees operate under D&D brands. [REDACTED].⁵⁰³
- (b) D&D provides all Index Indirect franchisees and PSG Indirect franchisees with common websites, ordering platforms and case management software, as well as with nationwide marketing programmes.⁵⁰⁴ For example, two Index Indirect franchisees said their business depended on D&D's investment in the software used by all Index franchisees.⁵⁰⁵

7.173 In return, the D&D Indirect franchisees pay D&D monthly royalties over their revenue.⁵⁰⁶

⁵⁰³ [REDACTED].

⁵⁰⁴ Response to the Issues Paper, Annex 03.01 (clauses 4.1, 10.9) and Annex 03.02 (clauses 4.1, 10.9). See also Response to the Issues Paper, Annex 03.01 (clauses 11.1-11.2) and Annex 03.02 (clause, 11.1). D&D also provides training, guidance, assistance and strategic business input; Index Indirect franchisees call note, 3 February 2022, paragraphs 1, 8; PSG [REDACTED] call note, paragraph 7; PSG [REDACTED] call note, paragraph 4.

⁵⁰⁵ Index Indirect franchisees call note, 3 February 2022, paragraphs 4 and 8.

⁵⁰⁶ Response to the Issues Paper, Annex 03.01 (clauses 9.1-9.2) and Annex 03.02 (clauses 9.1-9.2).

7.174 In addition, D&D enters into supply agreements with certain customers (eg high value supply agreements) for the benefit of its franchisees (including the D&D Indirect franchisees).⁵⁰⁷ D&D also supplies certain upstream property search reports to the D&D Indirect franchisees.⁵⁰⁸

7.175 We also note that D&D has up to date data on the value and volume sales of Index Indirect and PSG Indirect franchisees, by category (residential and commercial).⁵⁰⁹

7.176 D&D's Index and PSG franchise agreements contain a number of clauses of relevance as to whether the D&D Indirect franchisees operate independently, and/or have the potential to compete against D&D.⁵¹⁰ In particular, [REDACTED]:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]⁵¹¹ [REDACTED].⁵¹²

(d) [REDACTED]

7.177 Other clauses give D&D [REDACTED] oversight or control over the D&D Indirect franchisees' operations:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

7.178 In response to our working papers, the Parties submitted that:⁵¹³

⁵⁰⁷ Response to the Issues Paper, Annex 03.01 (clause 10.8) and Annex 03.02 (clause 10.8).

⁵⁰⁸ Response to the Issues Paper, paragraphs 3.6, 3.10-3.11, table 3.

⁵⁰⁹ See for example Annex DD001 of D&D's response to the CMA's s.109 Notice dated 23 December 2021.

⁵¹⁰ PSG franchise agreement and the Index franchise agreement. The two agreements are essentially identical in terms of the clauses as both are versions of a master franchise agreement. Prior to that, PSG used a different set of franchise agreements some of which have been extended and are still in use, see for example the franchise agreement with [REDACTED].

⁵¹¹ [REDACTED].

⁵¹² [REDACTED].

⁵¹³ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.12.

- (a) the clause preventing the D&D Indirect franchisees from competing nationally (see paragraph 7.176(b)) has not been enforced, and D&D Indirect franchisees do operate national accounts; and
- (b) certain non-competes and other oversight clauses (for example the clauses at paragraphs 7.176(a), 7.176(d) and 7.177) are consistent with standard franchise models, but do not materially affect competition between the D&D Indirect franchisees and D&D.

7.179 In our view, the D&D Indirect franchisees rely on D&D for important aspects of their business which influence their ability to compete with D&D (see paragraph 7.172). In particular, the reliance on D&D for inputs such as their websites, ordering platforms and case management software

7.180 limits the ability of the D&D Indirect franchisees to differentiate and innovate, and hence limits their ability to compete over time with D&D. Moreover, the terms of D&D's franchise agreement give D&D a [REDACTED] degree of control over and oversight of [REDACTED], in addition to [REDACTED]. Overall, we consider that these terms, even if some clauses are not enforced systematically or are similar to other franchise models, are likely to limit the independence of the D&D Indirect franchisees and limit competition between the D&D Indirect franchisees and D&D.

Views of franchisees

7.181 We spoke to two Index Indirect franchisees ([REDACTED] and [REDACTED]) and two PSG Indirect franchisees ([REDACTED] and [REDACTED]).

7.182 Our engagement with these franchisees indicates that the D&D Indirect franchisees have a degree of independence from D&D and can set some parameters of their competitive offering. In particular:

- (a) Index [REDACTED] said that the Index Indirect franchisees compile their own RLAS and RDWS reports (although they source searches from outside of their franchise areas from D&D).⁵¹⁴ PSG [REDACTED] also said that PSG [REDACTED] compiles its own RLAS and RDWS reports; PSG [REDACTED] also sells official searches, which are ordered through D&D's portal technology, which transmits the orders directly from the conveyancers through the various suppliers.⁵¹⁵

⁵¹⁴ Index [REDACTED] response to follow-up questions dated 28 April 2022.

⁵¹⁵ PSG [REDACTED] response to follow-up questions dated 22 April 2022.

- (b) The two Index Indirect franchisees told us that they can set their retail prices independently from D&D.⁵¹⁶ PSG [X], told us that the [X].⁵¹⁷
- (c) Index [X] submitted that the Index Indirect franchisees proactively try to win business (some of which served by D&D brands), and that each Index Indirect franchisee handles its own local marketing activity (although some of the offices have a shared external resource).⁵¹⁸ PSG [X] submitted that it tries to win clients from other suppliers based on quality of service, speed, affordability, local connections, and offering searches specific to rural areas.⁵¹⁹

7.183 However, our engagement with the D&D Indirect franchisees also shows that D&D influences and has [X] oversight over their commercial activities. In particular:

- (a) The two Index Indirect franchisees told us that D&D negotiates upstream supplier prices for Index, which in turn may affect the prices that the franchisees can charge to conveyancers.⁵²⁰ PSG [X], told us that D&D [X].⁵²¹
- (b) PSG [X] told us it has [X].⁵²² [X].⁵²³
- (c) Although PSG [X] clients are free to order third party reports via the ordering platform, D&D made attempts to persuade the franchisees to suggest to clients that they should move from their preferred suppliers to FCI/Terrafirma.⁵²⁴

7.184 The two Index Indirect franchisees also noted examples of D&D interfering with or influencing their commercial activities, including pricing (in addition to other problems with their franchising arrangements, [X]):⁵²⁵

- (a) [X]
- (b) [X]⁵²⁶

⁵¹⁶ Index Indirect franchisees call note, 3 February 2022, paragraph 3.

