

**COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK LIMITED OF CAPITA
SECURE SOLUTIONS AND SERVICES**

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INITIAL PHASE 2 SUBMISSION TO CMA

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1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 In this submission, NEC Software Solutions UK Limited ("**NECSWS**") and SSS Public Safety Limited (formerly Capita (SSS) Limited) and Secure Solutions USA LLC (formerly Capita Software (US) LLC) (together, "**SSS**") set out certain key factors and issues considered important to the CMA's Phase 2 assessment. NECSWS and SSS are referred to collectively as the "Parties" and this submission adopts the defined terms used in the Parties' Final Merger Notice ("**FMN**") and Issues Letter response dated 8 April 2022 ("**IL Response**") unless otherwise specified.
- 1.2 The Parties contend, as explained in this submission, that the Merger does not give rise to a substantial lessening of competition in any of the reference markets. This submission is not intended to address every point of difference between the Parties' position and the CMA's Phase 1 Decision of 29 April 2022 (the "**P1D**"), and focuses on a forward-looking assessment of the key substantive points which are pertinent to the CMA's investigation at Phase 2. For ease of reference, the submission is split into different sections addressing key points in relation to substantive and procedural issues to which the Parties consider the CMA should have due regard in its Phase 2 investigation.
- 1.3 In relation to key substantive points, this submission explains that:
- 1.3.1 The financial stability, capacity, reliability and efficiency of suppliers play a critical role in public sector software markets (*Section 2 – Market context and background / Public sector procurement*). Against this backdrop, NECSWS has a proven track record of investing to grow and develop the businesses it has acquired, and intends to reverse the trend of [redacted] SSS' products and services;
- 1.3.2 A key factor driving forward-looking competitive dynamics in the reference markets is the shift towards digital, mobile and cloud-based solutions, which has been prompted by customer demand and has increasingly been shaping customers' procurement decisions and choice of suppliers (*Section 2 – Market context and background / Developments in technology*);
- 1.3.3 Linked to this, another important driver of competition across the reference markets has been, and continues to be, the success of new entrants and the credible threat of potential entry (including by international suppliers). For example, Mark43's very recent actual entry into supply of RMS in the UK illustrates that the threat of new entry is a real constraint, not a notional one (*Section 2 – Market context and background / The rise of new entrants*);
- 1.3.4 In *ICCS*, the Parties' Opportunities Data shows that the Parties compete more closely with third party suppliers than with each other, and significant competition from several strong players who have modern and contemporary offerings (Frequentis, Motorola, SAAB and Systel) will continue to constrain the Parties post-Merger (*Section 3 – ICCS*);
- 1.3.5 In *Duties*, the Parties' Opportunities Data provides clear evidence that the Parties are not close competitors, and that there exists a range of actual competitors. There is also a number of credible potential competitors which will continue to exert a strong constraint on the Parties (*Section 4 – Duties*);
- 1.3.6 In *RMS*, [redacted], in light of the impact of substantial and high-profile implementation issues with its PoliceWorks product at Greater Manchester Police on SSS' business and reputation, and the [redacted]. The Parties are not close competitors; actual competitors (including Niche and now Mark43) and credible potential competitors

- will continue to impose a strong constraint on the Parties post-Merger, and customers can (and have) sponsored new entry (*Section 5 – RMS*);
- 1.3.7 The relevant counterfactual, being the most likely conditions of competition absent the Merger, is the scenario in which SSS is a substantially weakened competitive force, [X] (*Section 6 – Counterfactual*);
- 1.3.8 Any barriers to entry and expansion in the reference markets are readily and demonstrably surmountable (*Section 7 – Barriers to entry and expansion*);
- 1.3.9 Emergency services customers have a high degree of control over, and choose how they wish to procure, their products and services, and exercise material buyer power (*Section 8 – Countervailing buyer power*).
- 1.4 In relation to key procedural points across the reference markets, this submission explains that:
- 1.4.1 In light of the limitations of the CMA's evidence-gathering process within the confines of Phase 1, it will be crucial for the CMA's Phase 2 investigation to be underpinned by a reliable and sufficiently representative third-party evidence base (*Section 9 – The importance of representative customer feedback*);
- 1.4.2 Competition in the reference markets takes place "for the market", and shares of supply reflect outcomes of historic tender processes (and can and do fluctuate significantly). As recognised by the CMA at Phase 1,¹ such figures do not reliably indicate current or likely future competitive dynamics (*Section 10 – Historic market shares are not indicative of current competitive landscape*);
- 1.4.3 The datasets compiled at Phase 1 are a helpful starting point for a more reliable and forensic study of customer views and behaviour at Phase 2, with the views of current and recent purchasers being the most pertinent to the CMA's assessment (*Section 11 – Bidding data*).
- 1.5 The Parties stand ready to provide any further explanation or assistance that the CMA would find helpful.

SECTION A: KEY POINTS – SUBSTANTIVE

2. MARKET CONTEXT AND BACKGROUND

- 2.1 The Parties consider that there are several important factors underlying competitive dynamics in the relevant markets.

Public sector procurement

- 2.2 It is of critical importance to customers in the public sector, and emergency services customers in particular, that suppliers have the financial stability and capacity to deliver projects and "see them through" (in terms of maintenance and resolving any issues that may arise with implementation or operation of software), in light of the very significant consequences that could arise in this sector in the event of system errors or failure. This is

¹ P1D, para 112.

supported by references in customer feedback received by the CMA to the importance of a good track record.²

- 2.3 The harmful consequences of operational failures have been illustrated publicly by the well-publicised issues with the implementation of SSS' PoliceWorks product at Greater Manchester Police ("**GMP**"). As noted in the IL Response, given the importance of a reliable and stable RMS to effective and efficient policing, the Parties consider that there is no realistic prospect that police customers [redacted] PoliceWorks going forward.³ [redacted]⁴.
- 2.4 Further, given the importance of the Parties' products and the public sector activities that they support, it is essential that suppliers can demonstrate their reliability and efficiency⁵. NECSWS recognises this, and has consistently focused on meeting customers' evolving procurement requirements by increasing levels of investment and maintaining a track record of investing in its people, product development and new acquisitions to enhance the products and services it offers to customers.⁶
- 2.5 By contrast, SSS' products have suffered from a significant lack of investment in the past three to four years: for example, as explained in some detail at the Issues Meeting on 6 April 2022, [redacted].⁷ [redacted] NECSWS intends to reverse this position by investing in the Parties' combined offering to modernise existing products, develop new product capabilities and accelerate the move to cloud-based digital products which involve lower customer operating costs and joined-up delivery. NECSWS is committed to investing in its product portfolio and re-invests a proportion of revenues attributable to individual products back into the relevant product.

