



**ANTICIPATED ACQUISITION BY
LONDON STOCK EXCHANGE GROUP OF
QUANTILE GROUP LIMITED**

ME/6973/21

INITIAL SUBMISSION

27 MAY 2022

NON-CONFIDENTIAL VERSION

1. Executive summary¹

1. The Phase 1 Decision sets out that the acquisition by London Stock Exchange Group plc (“LSEG”) of Quantile Group Limited (“Quantile”) (together, the “Parties” or the “Merged Entity” if referring to the future) (the “Transaction”) gives rise to a realistic prospect of a substantial lessening of competition (“SLC”) arising from one theory of harm: namely that the Merged Entity would have the ability and incentive to foreclose Quantile’s competitors in OTC IRD multilateral compression, and that such foreclosure may give risk to substantial harm to overall competition in multilateral compression for OTC IRDs.
2. Fundamentally, the Phase 1 Decision suggests a theory of harm which is unrealistic and will not materialise given LCH’s role in multilateral compression, the market structure and the regulatory and governance context within which LCH operates as a central counterparty (“CCP”) which would prevent this type of foreclosure from taking place. It is not sufficient for the CMA to establish that the SLC is a mere theoretical possibility. The Parties believe that it is sufficiently unrealistic such that there is no “reasonable prospect” that an SLC will arise and thus that the Phase 1 Decision was unjustified. That being so, an SLC is even less likely to arise based on the higher Phase 2 threshold of “balance of probabilities”.
3. No SLC will arise for the reasons set out in this submission. In summary:
 - LCH operates in a highly regulated market in which its primary objective is to manage risk. The foreclosure strategies suggested in the Phase 1 Decision would require LCH to take decisions and behave in a manner which would be inconsistent with its duties as CCP.
 - As a financial market infrastructure provider, open access and customer partnership are the cornerstones of LSEG’s business model. LSEG’s philosophy is that remaining open as a platform for all third party service providers, even when they compete with LSEG’s own services, is in the best interests of both its customers and its own long-term profitability. Both LSEG and LCH have a proven track record of providing services on this basis across a number of markets. Similarly, both are committed to working with their customers and third party vendors as partners, entrenching customer participation and consultation in their own governance and decision-making across the board.
 - The Phase 1 Decision looks at a number of potential foreclosure mechanisms and concludes that it may be possible for LCH to implement a foreclosure strategy ignoring its own business model, stated customer preferences and governance arrangements. However, a foreclosure strategy of the kind envisaged in the Phase 1 Decision with sufficient force and relentlessness to eliminate competition from an incumbent provider (with a CCP as one of its JV parents) with a share of supply of around 70-80%, would require a brazen and obvious disregard for regulatory obligations and its primary role to manage risk, its own open access model, and the failure of so many checks and balances, that it lacks any credibility in the real world in which LCH operates day to day.
 - The Phase 1 Decision significantly overstates the benefits of foreclosure and understates the costs. It contends – without providing any explanation or supporting evidence – that SwapClear’s largest customers would need to shift a substantial amount of business away from LCH to deter a foreclosure strategy. This is not correct. Nor does the Phase 1 Decision appreciate the vehemence with which LCH’s customers would oppose any attempt to foreclose rival ACSPs (particularly given their historic conduct in driving competition

¹ Please note that this submission does not address every aspect of the Phase 1 Decision and, failure to address a specific part of the Phase 1 Decision does not mean that the Parties accept the CMA’s reasoning. The Parties reserve the right to respond to other aspects of the Phase 1 Decision during the remainder of Phase 2.

between ACSPs) and the risks that any breakdown in SwapClear's relationship with these customers would consequently create for the wider LCH and LSEG businesses. It is not credible that LSEG would risk its customer relationships, group-wide revenue and reputation as an open access provider for the sake of increasing its share of the small multilateral compression market (noting Quantile's global revenues of [...]). Furthermore, any foreclosure strategy would risk customers turning away from Quantile's other services and undermine LSEG's very rationale for acquiring Quantile.

- It is notable that all the evidence cited in the Phase 1 Decision in relation to foreclosure derives from competitors, rather than customers that appear largely to favour the Transaction. The Phase 1 Decision also does not fully reflect customers' feedback regarding the Transaction, which has generally been positive. In particular, the majority of customers who responded to the CMA's Phase 1 investigation submitted that the Transaction did not raise concerns. Customers also thought that the Transaction could produce a positive outcome such as enabling Quantile to benefit from greater scale, bolster its resilience and increase efficiencies.