⁵¹⁷ PSG [X] call note, paragraph 9.

⁵¹⁸ Index [X] response to follow-up questions dated 28 April 2022.

⁵¹⁹ PSG [X] response to follow-up questions dated 22 April 2022.

⁵²⁰ Index Indirect franchisees call note, 3 February 2022, paragraph 3.

⁵²¹ PSG [X] call note, paragraph 4.

⁵²² PSG [X] call note, paragraph 10.

⁵²³ PSG [X] call note, paragraph 10.

⁵²⁴ PSG [X] response to follow-up questions dated 22 April 2022.

⁵²⁵ Index Indirect franchisees call note, 3 February 2022, paragraphs 7 and 12.

⁵²⁶ We understand that this presentation is included in the D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD1018, page 56.

- 7.185 The two Index Indirect franchisees also told us that it is difficult to match the IT products and services that competitors and other D&D brands offer, due to the reduced investment from D&D into the software used by the franchisees.⁵²⁷ Index [REDACTED] also submitted a list of several IT products/services that D&D own brands offer and that have not been made available to the Index Indirect franchisees by D&D.⁵²⁸
- 7.186 We also note that both the two Index Indirect franchisees and the two PSG Indirect franchisees told us that they serve predominantly small/residential conveyancers.⁵²⁹
- 7.187 The Index Franchise Association, a body of 17 franchisees operating in E&W pursuant to rights granted to them by Index Franchising Ltd, said that Clause 2.2 of the franchise agreement with Index in practice meant that D&D have sought to restrict the ability of Index Indirect franchisees to accept work from certain potential customers within their allocated territories and discourages franchisees from accepting passive sales from outside their territory.⁵³⁰ It also submitted that Index Indirect franchisees have tried to add new products to the portfolio and some have been rejected, because D&D wanted to promote a similar insurance product themselves.⁵³¹

Evidence from D&D internal documents

- 7.188 We have considered whether D&D internal documents support a view that it sees itself as facing competition from its D&D Indirect franchises.
- 7.189 We have not seen any internal documents indicating that D&D sees the D&D Indirect franchisees as a competitive threat. Rather, a few D&D internal documents suggest that D&D considers the D&D Indirect franchisees as a way to expand its outreach:

- (a) A document [REDACTED]:⁵³² '[REDACTED]'.

⁵²⁷ Index Indirect franchisees call note, 3 February 2022, paragraphs 8.

⁵²⁸ Index [REDACTED] response to follow-up questions dated 28 April 2022. The products/services include: DUAL (insurance offering with multi quotes); CMS integration; [Brighter Law](#) (offered by PIE); Cloud Convey (a client onboarding system); Water Authority and Coal Authority xml (an automated system to order upstream reports).

⁵²⁹ Index Indirect franchisees call note, 3 February 2022, paragraph 2; PSG [REDACTED] call note, paragraphs 11-12; PSG [REDACTED] call note, paragraph 3.

⁵³⁰ Response by Index Franchise Association of 6 May 2022, in response to question 1a of CMA information request of 29 April 2022.

⁵³¹ Response by Index Franchise Association of 6 May 2022, in response to question 5 of CMA information request of 29 April 2022.

⁵³² D&D internal document, '[REDACTED]', dated 22 January 2019. Slide 4, Annex DD937.

(b) A January 2021 [REDACTED].⁵³³

(c) An [REDACTED].⁵³⁴

7.190 However, [REDACTED],⁵³⁵ potentially suggesting that D&D does not see the D&D Indirect franchisees as part of its market presence in the same way as its other brands.

7.191 We also note that PIE/PSG's switching records (see paragraph 7.64(a)) include at least [REDACTED] customers lost by PSG Indirect franchisees.⁵³⁶

7.192 The Parties have submitted that 'D&D [REDACTED]. This gives D&D a clear incentive to compete against and win business from the D&D Indirect franchisees as, if it does not, it loses up to [REDACTED]% of its revenue net of variable costs'.⁵³⁷ We note that while D&D makes more profit (in GBP terms) from direct sales than from sales through the D&D Indirect franchisees, the cost to D&D in losing business to a franchise is still less than the cost of losing business to an independent rival.

Switching estimates and survey evidence

7.193 The Parties' switching data shows that [10–20%] of PIE's customers ([10–20%] of revenues) switched to Index Indirect franchisees from 2017 to 2021.⁵³⁸ The Parties provided comments on four examples of such customer losses in their response to the Issues Statement.⁵³⁹ The Parties commented that '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 Index Indirect franchisees place on D&D today'.⁵⁴⁰ The Parties further submitted that

⁵³³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slides 3-12, Annex DD1911. In the 12 April 2022 D&D Hearing, D&D noted that this presentation, judging by the style and format, was produced prior to the acquisition of PIE by D&D (see page 54 of the transcript). However, we note that slide 12 shows PIE / PSG as being part of the D&D group. We also note that an email shows that the slide pack was created by [REDACTED] at D&D, and emailed to other D&D staff on 11 January 2021 (Annex 1909), which is after D&D's acquisition of PIE in September 2020.

⁵³⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, question 21, Annex DD1285.