Developments in technology

- 2.6 A key factor driving current competitive dynamics in public sector software markets is customers' movement towards digital, mobile and cloud-based solutions that allow modern and agile ways of working, which opens the market up to new entrants with contemporary product offerings. This movement towards more innovative technology is mandated by UK public policy, including the UK Government's "Cloud First" policy and the National Policing Digital Strategy, and is increasingly impacting customers' procurement decisions.⁸ The National Policing Digital Strategy is a seminal document which sets out an ambition of digital transformation of UK policing in the period to 2030, identifying a set of specific digital priorities for policing and outlining the key data and technology building blocks required to deliver them. For example, it sets out an aim that c. 80% of police technology will be hosted on the public cloud within the first five years of the plan.
- 2.7 In the time since the National Policing Digital Strategy has been published in 2020, customers have increasingly been specifying cloud-based capability as a requirement for

² Cited in P1D, paragraph 135.

³ See paragraph 7.7 of the IL Response.

⁴ [redacted]

⁵ This was also recently recognised in the CMA's Working Paper titled "[Approach to assessing Motorola's dual role](#)" in its *Mobile radio network services* market investigation, in which the CMA suggested that for products used by police and emergency services in critical situations "*any issues with performance or quality would have significant implications for customers and society*".

⁶ See paragraph 2.24 FMN.

⁷ See in particular slides 10-12 of the full confidential version of the Issues Meeting slides provided to the CMA on 6 April 2022.

⁸ "Government adopts 'Cloud First' policy for public sector IT" (5 May 2013) ([link](#)); National Police Chiefs' Council & Association of Police and Crime Commissioners, National Policing Digital Strategy – Digital, Data and Technology Strategy 2020-2030 ("**National Policing Digital Strategy**") (January 2020) ([link](#)).

prospective suppliers.^{9 10} Cloud-based solutions are particularly attractive because, as noted in the P1D, they "require little or no specialist physical computer equipment to be located on site."¹¹

- 2.8 Competitors including Frequentis, Motorola and SAAB (ICCS), SAP, Crown and Totalmobile (Duties) and Niche and Mark43 (RMS) are well-placed to serve demand for cloud-based solutions, and have already enjoyed a degree of success to date as a result.¹² The cloud functionality of the Parties' competitors has been highlighted in the Parties' internal documents as a key factor in their success.¹³ In order to meet customers' requirements, NECSWS has also focused on updating its own products: its Cortex (ICCS) and CONNECT (RMS) solutions are now cloud-capable, subject to [X].¹⁴
- 2.9 By contrast, SSS [X], in part because [X]. As explained in more detail below, such investment would be unlikely to occur absent the Merger, whereas NECSWS intends to invest to improve SSS' products and services.
- 2.10 The Parties note the third-party feedback received by the CMA and referred to in the P1D indicating that, although there is a general trend away from on-premise solutions to cloud-based solutions, the use of on-premise solutions remains widespread and that some customers consider cloud more important than others.¹⁵ However, it is important to note that:
- 2.10.1 The National Policing Digital Strategy, which calls for cloud-based solutions, was only issued in 2020, and therefore customers would only have been able to implement this strategy in procurements which took place after that point in time. It is to be expected that, in the meantime, customers will continue to use existing on-premise solutions until their current contracts end; and
- 2.10.2 importantly, NECSWS believes that almost all new contracts awarded by police customers for supply of ICCS and RMS since 2020 were for the provision of cloud-based solutions. In ICCS, most of these opportunities have been won by Motorola, and in RMS, such opportunities have been won by Niche and Mark43. In Duties, Thames Valley Police and Hampshire Constabulary also recently issued a tender for a cloud-based solution to replace their respective current on-premise solutions.
- 2.11 The Parties submit that in its Phase 2 investigation the CMA should take account of the increasing role of digital, cloud and mobile capabilities in customer procurement decisions which, in the Parties' view, will significantly impact competitive conditions on a forward-looking basis (and is timely, likely and sufficient to spur entry and expansion). The Parties anticipate that the CMA would find it helpful to seek input from the National Police

⁹ For example, Thames Valley Police in relation to a workforce management tool (paragraph 6.11.1 of the IL response); Dyfed-Powys Police, Warwickshire FRS and Northamptonshire FRS, Hereford and Worcestershire FRS and Shropshire FRS, Kent & Essex Police and South Wales Police in relation to ICCS (paragraph 5.26 of the IL response).

¹⁰ Further, public statements from Cumbria Constabulary in relation to its recently announced partnership with Mark43 reflect the substantial benefits of cloud-based capabilities ([link](#)), e.g.: "Our investment in new technology has one key aim – making sure we provide the best possible policing service to the people of Cumbria and those who work and visit our county. Improving the digital tools and systems with which our officers and staff do their jobs means they are able to work smarter and more efficiently, giving them more opportunity to be out and visible in our communities, which we know people want. Ultimately, this partnership will help our officers do their jobs better for the benefit of tackling and deterring crime and keeping the communities of Cumbria safe".

¹¹ See paragraph 35 P1D.

¹² See paragraph 11.6.1 of the FMN.

¹³ See paragraphs 5.22 and 5.30.4 of the IL Response.

¹⁴ See paragraphs 12.38, 12.56 and 12.60 of the FMN.

¹⁵ See paragraph 150 of P1D.

Technology Council and the Police ICT Company, which co-authored the National Policing Digital Strategy, on these developments.

The rise of new entrants

- 2.12 Linked with the technological developments set out above, a key driver of competition in the relevant markets is successful entry by suppliers (including international suppliers). For example:
- 2.12.1 In ICCS, Motorola (a US-based supplier) entered in 2016 and has won the highest number of recent opportunities compared to other ICCS suppliers in 2021 and 2022. Motorola was identified by [REDACTED].¹⁶ As explained in the FMN, Motorola has been capitalising on its role in the delivery of the new ESN to engage with customers and win contracts in this area.¹⁷
- 2.12.2 In Duties, current or recent [REDACTED] supply by global ERP vendors such as SAP and Oracle has continued to exert competitive pressure. [REDACTED].¹⁸
- 2.12.3 In RMS, Mark43 very recently (in May 2022) publicly announced a partnership with Cumbria Constabulary which "*propels Mark43 to the UK market, expanding the impact of industry-leading cloud-native software*"¹⁹. Industry commentators have recognised that this is a "key win" for Mark43, which it will look to use "as a launchpad for further expansion in the UK"²⁰.
- 2.13 Further, the advent of ESN is lowering barriers to entry, as noted in the Parties' internal documents.²¹ ESN is a worldwide standard, not one that is specific to the UK. If, therefore, an international ICCS product already has Long Term Evolution (LTE) capability such that it is ESN-compatible, the costs of entry would likely be [REDACTED] and investment may focus on adjustments to, for example, the [REDACTED].²²
- 2.14 The Parties also note that their predictions of market developments in relation to new entry have been borne out by the entry of Mark43 referred to above (which was foreshadowed in the FMN²³ and the IL Response²⁴). Customer demand for digital, mobile and cloud-based solutions, driven by national strategies mandating a shift towards modern and innovative technology, can be expected to encourage and facilitate entry from other suppliers who might be better placed to serve such customers.

¹⁶ Annex 10.1.11 to the FMN ("Control Room Business Update March 2021"), slide 12.

¹⁷ See paragraph 15.39.2 of the FMN.

¹⁸ Annex 9.2.17 to the FMN ("Project Siren Reboot"), slide 17.

¹⁹ See "*Mark43 and Cumbria Constabulary Announce New Deal to Enhance Community Safety Using a Modern Technology Solution*" ([link](#)). It is clear from this statement that the Mark43 UK entry relates to RMS, e.g. "*this software will be used to write reports, undertake investigations, more efficiently deploy resources, support safeguarding and victim care, and for officers to maintain a dialogue with their community members*".

²⁰ See "Mark43 secures inaugural UK customer", TechMarketView post dated 12 May 2022 ([link](#)).

²¹ [REDACTED]

²² See paragraph 22.23 FMN.

²³ See paragraphs 1.23, 11.61, 15.58, 22.4 and 22.31.

²⁴ See paragraphs 2.4.3, 4.13.3, 7.1.5, 7.12.3, 7.14.1, 7.16 and 9.4.

3. ICCS

Key points

- 3.1 The Parties firmly believe that the Merger will not give rise to a substantial lessening of competition in the supply of ICCS for the reasons set out below.
- 3.2 ICCS is a product with a low degree of differentiation. Its function is to enable calls to be made and taken by telephone and radio through a single integrated system.
- 3.3 Post-Merger, there will remain five competitors active in the supply of ICCS to emergency services customers: NECSWs, Frequentis, Motorola, SAAB and Systel. There will continue to be significant competition in this market:
- 3.3.1 In the last five years, new entrants and growing players such as Motorola, SAAB and Systel have increasingly been winning contracts at the expense of existing ICCS providers such as the Parties. Most of these competing solutions are cloud-based (allowing access from anywhere with an appropriate internet connection), which has been an important factor in recent customer procurement decisions (see also paragraphs 2.6 to 2.9 above) and a key area of development.
- 3.3.2 Frequentis, Motorola, SAAB and Systel are well-resourced international players with established cloud-based solutions which are better placed to meet customers' evolving technological requirements than the Parties. [redacted].

Frame of reference

- 3.4 The Parties agree with the CMA's conclusion in the P1D that the appropriate frame of reference is the supply of ICCS to emergency services and transport customers²⁵, given that ICCS products are broadly substitutable across different customer segments and that suppliers can straightforwardly expand into customer segments even if they do not have an existing presence in that segment.²⁶

Shares of supply

- 3.5 The Parties consider that, for emergency services customers, shares of supply based on the volumes of calls metric provides a representative view of current live suppliers and "contracted to" suppliers, as explained in more detail in the IL Response.²⁷
- 3.6 As noted in the P1D, "*shares of supply reflect past wins/losses in tenders rather than the future competitive strength and constraint posed by each competitor.*"²⁸ For example, the Parties perceive Motorola to be a highly credible ICCS supplier, which has won the highest number of recent opportunities (four of 11 ICCS opportunities over the years 2021-22).²⁹ As also recognised in the P1D, "*changes in suppliers' competitive positions will take several years to fully feed into changes in shares of supply.*"³⁰
- 3.7 Shares of supply do not accurately reflect the degree of competitive constraint imposed by the Parties themselves and their competitors. Although the Parties acknowledge that their

²⁵ P1D, paragraph 71.

²⁶ The Parties note the varying feedback the CMA received in Phase 1 in relation to transport customers (P1D, paragraph 64). As the Parties have previously stated, transport customers are heterogeneous in their requirements. This is particularly the case in respect of rail customers: e.g. [redacted]. It is nonetheless the case that other suppliers of ICCS would be able to compete for this demand.

²⁷ IL Response, paragraph 5.3.

²⁸ P1D, paragraph 112.

²⁹ See paragraph 15.39.2 FMN.

³⁰ See paragraph 112 P1D.

shares based on live suppliers in 2021 are comparatively high, shares of supply can swing very quickly – as illustrated by the shares incorporating won and lost contracts, in which the Parties' combined share drops significantly (from [80-90]%, combined to [20-30]% combined). This also illustrates the degree of supply-side substitutability and the movement of suppliers between segments. On this basis, the Parties' market shares in the police customer segment are not representative of current competitive dynamics in the market; current ICCS suppliers are capable of winning upcoming opportunities from police customers irrespective of their current shares of supply in the segment.

Closeness of competition

- 3.8 The Parties do not believe that they are close competitors in the supply of ICCS. Specifically, of the [redacted] ICCS opportunities since 2017 where at least two bidders were identified, NECSWS participated in [redacted] and SSS participated in [redacted] opportunities but both participated in the same opportunity on [redacted] occasions. Motorola participated in [redacted] opportunities, Frequentis in [redacted], SAAB in [redacted] and Systel in [redacted].
- 3.9 Moreover, the Parties agree with the CMA that there are limitations to the Customer Opportunities Data, in particular due to the limited sample size. As recognised in the P1D, customer feedback is likely to have significantly understated the degree of competitive constraint exerted by Motorola, SAAB and Systel. For example, only one emergency services customer that currently uses Motorola's ICCS product provided feedback.³¹ The Parties consider it is important that representative third-party feedback is gathered at Phase 2 and that, in light of the shift in customer demand towards more contemporary technologies, particular attention is given to procurements that took place after 2020.