⁵³⁵ D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, internal document entitled 'Budget 2020 presentation', dated 13 December 2019. Annex DD1197, page 7.

⁵³⁶ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022. See 'lost customers' spreadsheet, Annex DD2867. The [REDACTED] lost customers are [REDACTED].

⁵³⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.9.2. D&D submitted that revenue net of variable cost is equivalent to the measure of 'gross profit' that D&D uses for internal analyses and financial reporting – see D&D's response to Main Party Hearing follow-up questions, paragraph 8.2.

⁵³⁸ Parties' response to the Issues Statement, Table 1. See also Table 7.7 and Table 7.1 above.

⁵³⁹ Parties' response to the Issues Statement, paragraph 3.22.

⁵⁴⁰ Parties' response to the Issues Statement, Footnote 15, page 9.

consistent with the Parties' evidence on customer switching, the survey suggests that D&D likely competes with its D&D Indirect franchisees.⁵⁴¹

7.194 D&D acquired PIE in September 2020.⁵⁴² In our view, any losses of customers from PIE to Index prior to this acquisition are evidence of competition between Index and a (then) independent PIE and not relevant to the question of whether D&D currently faces competition from the D&D Indirect franchisees.

7.195 D&D's internal records (see paragraph 7.64(a) above and Appendix D) identify two customers who have been lost by PIE to Index after September 2020.⁵⁴³ [REDACTED].

7.196 Overall, we consider that there is limited evidence of customers switching from PIE to Index Indirect franchisees (especially after September 2020). Moreover, as reported at paragraphs 7.88 to 7.95, we cannot determine whether Index Indirect and PSG Indirect are considered significant alternatives by D&D's (and TMG's) customers by looking at the customer survey responses, as we cannot determine whether the mentions of Index and PSG as alternatives to D&D refer to franchisees owned by third parties (D&D Indirect franchisees) or to franchisees owned by D&D (Index Direct and PSG Direct).

Competitor feedback

7.197 We asked ATI and Landmark if they consider that franchise groups represent a competitive constraint for their businesses (we note that the question did not refer to Index and PSG specifically, but rather to franchise groups in general).

(a) ATI submitted that franchise groups do not currently represent a significant competitive constraint as they generally do not have the resources to develop technology to compete in the marketplace, given the substantial margins that are retained by the local franchisees.⁵⁴⁴

(b) Landmark submitted that franchise groups represent a competitive constraint at most to a limited degree. In particular, Landmark submitted that 'franchisees have established market share and relationships which to some degree limit the readily available market to SearchFlow. However, the market share of franchisees is less than the other 3 large

⁵⁴¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.11.

⁵⁴² Response to the Enquiry Letter, paragraph 11.5.1.

⁵⁴³ And a further three in September 2020, and 12 before September 2020.

⁵⁴⁴ Competitor response to the phase 2 competitor questionnaire, question 8.

search providers, so they are not as much of a constraint to SearchFlow as compared to the larger competitors ... However, if the franchisee were not truly independent from a large search provider, then they would be a far more significant constraint to our business'.⁵⁴⁵

7.198 We also asked smaller competitors their opinion on whether franchise groups are better able to compete with national suppliers, such as D&D and TMG, than individual independent smaller suppliers (we note that the question did not refer to Index and PSG specifically, but rather to franchise groups in general). The evidence was mixed. As set out in Appendix C, some respondents said that franchise groups are in a better position to compete because they benefit from volume discounts and brand recognition, while other respondents did not think that franchise groups were better able to compete with large national suppliers.

7.199 Overall, we consider that the evidence from competitors is inconclusive as to whether franchise groups are a material competitive constraint for the large national providers.

Our assessment of competitive constraints from D&D Indirect franchisees

7.200 As explained above, some franchisees are owned and operated by D&D (ie the Index Direct and PSG Direct franchisees) and are therefore considered to be part of D&D for the purposes of our competitive assessment. We have therefore focused this assessment on the third-party owned franchisees (ie the D&D Indirect franchisees, namely Index Indirect and PSG Indirect). However, we note that it is not always possible to distinguish between the different types of franchisees in the evidence.

7.201 Some of the evidence we have received as to whether Index Indirect and PSG Indirect are a material competitive constraint for the Merged Entity is mixed. In addition, D&D only acquired Index in March 2019 and PIE/PSG in September 2020, making it hard to draw conclusions from internal documents and switching data which relates to different periods. We also cannot determine whether Index Indirect franchisees and PSG Indirect franchisees are considered good alternatives by D&D's customers in our customer survey as we cannot determine whether the mentions of Index and PSG as alternatives to D&D refer to franchisees owned by third parties or by D&D.

7.202 Overall, we consider that, in aggregate, the D&D Indirect franchisees may exert some competitive constraint on the Merged Entity. In particular, we note

⁵⁴⁵ Competitor response to the phase 2 competitor questionnaire, question 8.

that the D&D Indirect franchisees are able to differentiate their offering in relation to price and local or personal service (but not in relation to other parameters, such as the operating platform). We also note that the Index Indirect franchisees' aggregate market share increased from [0–5%] in 2018 to [5–10%] in 2021, although we do not know whether this has been at the expense of the Parties or other competitors.

7.203 However, we also consider that any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is likely to be limited, and inferior to the constraint exerted by a fully independent competitor, for a number of reasons.

7.204 First, the D&D Indirect franchisees face some of the same disadvantages that the smaller suppliers face. The franchise model may in principle help overcome some disadvantages, for example in relation to national marketing, common software and platforms. However, the D&D Indirect franchisees rely entirely on D&D for these aspects of their market presence. The D&D Indirect franchisees' dependence on D&D limits their ability to differentiate themselves and innovate, and hence limits their ability to compete with the Merged Entity.

7.205 While the Merged Entity may have an incentive to enable the franchisees to compete effectively with rivals like ATI and Landmark, the terms of the franchise agreements give D&D [X] oversight or control over the franchisees' operations which we would expect to be used to limit the D&D Indirect franchisees' ability to compete with each other and with D&D.