Constraint from other suppliers

- 3.10 The CMA acknowledged in the P1D that Frequentis "*imposes a strong constraint on the Parties*"³². Similarly, the CMA recognised that Motorola "*imposes a material competitive constraint on the Parties*"³³. The Parties' Opportunities Data shows that [redacted].³⁴
- 3.11 However, in the Parties' view it is also important to give due weight to the strong competitive constraint imposed by each of SAAB and Systel:
- 3.11.1 SAAB initially entered the UK market through successfully bidding for a framework agreement for ICCS and CAD which was awarded by Cheshire Constabulary in 2015 and which permitted 16 police forces in England, Scotland and Wales to acquire services on the terms set out in the framework; in the following years it was awarded contracts by another four police forces pursuant to the framework. SAAB's wins via this framework illustrate its strength as a competitor in ICCS, and make it a clear potential supplier for the other forces covered by the framework. In addition, [redacted].³⁵
- 3.11.2 Systel currently supplies ICCS to six fire customers in England and has won contracts to supply fire services covering the whole of Scotland and Northern Ireland. Given the degree of supply-side substitutability, there are no significant obstacles to Systel supplying customers in other emergency services segments. There is evidence that competitors compete for contracts in customer segments

³¹ See paragraph 123 P1D.

³² P1D, paragraph 160.

³³ P1D, paragraph 168.

³⁴ See paragraph 127(c) P1D.

³⁵ See paragraph 5.17, Table 1 of the IL Response.

they do not currently serve, as shown by Frequentis' recent significant win in the ambulance customer segment.

- 3.12 The CMA concluded that the Parties operate in a concentrated market based on the average number of bidders faced by the Parties. However, the average number of bidders identified for an opportunity typically only represents the number of candidate suppliers that a customer shortlisted for that opportunity where the Parties had intelligence that those suppliers participated: it does not mean that only those suppliers competed for that opportunity. Customers rarely provide feedback following a tender or other competitive opportunity as to which suppliers were approached (for example, for an indicative price) or were included on the shortlist of bidders (for example, following the submission of pre-qualification questionnaires).

Cloud capability

- 3.13 In the Parties' view, SSS' lack of a cloud offering means that it is [X] with the offerings of its competitors: Frequentis, Motorola, SAAB and Systel each already supply cloud-based ICCS solutions.
- 3.14 As noted in the P1D³⁶, the CMA considers that cloud capability is a factor of increasing importance. This is evident from recent tenders such as those issued by Dyfed-Powys Police, Warwickshire and Northamptonshire FRS, Kent & Essex Police *etc.*³⁷
- 3.15 The CMA concluded in the P1D that barriers to entry are high in the supply of ICCS and that any new entrant would have to overcome obstacles to win customers. However, in the Parties' view the cost and time to enter the UK market for an international ICCS supplier is likely to be relatively small. The Parties believe that the move towards cloud-based technology and the transition to the new Emergency Services Network ("**ESN**") are lowering (and will further lower) any barriers for new entrants, including international suppliers. If the international ICCS product already has Long Term Evolution (LTE) capability such that it is ESN-compatible, such cost would likely be [X] and investment may focus on adjustments to, for example, the [X].³⁸ The Parties also note that international suppliers have successfully entered and expanded in the supply of ICCS in the last decade – i.e. Systel, SAAB, Motorola and Frequentis; in particular, Motorola has been capitalising on its role in the delivery of the ESN to engage with customers, win contracts and grow its market share.

4. DUTIES

Key points

- 4.1 The Parties firmly believe that the Merger will not give rise to a substantial lessening of competition in the supply of Duties, even if assessed on the basis of supply to police customers only.
- 4.2 In particular, the Parties consider that:
- 4.2.1 There is clear substitutability regarding the supply of Duties across emergency services customers;
 - 4.2.2 The Parties' existing shares of supply are not a reliable indicator of current and future competitive dynamics;

³⁶ P1D, paragraph 70.

³⁷ See paragraph 5.26 of the IL Response.

³⁸ See paragraph 22.23 of the FMN.

4.2.3 There is clear evidence that the Parties are not close competitors in the supply of Duties; and

4.2.4 Several actual competitors and credible potential competitors exert a strong competitive constraint on the Parties.

Frame of reference

4.3 The Parties consider that there is substitutability regarding the supply of Duties across emergency services customers (both on the demand and supply sides), and therefore that the frame of reference should be broader than police customers alone.

4.4 As noted by the Parties in the IL Response, although different emergency services have different rules and functional requirements, the basic Duties products and functionality are broadly the same. The Parties acknowledge that third-party feedback received by the CMA indicated that there are substantial differences in the Duties requirements of different customer groups³⁹. However, this does not affect the fact that Duties products are fundamentally similar, even if a degree of tailoring is required for different customer groups.

4.5 Further, the scale of investment needed to adapt a Duties product to the requirements of new emergency services customers is not an obstacle to switching to suppliers which are active in different customer segments. The Parties note the third-party feedback received by the CMA regarding expansion into new customer segments⁴⁰. The Parties acknowledge that a degree of tailoring is required to cater to the requirements of customers in different segments. The Parties nonetheless consider that the scale of such investment is not an obstacle, and that it is readily possible to make adaptations within a relatively short timeframe. For example, [redacted]⁴¹.

4.6 The CMA indicated in the P1D that Totalmobile is the only supplier active in Duties across emergency services customer segments, and that significant differences in conditions of competition can be inferred from this. However, the Parties do not believe that Totalmobile is the only supplier active across segments: they understand that [redacted]. Meanwhile, the Parties believe there have been numerous instances of Duties suppliers moving into supplying emergency services customers using their prior non-emergency services experience (for example Allocate Software, Zellis and Midland HR).

4.7 The Parties are aware that, in the CMA's Customer Opportunities Data (i.e. covering procurements since 2017), there were no instances of suppliers identified as being active in one customer segment being considered as an alternative by a customer in a different customer segment⁴². The Parties submit that past procurements can be an imperfect indicator of current competitive conditions (notably in the case of Duties, for which the frequency of opportunities is comparatively low). This underlines the importance of a reliable and sufficiently representative third-party evidence base in Phase 2, which is explained further below.

4.8 The Parties also consider that ERP suppliers should be included in the same frame of reference as Duties providers. In particular:

4.8.1 International ERP suppliers supply or have recently supplied Duties to emergency services customers in the UK. For example, [redacted], demonstrating that Oracle has

³⁹ P1D, paragraph 76.

⁴⁰ P1D, paragraph 76.

⁴¹ IL Response, paragraph 4.6.2.

⁴² P1D, paragraph 76(c).

Duties capabilities⁴³, and SAP has been the longstanding Duties supplier for the [redacted];

4.8.2 There is evidence of police customers using Duties solutions developed in-house by their ERP supplier;

4.8.3 Some customers also suggested to the CMA that ERP software could be a viable alternative to Duties solutions⁴⁴.

Shares of supply

4.9 The Parties note that their existing shares of supply, once combined, would be more than twice that of the next largest supplier (Crown). However, the Parties consider that these shares of supply figures are not a reliable indicator of forward-looking conditions of competition, as explained further below.

Closeness of competition

4.10 The Parties consider that there is very clear evidence, acknowledged by the CMA, that the Parties are not close competitors in the supply of Duties. In particular:

4.10.1 [redacted] and

4.10.2 [redacted]

4.11 Together with [redacted] and differences in the Parties' product offerings, this provides compelling evidence that the Parties are not close competitors for the supply of Duties.

4.12 The Parties note the third-party feedback received by the CMA indicating that customers consider the Parties' products to be alternatives⁴⁵, and that most customers providing evidence to the CMA said that NECSWS and SSS compete in the supply of Duties⁴⁶. However, this feedback cannot accurately represent current conditions of competition when, in reality, the Parties have not competed in Duties for several years. In the Parties' view, the feedback may be explained by the comparative lack of opportunities in Duties, and the fact that many customers will not have formally held procurement processes for several years. This underlines further the importance of a reliable and sufficiently representative third-party evidence base in Phase 2, in particular in relation to current and forward-looking conditions of competition.

Constraint from other suppliers

4.13 The Parties consider that several actual competitors and credible potential competitors exert a strong competitive constraint on the Parties in the supply of Duties. While Crown and Totalmobile exert a considerable constraint, they are not the only suppliers that do so – in particular:

4.13.1 As noted above, the Parties believe there have been numerous instances of Duties suppliers moving into supplying emergency services customers using their prior non-emergency services experience (for example Allocate Software, Zellis and Midland HR);

⁴³ This is contrary to the evidence in P1D, paragraphs 84 and 85.

⁴⁴ P1D, paragraph 83.

⁴⁵ P1D, paragraph 200.

⁴⁶ P1D, paragraph 204.

4.13.2 A credible competitive constraint is exerted by ERP suppliers, as supported by internal NECSWS documents⁴⁷.

Conclusion

4.14 The Parties do not consider that the Merger will give rise to an SLC in the supply of Duties, even if assessed on the basis of supply to police customers only (without prejudice to the Parties' position that the frame of reference should be interpreted more broadly than this).

5. RMS

Key points

5.1 The Parties firmly believe that the Merger will not give rise to significant competition concerns in the supply of RMS to police customers.

5.2 In particular, the Parties consider that:

5.2.1 The Parties' existing shares of supply are not a reliable indicator of current and forward-looking conditions of competition;

5.2.2 [X]. As a result of the substantial and high-profile implementation issues with its PoliceWorks product at GMP on SSS' business and reputation, [X] (see paragraph 2.3 above);

5.2.3 The Parties are not close competitors in the supply of RMS, in particular in light of SSS' [X] and the differences between the Parties' product offerings;

5.2.4 Several actual competitors and credible potential competitors exert a strong competitive constraint on the Parties; and

5.2.5 Customers can, and in the past have, sponsored new entry in RMS.

Shares of supply

5.3 The Parties consider that shares of supply are not a reliable indicator of forward-looking conditions of competition, as acknowledged by the CMA⁴⁸.

5.4 In any case, to the extent the CMA places reliance on these shares of supply figures, the Parties note that Niche will remain a leading supplier post-Merger. Further, while the CMA indicates that other RMS suppliers are not identified in the Parties' internal documents or by responding customers as providers that could meet their software requirements, the Parties' internal documents clearly indicate [X]⁴⁹.

Closeness of competition

5.5 The Parties consider that they are not close competitors in the supply of RMS.

5.6 [X], in light of the impact of substantial and high-profile implementation issues with its PoliceWorks product at GMP on SSS' business and reputation, and the [X]. While noting the CMA's comments that it did not receive evidence to suggest that SSS is no longer a credible competitor, the Parties maintain that this conclusion is not supported by the reality

⁴⁷ IL Response, paragraph 6.13.

⁴⁸ P1D, paragraph 223.

⁴⁹ IL Response, paragraph 7.12.

in practice, and respectfully submit that the issue should be assessed in more detail at Phase 2. In particular:

- 5.6.1 The Parties are surprised that customers at Phase 1 did not identify a decline in SSS' competitive strength, [redacted];
- 5.6.2 The Parties note that GMP's public announcement that it would terminate its contract with SSS was issued after the CMA's Phase 1 deadline for third-party comments.
- 5.7 SSS' other product, UNIFI, is not an integrated RMS (unlike NECSWS' CONNECT product), and [redacted]. The CMA has recognised previously that there are differences between the Parties' offerings⁵⁰. Importantly, having a modern RMS solution brings improved capabilities for customers and NECSWS considers this to be essential to win new customers in future. Further:
 - 5.7.1 While customers said to the CMA that they consider the Parties' products to be alternatives⁵¹, the Parties consider that this is not currently the case and will not be the case in future. [redacted]⁵²;
 - 5.7.2 As noted by the Parties, the vast majority of recent tenders indicate (either expressly or impliedly) that customers are seeking modern, integrated RMS platforms⁵³, which UNIFI is not;
 - 5.7.3 SSS' internal documents recognise that [redacted]⁵⁴ – in the Parties' view, UNIFI will only become [redacted] in future given the dynamics explained above.
- 5.8 Since winning the GMP contract, SSS has won [redacted] to supply RMS software as part of a tender or a direct award involving a market test.⁵⁵ This took place in unique circumstances: SSS was able to win a tender by Police Scotland in 2019 with UNIFI because, unusually, the tender [redacted] following the catastrophic failure of a wider IT project which had included RMS. This does not indicate that [redacted] in RMS going forward.
- 5.9 [redacted].
Constraint from other suppliers
- 5.10 The Parties consider that several actual competitors and credible potential competitors exert a strong constraint in the supply of RMS to police customers.
- 5.11 Niche will continue to exert a strong competitive constraint post-Merger: the Merger will not bring about any change in this regard.
- 5.12 Further, as acknowledged by the CMA, the Parties' internal documents recognise multiple competitors (for example [redacted]), while several customers said that they were aware of non-UK RMS providers such as Mark43⁵⁶, and HCL was also mentioned by third parties⁵⁷. Further, Hexagon and Motorola both supply RMS to US police forces and have UK emergency services customers for other products.