7.206 Second, the D&D Indirect franchisees' feedback indicates that they tend to serve small, regional or local conveyancers focused on residential transactions, and we do not consider that the D&D Indirect franchisees would be likely to present an effective alternative for the larger customers, including large conveyancers and Panel Managers.

7.207 Third, the cost to D&D in losing business to a D&D Indirect franchisee is still less than the cost of losing business to an independent rival (given D&D Indirect franchisees pay D&D royalties over their revenues). This means that the competitive threat to D&D from independent rivals is likely to be greater than the threat from the D&D Indirect franchisees, even if D&D could not otherwise limit that threat through the operation of the franchise agreements.

7.208 Fourth, as noted in Chapter 6, the market for PSRB is becoming increasingly digitised, and ancillary services have become an important component of the offers of the Parties and their main competitors. We consider that as these trends continue, the D&D Indirect franchisees will be even more dependent on D&D for their capacity to compete.

The constraint from intermediaries

7.209 The Parties submitted that:

‘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’.⁵⁴⁶

7.210 The Parties also submitted that:

‘For intermediaries, as the CMA confirms, ATI is not active in that segment pre-merger. Given that these customers achieve low prices pre-merger, this suggests that competition is strong even with a small pool of large suppliers. If the Parties were to increase prices post-merger, ATI would be well placed to start serving intermediaries at short notice, to replicate the premerger situation’.⁵⁴⁷

7.211 Our Merger Assessment Guidelines note that where a customer has the ability and incentive to trigger new entry, it may be able to restore competitive conditions to the levels that would have prevailed absent the merger.⁵⁴⁸ We consider entry as a countervailing factor in Chapter 8.

7.212 Most other forms of buyer power that do not result in new entry – for example, buyer power based on a customer’s size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because a customer’s buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers’ buyer power.⁵⁴⁹

7.213 We note that the Parties’ submission that intermediaries provide a pricing constraint (see paragraph 7.208) is not supported by the evidence available to us. We consider that intermediaries would be unlikely to be able to obtain discounts or resist price increases in the absence of sufficient switching options. In particular, the Panel Managers we spoke to expressed a concern

⁵⁴⁶ [Parties’ response to the Issues Statement](#), paragraph 2.3.4.

⁵⁴⁷ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.31.

⁵⁴⁸ [MAGs](#), paragraphs 4.19.

⁵⁴⁹ [MAGs](#), paragraphs 4.20.

that the Merger would reduce their bargaining power relative to search providers (typically because of the reduction in viable alternative options to switch to):

- (a) [X] said⁵⁵⁰ it faced a concentration risk in using [X], in that if TMG were no longer available or satisfactory, [X] would probably look at SearchFlow, D&D/PSG, or a panel arrangement (ie a number of different suppliers). Not many alternatives could provide the coverage they would need as a national business. [X].⁵⁵¹
- (b) [X] said it had been concerned with ongoing consolidation, noting that 'PSG has been acquired as well as CDS. There are fewer options available in terms of companies we could tender to'.⁵⁵² [X] competes with a number of organisations who have bought these businesses. [X].⁵⁵³ For [X], the identity of the parent company of the search provider is a consideration when conducting tendering.⁵⁵⁴ [X] overarching concern about the Merger was a further lack of choice and less competition between providers, leading to [X] having to pay more for inferior products.⁵⁵⁵ [X] noted that if the Panel Manager wanted to buy from somebody other than the big four, the cost would be [X] higher than it would have been a few years ago.⁵⁵⁶
- (c) [X] had a concern about concentration, as the Merger means fewer and fewer competitors.⁵⁵⁷ [X] noted that [X], there had been 12 options six years ago, 7-8 options two years ago, and there will be 3-4 credible options in 2022.⁵⁵⁸ [X] is concerned that the ability to apply competitive pressure is harder when there are fewer competitors in the market.⁵⁵⁹
- (d) [X] said that there is a concentration risk developing in this market and that the Merger could lead to less choice for customers and to price increases.⁵⁶⁰ In particular, [X] noted that following D&D's past acquisitions, prices generally increased, not benefiting the customer or the market.⁵⁶¹

⁵⁵⁰ [X] call note, [X], paragraph 7.

⁵⁵¹ [X] call note, [X], paragraph 12.

⁵⁵² [X] call note, [X], paragraph 23.

⁵⁵³ [X] call note, [X], paragraph 7.

⁵⁵⁴ [X] call note, [X], paragraph 24.

⁵⁵⁵ [X] call note, [X], paragraph 25.

⁵⁵⁶ [X] call note, [X], paragraph 25.

⁵⁵⁷ [X] call note, [X], paragraph 29.

⁵⁵⁸ [X] call note, [X], paragraph 29.

⁵⁵⁹ [X] call note, [X], paragraph 30.

⁵⁶⁰ [X] call note, [X], paragraph 29.

⁵⁶¹ [X] call note, [X], paragraph 28.

7.214 As regards the Parties' further submissions in relation to intermediaries (see paragraph 7.209):

- (a) In principle, it is difficult to draw comparisons between different market segments (because of the difficulties inherent in establishing whether existing prices in other segments are 'competitive' and how particular aspects of that market segment impact on pricing).
- (b) Even if certain intermediaries were in a better position to negotiate prices than other customer groups, this in itself does not preclude the risk of a reduction in competition following the Merger, given that other customers might not be in the same position (and, as explained above, the intermediaries do not believe, in any case, that they would be in a position to exercise buyer power after the Merger). We consider differences in prices between customer groups and between customers within the same groups in detail in Chapter 6.
- (c) We are not able to rely on ATI entering the market in the way suggested by the Parties. In particular, ATI told us that it does not take part in panel work due to the high costs involved and the lack of connection with quality of services provided. As such, it considers that this portion of the market is unavailable to it.⁵⁶² We consider entry as a countervailing factor in Chapter 8.