⁵⁰ P1D, paragraph 235.

⁵¹ P1D, paragraph 235.

⁵² IL Response, paragraph 7.9.

⁵³ IL Response, paragraph 7.8.

⁵⁴ P1D, paragraph 240.

⁵⁵ For completeness, in the same period [redacted].

⁵⁶ P1D, paragraph 248.

⁵⁷ P1D, paragraph 244.

- 5.13 In particular, the impact of Mark43's recent entry should not be understated and demonstrates that an international supplier can readily enter the UK market and pose a competitive constraint⁵⁸:
- 5.13.1 Mark43 has now announced publicly (in May 2022) that it has signed with its inaugural UK customer, Cumbria Constabulary, demonstrating both the credibility of the competitive constraint it poses and that any entry barriers are readily surmountable even for non-UK businesses. Industry commentators have recognised that this is a "key win" for Mark43, which it will look to use "as a launchpad for further expansion in the UK"⁵⁹;
 - 5.13.2 Mark43 is well-placed to establish itself in the supply of RMS in the UK, given also (i) its innovative offering and excellent cloud capabilities; (ii) its existing international record, (iii) its announcement that it intends to open an office in the UK, and (iv) the adaptations it has made already to its product previously provided to non-UK customers;
 - 5.13.3 Following its entry, it is highly likely that other customers which are due to procure RMS in the near future will consider Mark43 to be a credible and attractive supplier.
- 5.14 In addition, customers can, and have, sponsored new entry:
- 5.14.1 Niche's entry into supplying RMS in the UK (as an international entrant) was sponsored by North Wales Police, and it has demonstrably built up a successful market position since then. NECSWS' own entry into RMS was sponsored by the Athena consortium;
 - 5.14.2 Publicly available statements in relation to the recent UK entry of Mark43 clearly indicate that, as part of the supplier selection process, Cumbria Constabulary provided material assistance to Mark43 to optimise its offering⁶⁰. The contract for provision of RMS to Cumbria was also awarded to Mark43 without any tender process taking place. This example demonstrates the commitment that customers are willing to make to sponsor UK entry, including by international suppliers;
 - 5.14.3 The CMA has noted that one international supplier was planning to enter the UK and was in active discussions with a police force⁶¹ (which may have referred to Mark43 and Cumbria Constabulary respectively), suggesting that there are some police forces who are open to sponsoring new entry;
 - 5.14.4 Only two customers appear to have commented to the CMA that they would not be willing to sponsor new entry⁶²;
 - 5.14.5 The Parties consider that a wider range of customer feedback at Phase 2 (including from customers who have been active in procuring RMS more recently) is essential to underpin this area.

⁵⁸ It is clear from publicly available statements that the Mark43 UK entry relates to RMS, e.g. "*this software will be used to write reports, undertake investigations, more efficiently deploy resources, support safeguarding and victim care, and for officers to maintain a dialogue with their community members*" ([link](#)).

⁵⁹ See "Mark43 secures inaugural UK customer", TechMarketView post dated 12 May 2022 ([link](#)).

⁶⁰ In particular, Mark43 staff "*spent time with the force over the last year to find out how they work and how the systems would best serve the aims of solving and deterring crime and keeping people safe. Mark43 went out with response officers, visited police stations and sites, and participated in dozens of meetings to get to the bottom of what works best and what will be best for the future of policing*" ([link](#)).

⁶¹ P1D, paragraph 249.

⁶² P1D, paragraph 248.

Conclusion

- 5.15 The Parties do not consider that the Merger will give rise to an SLC in the supply of RMS to police customers.

6. THE COUNTERFACTUAL

- 6.1 The Parties note that, while in Phase 1 the CMA is able to consider potential counterfactual scenarios that are a realistic prospect (and will choose the scenario where the merger firms exert the strongest competitive constraint on each other), at Phase 2 the CMA will select the most likely conditions of competition as the relevant counterfactual.
- 6.2 The Parties submit that the most likely conditions of competition absent the Merger are not the pre-Merger conditions of competition but the scenario in which SSS [X], with significant underinvestment by Capita having materially impacted SSS' ability to compete effectively [X]. [X].
- 6.3 In the Parties' view, SSS has been [X] for some years, evidenced for example by [X] and the termination of the GMP contract for RMS (with significant public criticism and reputational issues for SSS in relation to the same)⁶³.
- 6.4 It is clear that, absent the Merger, SSS would be a [X] weakened competitor. The evidence points to [X] underinvestment by Capita in the SSS business, [X] (see in this regard the Counterfactual Paper provided alongside the IL Response).
- 6.5 The Parties therefore submit that the pre-Merger conditions of competition are not the appropriate counterfactual at Phase 2, given that the evidence demonstrates this scenario would not be likely absent the Merger. [X].
- 6.6 The Parties note the CMA's acceptance in the P1D that there is some uncertainty over what funding might have been made available by Capita to SSS absent the Merger, and how SSS' products might have been developed and over what time horizon⁶⁴. In the Parties' view, the evidence demonstrates that the likeliest scenario, absent the Merger, would be one of underinvestment materially impacting SSS' ability to compete effectively. In any event, the Parties note (per the CMA's Guidelines) that uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual⁶⁵.
- 6.7 In contrast to the counterfactual and as explained above, NECSWS intends to reverse this trend of [X] by investing to improve SSS' products and services; NECSWS has a proven track record of investing to grow and develop the businesses it has acquired.

7. BARRIERS TO ENTRY AND EXPANSION

Key points

- 7.1 The Parties consider that any barriers to entry and expansion in the reference markets are readily and demonstrably surmountable, as set out further below.

⁶³ Issues Meeting Presentation, slide 6.

⁶⁴ P1D, paragraph 51.

⁶⁵ CMA's Guidelines, paragraph 3.14.

- 7.2 As a general point, the Parties note the limitations of the third-party evidence upon which the CMA based its Phase 1 views as regards barriers to entry and expansion (in particular, the relatively low number of responses). It is essential that the CMA's Phase 2 investigation is underpinned by a reliable and sufficiently representative third-party evidence base in this regard.
- 7.3 The Parties also submit that the CMA should give due consideration in its Phase 2 investigation to dynamic factors that will impact supplier entry and expansion on a forward-looking basis, in particular the increasing role of cloud, mobile and digital capabilities in customer procurement decisions (which in the Parties' view is timely, likely and sufficient to spur entry and expansion in the reference markets).