7.215 Based on this evidence, we consider that, while certain intermediaries may be currently able to negotiate better terms than other customers, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

Our current view of remaining competitive constraints

7.216 We consider that only two other PSRB suppliers, ATI and Landmark, are effective competitors to the Parties, with ATI having been particularly effective in recent years. Like the Merged Entity, these PSRB suppliers are able to take advantage of economies of scale in order both to invest in integrated software systems and other ancillary services to customers, and to compete with the Parties in terms of marketing. These advantages are not available to the smaller suppliers, who have been losing market share in recent years.

⁵⁶² ATI call note, 16 February 2022, paragraph 22.

- 7.217 The evidence on market shares, the Parties' internal documents, and the views of competitors and customers, support the view that competition in the supply of the PSRBs is centred on the large national providers.
- 7.218 We consider that the competitive constraint that the smaller suppliers, individually and in aggregate, exert on the Merged Entity is limited, weaker than the constraint the Parties exert on each other, and likely to diminish in the future. In particular, we consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. We therefore do not consider that smaller suppliers, taken separately or together, will impose a sufficient ongoing competitive constraint on the Merged Entity to offset the loss of competition arising from the Merger.
- 7.219 We also consider that any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is likely to be and to remain limited. D&D Indirect franchisees face some of the same disadvantages that the smaller suppliers face. Moreover, we consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offer and are subject to various restrictions in the franchise agreements. This limits their ability to differentiate themselves, innovate, and compete with the Merged Entity, and their dependence on D&D is likely to increase given the increasing importance of digitisation and ancillary services.
- 7.220 We further consider that the constraints exerted by ATI, Landmark, the smaller suppliers, and any competitive constraint exerted by the franchisees, even in aggregate, will be insufficient to offset the loss of competition arising from the Merger.
- 7.221 We also consider that, while certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

Provisional conclusion

- 7.222 In this chapter we have considered whether the Merger would lead to a substantial lessening of competition by removing a previous competitor from the market and whether there would remain sufficient competitive constraints to offset the effects of the Merger.
- 7.223 The Merger eliminates one of the largest PSRB suppliers from the market and creates a market leader with a very significant share of the supply of PSRBs in E&W. In particular:

- (a) The Merged Entity is significantly larger in terms of market share than the two largest competitors, ATI and Landmark, in a market in which we have evidence that economies of scale are important.
- (b) The market is highly concentrated. The three largest competitors post-Merger, ie the Merged Entity, ATI, and Landmark together account for over 80% if D&D Indirect franchisees are included and over 70% of the market if D&D Indirect is excluded from the Merged Entity.
- (c) There is a number of smaller suppliers in the market but they all have much lower market shares. The tail of smaller suppliers for which we have data all have individual market shares of less than [0–5%] and together account for less than [10–20%] of the market on a national basis. These smaller competitors have lost market share since 2018.

7.224 The evidence available to us consistently shows that the Parties are close competitors. In particular we note:

- (a) Despite the Parties' submission that they focus on different parts of the market, the data shows that both Parties have a significant presence in the supply of both residential and commercial PSRBs.
- (b) While there are some differences in their competitive strengths (with TMG stronger than D&D in the supply of PSRBs to the Top 100 law firms, which represents a relatively small part of the overall market), both Parties supply PSRBs to conveyancers ranging from small to large law firms, and to intermediaries (such as Panel Managers).
- (c) Both Parties also provide ancillary services that are closely linked to the supply of PSRBs and which are an important aspect of competition in this market.
- (d) The Parties' internal documents show that each Party sees the other as a key competitor and that the Parties monitor each other.
- (e) Our engagement with customers indicates that a material proportion of D&D's customers see TMG as an important alternative to D&D (although we also recognise that it is more difficult to determine whether TMG's customers see D&D as an important alternative).
- (f) This is consistent with the evidence provided by competitors, which consider that D&D and TMG are among each other's closest competitors, and the available evidence on customer switching (albeit that we interpret this evidence with caution, for the reasons explained above).

7.225 The Merged Entity would face only limited competition, and the remaining competitive constraints would be insufficient either individually or in aggregate to offset the loss of competition resulting from the Merger. In particular:

- (a) Our current view is that the two large national providers (ATI and Landmark) each would provide an effective competitive constraint post-Merger, with ATI having been particularly effective in recent years. ATI and Landmark are mentioned as close competitors in the Parties' internal documents, and the evidence from customers and competitors corroborates this view. The evidence from the survey and the available evidence on switching data, both of which we interpret with caution, shows ATI to be a strong constraint with Landmark attracting some customers but fewer than ATI. Like the Merged Entity, these providers are able to take advantage of economies of scale in order both to invest in integrated IT platforms and the provision of other ancillary services to customers, and to compete with the Parties in terms of marketing.
- (b) The competitive constraint that the smaller suppliers exert on the Merged Entity, both individually and in aggregate, is limited, weaker than the constraint the Parties exert on each other, and likely to diminish in the future. We consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. Whilst the customer survey and switching evidence shows that some customers see these smaller suppliers as alternatives to the Parties, we treat this evidence with caution and do not consider it sufficient to support a conclusion that they are effective competitors in light of the other evidence. As noted above, all the smaller suppliers have very small shares of supply, and they consider themselves restricted in their ability to compete with the large suppliers. The Parties' internal documents contain very few references to these smaller suppliers. In some of the references that are included, the Parties indicate that these smaller competitors are not seen as a competitive threat by them. We therefore do not consider that the presence of the smaller suppliers, taken separately or together, is sufficient to offset the loss of competitive constraint arising from the Merger.
- (c) Any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is limited. We consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. This limits their ability to differentiate themselves, innovate and compete with the Merged Entity. Moreover, the D&D Indirect franchisees are themselves small regional competitors, who

lack the ability to compete for some customer segments or to constrain the Merged Entity to a significant degree.

- (d) While certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

7.226 On this basis, our current view is that the Merger eliminates a major national PSRB supplier from the market, that in addition to the Merged Entity only two large national PSRB suppliers would remain, and that the constraints from franchisees and smaller suppliers would not impose a sufficient competitive constraint on the Merged Entity, either individually or collectively, to offset the effects of the Merger.

7.227 Before provisionally concluding on whether the Merger has resulted or may be expected to result in an SLC in the market for the supply of PSRBs in E&W, we have considered in Chapter 8 whether there are any countervailing factors (specifically entry and/or expansion) that could prevent an SLC arising from the Merger.

8. Countervailing factors

Introduction

- 8.1 In this chapter, we consider whether there are countervailing factors which may prevent the SLC we have provisionally found from arising. We note that we have not received any submissions on efficiencies, and we have not considered them further.
- 8.2 This chapter therefore assesses the potential for entry and/or expansion to mitigate the loss of competitive constraint resulting from the Merger.

Entry and expansion

Framework of assessment

- 8.3 If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect (for example, a price rise), the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger.⁵⁶³

⁵⁶³ MAGs, paragraph 8.28.

- 8.4 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.⁵⁶⁴
- 8.5 The CMA will use the following framework to determine whether entry or expansion would prevent an SLC. The entry or expansion must be:
- (a) 'timely;
 - (b) likely; and
 - (c) sufficient to prevent the SLC'.⁵⁶⁵
- 8.6 These conditions are cumulative and must be satisfied simultaneously.⁵⁶⁶

Timely

- 8.7 What is considered to be timely in order to prevent or mitigate the adverse effects of a merger will depend on the industry and the characteristics and dynamics of the market, and the timeframe over which the CMA expects an SLC to result from a merger. The CMA guidance provides that '[t]ypically, entry or expansion being effective within two years of an SLC arising would be considered by the CMA to be timely although, depending on the nature of the market, the CMA may consider a period of time shorter or longer than this'.⁵⁶⁷

Likely

- 8.8 The CMA must be satisfied that potential rivals or existing rivals have both the 'ability and incentive' to enter and/or expand. The CMA will consider the scale of any barriers to entry and/or expansion.⁵⁶⁸

Sufficient

- 8.9 Entry or expansion should be of sufficient scope and effectiveness to prevent an SLC from arising as a result of the merger.⁵⁶⁹ Small-scale entry that is not comparable to the constraint eliminated by the merger is unlikely to prevent an SLC. In a differentiated market, entry into a market niche may be possible, but to the extent the niche product may not necessarily compete strongly with

⁵⁶⁴ MAGs, paragraph 8.29.

⁵⁶⁵ MAGs, paragraph 8.31.

⁵⁶⁶ MAGs, paragraph 8.32.

⁵⁶⁷ MAGs, paragraph 8.33.

⁵⁶⁸ MAGs, paragraph 8.35.

⁵⁶⁹ MAGs, paragraph 8.37.

other products in the overall market, it may not constrain incumbents effectively.⁵⁷⁰

8.10 In this chapter, we first look at:

- (a) potential barriers to both entry and expansion (paragraphs 8.11 to 8.17);
- (b) the evidence in relation to entry (paragraphs 8.18 to 8.22); and
- (c) the evidence in relation to expansion (paragraphs 8.23 to 8.35).

Barriers to entry and expansion

8.11 In this section we look at potential barriers to entry and expansion.

The Parties' view

8.12 The Parties submitted that there were no significant barriers to entry or expansion.⁵⁷¹ The Parties argued that:

- (a) initial set-up costs were generally low;⁵⁷²
- (b) the importance of price and lack of close focus on quality meant that neither retailer nor customer clients placed a high value on the reputation of participants as a factor in ordering products;⁵⁷³
- (c) economies of scale in ordering products were not present at a compiler level;⁵⁷⁴
- (d) there was little to no use of term agreements or exclusivity requirements as regards the ordering of products by retailers and customers;⁵⁷⁵
- (e) search packs are essentially commodity products;⁵⁷⁶ and
- (f) customers can (and do) switch easily between providers, facilitated by multi-sourcing by customers.⁵⁷⁷

⁵⁷⁰ MAGs, paragraph 8.39.

⁵⁷¹ Response to the Enquiry Letter, paragraph 32.1.

⁵⁷² Response to the Enquiry Letter, paragraphs 32.2-32.5. The Parties also provided a list of new market entrants at paragraph 33.2 of the Response to the Enquiry Letter.

⁵⁷³ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁵⁷⁴ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁵⁷⁵ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁵⁷⁶ Response to the Issues Paper, paragraphs 4.9-4.10.

⁵⁷⁷ Response to the Issues Paper, paragraphs 4.9-4.10.

Third party views and the Parties' responses to these views

- 8.13 Third parties told us that the key factor preventing expansion is accessing sufficient resources to be able to compete with established larger property search businesses. The level of spend and capital to fund expansion is viewed as increasingly difficult to reach and the gap between their spending power and the larger suppliers is increasing. This specifically concerns spending on technology, as the processes and services relating to PSRBs has become more digitised,⁵⁷⁸ and marketing to attract new customers. No third party told us that 'white label' products were a way to bridge the technology spend gap. Detailed third party responses can be found in Appendix C.
- 8.14 In response, the Parties argued that expansion was a matter of financing and there was no lack of available finance for innovative products as shown by the proliferation of PropTech companies.⁵⁷⁹ They considered that the increased digitalisation of property searches opened possibilities for expansion of PSRB suppliers⁵⁸⁰ with the technology required to enter and expand being 'readily available' including through white label provision.⁵⁸¹ The Parties also submitted that marketing spend was not a barrier to expansion. They provided the marketing spend for a number of their businesses stating that this was relatively modest and not insurmountable for other suppliers.⁵⁸²

Our assessment

- 8.15 We addressed the points set out at paragraph 8.12 on barriers in Chapter 6. These include the importance of quality as a competitive factor, economies of scale, supply agreements and exclusivity, and switching. In Chapter 6 we consider that not all customers are price sensitive and PSRB suppliers do compete on quality. While exclusive supply agreements are not widely used, customers do not tend to switch unless there is an issue with the service or quality they are already receiving, and the provision of ancillary services can contribute to making customers 'sticky'. This customer inertia can act as a barrier to expansion. Furthermore, there are some economies of scale as large firms are able to spread fixed costs over a wider customer base, allocate staff efficiently, automate, and purchase inputs more efficiently than smaller

⁵⁷⁸ ATI response to phase 1 questionnaire, question 11.