ICCS

- 7.4 In relation to the supply of ICCS, the presence of several credible non-UK competitors to the Parties in the supply of ICCS to UK customers demonstrates that barriers are low. In particular, Frequentis, Motorola, SAAB and Systel are all non-UK suppliers, and the majority of ICCS suppliers to UK customers are therefore not UK organisations⁶⁶. The Parties do not believe that any reliable conclusions in relation to entry barriers can be drawn from these suppliers' current shares of supply⁶⁷. As acknowledged by the CMA, suppliers' shares of supply are not a reliable indicator of forward-looking conditions of competition⁶⁸, and these also do not reflect current and future competitive dynamics in which factors like cloud capability are likely to be increasingly significant in customer procurement decisions (see further paragraphs 2.6 to 2.9 above). As noted above, most new contracts awarded by police customers for supply of ICCS since 2020 have been won by Motorola.
- 7.5 Further, as set out in more detail in the IL Response, the Parties do not believe that the below factors referred to in the P1D represent material barriers to entry:
- 7.5.1 The need to develop solutions to be compatible with ESN⁶⁹.
 - 7.5.2 Lack of an existing UK presence or reference⁷⁰.
 - 7.5.3 Security compliance⁷¹.
 - 7.5.4 The need to build Airwave specific technology or obtain regulatory certification⁷².

Duties

- 7.6 In relation to the supply of Duties, the presence of a variety of competing suppliers to the Parties demonstrates that barriers are low. For example:
- 7.6.1 International ERP suppliers have recently been supplying Duties to emergency services customers in the UK. For example, [redacted] and SAP has been the longstanding Duties supplier for the [redacted];
 - 7.6.2 Other Duties suppliers (for example FireServiceRota and Kronos) are based outside the UK;

⁶⁶ See IL Response, paragraph 9.2.2.

⁶⁷ P1D, paragraph 311.

⁶⁸ P1D, paragraph 112.

⁶⁹ IL Response, paragraph 9.2.1 for the Parties' previous submissions.

⁷⁰ IL Response, paragraph 9.2.2 for the Parties' previous submissions.

⁷¹ IL Response, paragraph 9.2.3 for the Parties' previous submissions.

⁷² IL Response, paragraph 9.2.4 for the Parties' previous submissions.

- 7.6.3 The Parties believe there have been numerous instances of Duties suppliers moving into supplying emergency services customers using their prior non-emergency services experience (for example Allocate Software, Zellis and Midland HR).
- 7.7 Further, as set out in more detail in the IL Response, the Parties do not believe that the below factors referred to in the P1D represent material barriers to entry:
- 7.7.1 Regulatory environment, interfacing factors, reference base, specialist functionality and presence⁷³;
- 7.7.2 Security rules⁷⁴;
- 7.7.3 Location of data⁷⁵.
- 7.8 The Parties also do not agree with the third-party feedback received by the CMA that overseas suppliers do not seem to gain any traction with UK police customers,⁷⁶ particularly in light of the presence of international suppliers as described in paragraph 7.6 above.⁷⁷ The Parties consider that a variety of actual and credible potential competitors exert a strong competitive constraint, and that a key forward-looking factor driving competitive dynamics is the increasing shift to cloud capability in customers' procurement decisions (see paragraphs 2.6 to 2.9 above more generally in this regard).

RMS

- 7.9 In relation to the supply of RMS, the presence of a variety of actual and credible potential competitors demonstrates that barriers are low. The Parties note that Niche is headquartered outside the UK (in Canada). Further, building on the active steps it had already taken towards entering the UK market (as referred to by the Parties in the IL Response), Mark43 has now announced publicly (in May 2022) that it has signed with its inaugural UK customer, Cumbria Constabulary⁷⁸. This demonstrates both the credibility of the competitive constraint posed by Mark43 and the fact that entry barriers are readily surmountable even for non-UK businesses. Other international RMS suppliers who are also highly credible potential entrants in relation to the UK market include Hexagon, Motorola and HCL.
- 7.10 As set out in more detail in the IL Response, the Parties do not agree with the third-party feedback received by the CMA⁷⁹. The UK entry of Mark43, as forecast by the Parties, demonstrates that the RMS market is not entrenched or unattractive to non-UK suppliers, and it is not the case that there is limited customer appetite for change. Further, this shows that costs and commitment associated with supplier switching are not an obstacle. The Parties also do not believe that security concerns represent a material barrier to entry⁸⁰.
- 7.11 NECSWS considers it likely that this very recent example of successful entry by an international supplier will encourage other international suppliers which may be considering

⁷³ IL Response, paragraph 9.3.1 for the Parties' previous submissions.

⁷⁴ IL Response, paragraph 9.3.3 for the Parties' previous submissions.

⁷⁵ IL Response, paragraph 9.3.4 for the Parties' previous submissions.

⁷⁶ P1D, paragraph 317.

⁷⁷ More generally, a number of leading IT suppliers to emergency services customers in the UK are based outside the UK: e.g. Sopra, CGI, Microsoft, Leidos, Atos, SAAB, NICE, Hexagon, Motorola, Frequentis, Unisys, Oracle, IBM, Systel and Amazon.

⁷⁸ See "*Mark43 and Cumbria Constabulary Announce New Deal to Enhance Community Safety Using a Modern Technology Solution*" ([link](#)).

⁷⁹ P1D, paragraphs 321 and 322.

⁸⁰ IL Response, paragraph 9.4.2 for the Parties' previous submissions.

entry into the UK market, particularly in the context of customer demand for more modern technologies.

- 7.12 The Parties note the CMA received evidence that one international supplier was looking to enter the UK⁸¹. The Parties submit that, if the identity of this supplier is not Mark43, this further indicates credible supplier entry (underlined by the recent successful entry of Mark43). However, even if this reference is to Mark43, the Parties submit that the impact of Mark43's entry should not be understated, as explained above. This is particularly so in the context of the increasing shift to cloud-based capabilities in customer procurement decisions (see further paragraphs 2.6 to 2.9 above).