⁵⁷⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.11.

⁵⁸⁰ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.12.

⁵⁸¹ D&D Site visit slide pack, dated 3 February 2022, slide 18.

⁵⁸² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.15. D&D's marketing spend budget for PIE in FY21 was £[REDACTED]; and for Index franchise it was £[REDACTED]. TM Convey spent £[REDACTED] and CDS spent £[REDACTED].

firms. Smaller firms which are at a cost disadvantage may find it particularly difficult to expand (by competing on price or investing in service improvements). Smaller suppliers are at a distinct disadvantage in their ability to expand through competition with large suppliers because of a lack of ancillary services.

- 8.16 We also note in this regard that the PSRB market has become increasingly concentrated in recent years, with the supply of PSRBs in E&W by the Merged Entity, ATI, and Landmark together accounting for around [80–90%] of the market.⁵⁸³ Even if the D&D Indirect franchisees are excluded, the share of supply of the Merged Entity, ATI, and Landmark together still accounts for around [70–80%] of the market.
- 8.17 We therefore consider that large suppliers have a significant advantage over new entrants and smaller suppliers looking to expand. In addition to our findings, as summarised in paragraph 8.15, we consider the ability to invest in and develop technology and marketing at sufficient levels to compete with the large suppliers act as further barriers to expansion. The recent consolidation in the market we consider has also increased the disparity between large and smaller suppliers in recent years and thus increased the barriers faced by smaller suppliers.

Entry

- 8.18 We now look at past entry and how it can inform us of the potential for future entry.

The Parties' view

- 8.19 The Parties submitted that 'there is evidence of historic disruptive new entrance and growth and the prospect of new entry is real, imminent and potentially disruptive'.⁵⁸⁴ They also argued that entry 'even at a small scale is sufficient'⁵⁸⁵ and that it is 'not inconceivable' that property websites could enter into the provision of PSRBs.⁵⁸⁶

⁵⁸³ See Table 1 in Appendix B.

⁵⁸⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.40.

⁵⁸⁵ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.42.

⁵⁸⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4 paragraph 1.12

Our assessment

- 8.20 Entry (and exit) by firms on a small scale into the PSRB market has occurred on a regular basis in the past and is continuing to happen.⁵⁸⁷ However, in order to be taken into account in our assessment entry must be sufficient in scope and effectiveness to prevent an SLC from arising as a result of the Merger. As set out in paragraphs 7.163 to 7.167, the Merged Entity faces a limited competitive constraint from smaller suppliers, which is likely to diminish overall in the future. As such, any entry by smaller suppliers into the PSRB market would not be a sufficient constraint to prevent any SLC from arising as a result of the Merger.
- 8.21 We have not seen any new entry into the PSRB market on a large scale since ATI entered from outside the UK through the acquisition of a small supplier (STL) in 2015. In relation to evidence of potential large-scale entry into the market, third parties were sceptical of further entry from outside the UK.⁵⁸⁸ We have also not received any evidence from the Parties or through our enquiries, of any likely large-scale entrant who would enter in a timely manner. Three companies mentioned by the Parties as potential entrants confirmed that they did not have plans to enter the PSRB market.⁵⁸⁹
- 8.22 We therefore do not consider that entry would be timely, likely and sufficient to prevent the SLC that we have provisionally found in the PSRB market in E&W.

Expansion

- 8.23 In this section we first look at the ease of expansion by looking at the extent and speed of growth seen historically in PSRB suppliers (paragraphs 8.24 to 8.31). We then look at the potential for expansion to be facilitated by larger customers (paragraphs 8.32 to 8.35).

⁵⁸⁷ Response to the Enquiry Letter, paragraph 33.2. The Parties provided a schedule of small-scale entrants in 2021 (post-Merger) and to date in 2022.

⁵⁸⁸ For example, ATI stated that it was not aware of any other global players – similar to ATI and D&D – that could enter the property search reports industry in E&W. ATI call note, 28 September 2021, paragraph 20.

⁵⁸⁹ [REDACTED] response to questions submitted to the CMA on 14 April 2022, [REDACTED] response to questions submitted to the CMA on 3 May 2022 and [REDACTED] response to questions submitted to the CMA on 26 April 2022.

Ease of expansion

The Parties' view

8.24 The Parties submitted that there were no significant barriers to expansion and that expansion was 'remarkably easy'.⁵⁹⁰ The Parties argue that this was shown by the growth of the Parties and the emergence of the Index franchise group, InfoTrack, CDS, Search Acumen, Legal Bricks, Legal Brokers, Move Reports UK, and The Search Bureau.⁵⁹¹

Third party views

8.25 No third party considered that expansion was easy. Almost all small PSRB suppliers told us that it was difficult, very difficult or impossible to expand in the property search market.⁵⁹² This view was also supported by the other two large competitors:

- (a) Landmark stated that in its view it was very difficult for a new entrant to come into the market and grow.⁵⁹³
- (b) ATI told us that the barriers for new entrants into the market were higher than ever and as such there have not been any significant new entrants able to expand rapidly (other than D&D) since InfoTrack entered the market.⁵⁹⁴

Our assessment

8.26 Of the PSRB suppliers mentioned by the Parties, ATI has experienced the most significant expansion in recent years. ATI entered the market through acquisition of an existing smaller supplier (STL) in 2015, launching its own product InfoTrack in the same year. InfoTrack grew gradually, taking three years to reach a market share of [X] [5–10%].

8.27 ATI attributed its success to certain advantages it had on entering the market. These were:⁵⁹⁵

⁵⁹⁰ Response to the Enquiry Letter, paragraph 32.1. [Parties' response to the Issues Statement](#), paragraph 3.8.

⁵⁹¹ [Parties' response to the Issues Statement](#), paragraph 3.8.

⁵⁹² Third party respondents to phase 1 and phase 2 questionnaire, responses to question 'How easy or difficult is it for a small supplier to expand in the market for the supply of property search report bundles in England & Wales in your opinion? What are the main barriers (if any)?'. 28 out of 29 respondents who answered the question at Phase 1 or 2 stated that it was difficult, very difficult or impossible to expand in the property search market.

⁵⁹³ Landmark call note, 22 September 2021, paragraph 23.

⁵⁹⁴ ATI call note, 16 February 2022, paragraph 14.

⁵⁹⁵ ATI call note, 16 February 2022, paragraph 1.

- (a) a tried and tested product which was easily transferable to the UK;
- (b) an innovative product that was different to anything else in the UK PSRB sector at the time;
- (c) experience in a market (Australia) where the conveyancing and legal system were highly compatible with the UK; and
- (d) significant financial backing, being at the time the largest property search provider in Australia.

8.28 Of the other PSRB suppliers mentioned by the Parties, the Index Indirect franchise group, CDS and Search Acumen (prior to their acquisitions by D&D, TMG and ATI respectively) had market shares of between [5–10%] each.⁵⁹⁶ These shares had taken them five years or more to achieve.

8.29 Legal Bricks and Move Reports UK which are newer entrants into the PSRB market and therefore, potentially still in an initial growth phase, each have a market share as of 2021 of only about [0–5%]. Legal Bricks was acquired by The Access Group in November 2021. The Access Group told us that its projected growth for Legal Bricks meant that it would increase its market share from around its current [0–5%] to around [0–5%] in 2024.⁵⁹⁷ This growth would come from both new business and cross selling from The Access Group’s legal customer base. The Access Group stated that the acquisition ‘represented an opportunity for Access to enhance the breadth of its offering to its customers’ and that for it a small acquisition made sense as it offered the ability to accelerate growth quickly.⁵⁹⁸

8.30 We consider that whilst the suppliers that have entered the market that were mentioned by the Parties were able to grow their market share, this was achieved slowly over time. Further, even after such growth, their market shares remained very substantially below the shares of the four main PSRB suppliers. Legal Bricks’ projected future growth while marginally ahead of the historic growth of the market as a whole would still leave it significantly smaller than ATI, Landmark and the Merged Entity.

8.31 ATI’s explanation of its success suggests that there are significant barriers to expansion in the PSRB market which it was in a unique position to overcome. Specifically, it had an innovative product that was already an established offering in Australia, a similar market to the UK. It also had significant financial

⁵⁹⁶ Market shares for the individual companies are shown in Table 7.1.

⁵⁹⁷ Response to a Request for Information (RFI) sent to The Access Group on 14 April 2022. Response dated 22 April 2022.

⁵⁹⁸ Response to a Request for Information (RFI) sent to The Access Group on 14 April 2022. Response dated 22 April 2022.

backing. As set out in our analysis of entry above, we are not aware of any PSRB suppliers from outside the UK that are looking to enter the market in E&W and would be potentially able to enter and expand in a timely, likely, and sufficient manner. We are not aware of any PSRB supplier that is already in the market which would be able to grow in a similar way to ATI.

Expansion facilitated by larger customers

The Parties' view

- 8.32 The Parties suggested that '[e]xpansion 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, [Conveyancing Alliance Limited] (**CAL**)'.⁵⁹⁹ The Parties have also said that '[a]cross the [...] period 2014–2017, 42% of CDS' total growth can be attributed to increased sales to CAL'.⁶⁰⁰

Our assessment

- 8.33 The argument that large customers and/or panels could divert work to smaller PSRB suppliers to facilitate their growth is an argument principally about buyer power. We address buyer power in Chapter 7⁶⁰¹ where we found that, while certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.
- 8.34 In relation to CDS we consider the ability of CDS to grow its market share in 2014-2017 is unlikely to be informative as to the current scope for such growth, given in particular the changes in market shares of the main PSRB suppliers and the effect this has had on entry barriers in recent years (see paragraphs 8.11 to 8.17 above). In addition, CAL's purchases from CDS even in 2017 were relatively modest relevant to the total size of the market (around [0–5%] in volume terms). Even if a Panel Manager were to offer a similar volume of business to a smaller supplier in response to the Merger, in our view this is unlikely to be sufficient to allow timely expansion on a sufficient scale to address any concerns arising from the Merger.
- 8.35 Furthermore, we have seen no evidence that large customers or panels have looked to sponsor entry in the past nor have we received any evidence from

⁵⁹⁹ [Parties' response to the Issues Statement](#), paragraph 3.9.

⁶⁰⁰ D&D response to the CMA's s.109 Notice issued on 17 November 2021, question 3(c).

⁶⁰¹ See paragraphs 7.208 to 7.216.

them or from the Parties or third parties that this is likely to happen in the future.

Provisional conclusion

- 8.36 We provisionally conclude that neither entry nor expansion would be timely, likely and sufficient to mitigate any potential adverse effects of the Merger and prevent the SLC we have provisionally found from arising.

9. Provisional conclusion

- 9.1 As a result of our assessment, we provisionally conclude that the completed acquisition by D&D of TMG has resulted in the creation of an RMS.
- 9.2 We also provisionally conclude that the creation of that situation has resulted, or may be expected to result in an SLC in the supply of PSRBs in E&W.