8. COUNTERVAILING BUYER POWER

- 8.1 As discussed in section 2 above, there is a strong emphasis on value for money and a drive for greater efficiency underlying public sector customers' approach to the procurement of software, together with the importance of reliable and stable providers and solutions.
- 8.2 Emergency services customers have a high degree of control over, and choose how they wish to procure, their products and services in this regard, regularly assessing the best way to achieve value for money before deciding how they wish to award a contract – including whether or not they wish to do so via a competitive tender.
- 8.3 The P1D states that competitive tender processes are relatively uncommon⁸², but this significantly understates the scope for competition:
- 8.3.1 As the CMA recognises⁸³, competition may occur in relation to all opportunity types;
- 8.3.2 The clear majority of opportunities that have arisen since 2017 relate to tenders and direct awards under frameworks, for which customers have the ability to test the market and exercise buyer power;
- 8.3.3 The shift towards digital, mobile and cloud-based solutions, which has been mandated by the National Policing Digital Strategy and has increasingly been shaping customers' procurement decisions, has provided even greater scope for competition from suppliers of modern and contemporary products.
- 8.4 While the Parties acknowledge that contracts are of relatively long duration, and customers may not test the market very often⁸⁴, the Parties consider that the relatively low frequency of opportunities (and "for the market" nature of competition) raises competitive tension between suppliers and increases customers' market power.
- 8.5 The Parties do not agree that they face few material rivals, and believe the CMA's conclusion that few suppliers participate in procurement processes⁸⁵ potentially understates the degree of actual and potential competition in practice. Procurement processes are nuanced in this regard – for example, a larger number of competitors may have initially pursued an opportunity, even if the eventual shortlist is smaller, and such players also pose a material constraint. On this basis, the actual competitive constraint posed by alternative suppliers with regard to an opportunity is likely to be broader than the CMA considered at Phase 1,

⁸¹ P1D, paragraph 323.

⁸² P1D, paragraph 326.

⁸³ P1D, paragraph 120.

⁸⁴ P1D, paragraph 327.

⁸⁵ P1D, paragraph 328.

underlining the importance of a reliable and sufficiently broad information base underpinning the CMA's Phase 2 investigation.

SECTION B: KEY POINTS – PROCEDURAL

9. THE IMPORTANCE OF REPRESENTATIVE CUSTOMER FEEDBACK

- 9.1 The Parties are of the firm view that obtaining up-to-date representative customer feedback in Phase 2 is essential if the CMA is to properly assess the current competitive dynamics in the reference markets and how the markets are continuing to evolve (in particular, as regards the competitive constraint from third-party competitors and the increasing importance of digital and cloud-based technology). Given the nature of the reference markets, these dynamics would not be captured by other forms of evidence, such as market shares which only reflect the state of historic competition (see further below).
- 9.2 The Parties recognise that the compressed Phase 1 timeline limited the ability of the CMA to undertake a detailed market feedback process (and to follow up with customers who do not reply), which may be why the customer feedback gathered at Phase 1 suffered a number of limitations. However, during a Phase 2 process, there will be ample time and opportunity for the CMA to undertake an in-depth review of customer comments.
- 9.3 In assessing any customer feedback, the CMA should afford greater evidentiary weight to the views of those customers that have more recent experience of procuring the relevant products and services. These customers will be a more reliable barometer of the competitive conditions in the market, and of the factors that are relevant to a customer when procuring the relevant products and services, including the drive for more technologically advanced solutions and more modern integrated systems. In contrast, customers who have not procured the relevant products and services for some time may simply not have an up-to-date view of the strength and depth of third-party competitors or the improved features of some products that are available (and which may in turn influence procurement choices). It will be important for the CMA to bear these distinctions between customers in mind when conducting its Phase 2 assessment. In addition and as noted above, the Parties anticipate that the CMA would find it helpful to seek input from the National Police Technology Council and the Police ICT Company in light of their knowledge of the National Policing Digital Strategy and its impact on customer procurements.

10. HISTORIC MARKET SHARES ARE NOT INDICATIVE OF CURRENT COMPETITIVE LANDSCAPE

- 10.1 In markets such as the reference markets where competition takes place "for the market", shares of supply only reflect outcomes of historic tender processes and can fluctuate significantly when particular tenders are won/lost (for example, Frequentis winning the contract to supply ICCS to all English, Welsh and Scottish ambulance services from SSS in 2017). Shares of supply can at best provide an indication of historic levels of competition, but do not reflect the current competitive intensity and are not indicative of the likely impact of the Merger now or in the future.
- 10.2 In fact:
- 10.2.1 Suppliers with a relatively low share of supply or new entrants with no historic share of supply can be highly competitive in current market conditions. The Parties note for example the recent announcement that Cumbria Constabulary has signed a contract with Mark43, demonstrating that new entrants with attractive product

propositions can and do win opportunities, notwithstanding their lack of existing presence.⁸⁶ It should also not be discounted that such suppliers can exercise a constraint upon other competitors during the bidding process, even if they are not ultimately successful for that particular bid.

- 10.2.2 Shares of supply do not indicate the number of credible competitors that participated in a tender, or reliably indicate which competitors can be expected to bid and exercise competitive constraints in the future.
- 10.3 These limitations on the usefulness of market shares in the reference markets make it all the more important that the CMA at Phase 2 undertakes a fresh and in-depth review of customer feedback, based on a broad and representative set of customer comments, with greater weight and emphasis being given to feedback from customers who have recently procured the relevant products and services (see further above).
- 10.4 In any event, there are a number of strong active competitors to the Parties in the reference markets (some of which had as strong or even stronger shares of supply than NECSWS and SSS at present) which are effective at winning opportunities and which compete vigorously with the Parties at present, such as Crown (Duties), Niche (RMS) and Frequentis, Motorola, SAAB and Systel (ICCS). These competitors will continue to exercise a significant competitive constraint upon the Parties post-Merger.
11. **BIDDING DATA: THE CMA'S CUSTOMER DATA AND THE PARTIES' DATASET ARE CONSISTENT AS REGARDS CERTAIN KEY POINTS**
- 11.1 The Parties have made significant efforts to prepare the Parties' Opportunities Data to the best of their ability, based on their combined market knowledge and investigation of publicly available information. They have undertaken an iterative time and labour-intensive process to produce as full and accurate a dataset as possible in the circumstances.
- 11.2 The Parties observe that although it is difficult for any dataset of bidding opportunities to be fully comprehensive, the Parties' Opportunities Data provides useful evidence that a variety of rivals, including new entrants, impose a significant competitive constraint on the Parties. The Customer Opportunities Data also has certain limitations, but - as the CMA acknowledges in the P1D - is directionally similar in this respect. These datasets are a helpful starting point for a more reliable and forensic study of customer views and behaviour at Phase 2, with the views of current and recent purchasers being the most pertinent to the CMA's assessment.

⁸⁶ See Cumbria Constabulary case study on Mark43's website ([link](#)).