2. Transaction rationale

4. The transaction rationale relates primarily to a diversification of LSEG Post Trade's current services beyond clearing, the focus of the Phase 1 Decision.
5. Since the financial crisis, LSEG's Post Trade services have been focused on supporting the industry's need to ensure lower systemic risk and comply with incoming regulation through clearing. Now that regulatory compliance with the post-financial crisis legislation has largely been achieved, customers are looking at how they can operate more efficiently and cost effectively. LSEG is therefore looking to develop its service offering beyond that of centralised risk manager to also providing a range of solutions that are complementary to LCH's core services today and that solve customers' objectives to be more financially and operationally efficient in both cleared and uncleared OTC derivatives across different asset classes.
6. Quantile is one element of this strategy, in particular offering multilateral compression/margin optimisation services [...].
7. LSEG's growth plans for Quantile relate primarily [...]. As noted in the Phase 1 Decision², [...] other products and asset classes do not rely on a CCP and the CMA has found no competition concerns in relation to these. LSEG's plans for Quantile's multilateral compression business [...]. LSEG does not plan to make any changes to Quantile's pre-existing plans to connect to other CCPs, which would also encourage Quantile's growth.
8. There is no evidence in the Phase 1 Decision, or in any of LSEG's internal documents, to suggest that the rationale includes a change to LCH's long-standing operating model of open access to foreclose TriOptima, the incumbent provider. Indeed, in its dealings with customers and more generally, LSEG has emphasised the importance of maintaining open access including in its press release on announcement of the Transaction.

3. The role of the CCP as risk manager

9. The Transaction should be seen within the context of a heavily regulated clearing sector and the primary role of the CCP within this sector. The foreclosure strategies suggested in the Phase 1 Decision are entirely inconsistent with LCH's role as a CCP to manage risk.

² Paragraphs 159-188 and footnote 35 of Phase 1 Decision.

10. The CCP's key role, i.e., reducing and managing risk³, and the regulatory framework within which it operates, mean that a CCP has to be trusted to deliver both the security of systemic risk management and a 'fairness' approach that is based on the obligations of the participants being in proportion to the risk they introduce to the CCP. They also mean that, where the CCP is part of a wider group, the CCP does not operate as a typical subsidiary but is subject to a higher degree of independence, and regulatory and customer scrutiny.
11. As a CCP, LCH is highly regulated and is subject to regulatory oversight in multiple jurisdictions. In the UK, LCH is regulated by the Bank of England. The Bank regulates financial market infrastructures ("FMIs") in accordance with a statutory framework which includes the Banking Act 2009, the Financial Services and Markets Act 2000 and retained EU law, such as the European Market Infrastructures Regulation (EMIR)⁴ and the Markets in Financial Instruments (MiFIR)⁵.
12. As recognised in the Bank of England's own approach to supervision document, FMIs are different to risk-taking institutions such as banks as they do not create, but rather reduce risks that can arise as part of the transaction process. *"FMIs are, in essence, sets of rules, contracts, processes and operational arrangements for managing, reducing and allocating risk arising from transactions between market participants"*.⁶
13. EMIR imposes a series of requirements for CCPs including:
 - a. Organisational requirements: such as obligations to (i) have robust governance arrangements, including specific obligations around the expectations of senior management, independent board members and the risk committee⁷; (ii) maintain information technology systems adequate to deal with the complexity, variety and type of services offered so as to ensure high standards of security and the integrity and confidentiality of the information maintained⁸; and (iii) manage conflicts of interest, including with its parent company and specifically to prevent the misuse of information held in its systems and use of that information for other business activities⁹.
 - b. Conduct of business rules under which CCPs have an obligation to act fairly and professionally in accordance with the interests of its clearing members and clients and sound risk management¹⁰. These rules also set out extensive transparency obligations including in relation to prices and fees associated with the services it provides (and including discounts and rebates), and the operational and technical requirements relating to the communication protocols with third parties.¹¹

³ The main function of clearing is to insure each party to a trade against non-fulfilment of the commitments agreed to by the other party. This is commonly referred to as insuring "counterparty risk". Where the clearing service is performed centrally by a third party, this third party is referred to as the CCP.

⁴ Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of retained EU law.

⁵ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁶ The Bank of England's approach to the supervision of financial market infrastructures April 2013

⁷ Articles 26-28 EMIR.

⁸ Article 26.6 EMIR.

⁹ Article 33 EMIR.

¹⁰ Article 37 EMIR.

¹¹ Article 38 EMIR.

- c. Prudential requirements such as margin and collateral requirements and rules relating to default management.
14. Together with regulation, stronger regulatory expectations have been promulgated internationally since the 2008 financial crisis, facilitated by the development of internationally-agreed risk-management standards set out in the “Principles for Financial Market Infrastructures” (the “**Principles**”).¹² The Principles set international standards for FMI regulation in areas such as governance arrangements, financial resources, and the management of certain types of risk¹³. LCH undergoes regular assessments by its global regulators, to evaluate its compliance with local and international standards for CCPs.
15. The Bank of England’s oversight of LCH’s governance framework requires it to demonstrate that its governance and decision-making processes reflect the risk management purpose of the institution – and give adequate regard to the interests of system participants and the financial system as a whole. In particular, the CCP’s corporate governance structure and arrangements need to demonstrate that systemic risk management is not sacrificed in the pursuit of the commercial interests of particular stakeholders and assurances need to be provided that other group priorities are not directly or indirectly imposed on supervised institutions at the expense of the CCP’s responsibility for managing risk.
16. A foreclosure strategy such as that described in the Phase 1 Decision would not only be contrary to the Principles but would risk eroding trust in LSEG’s post-trade services, leading to switching or clearing of new trades with other CCPs or failure to engage with and adopt new services.
17. The heavily regulated environment in which LCH operates and the impact on LCH’s approach and governance that result from this environment make a foreclosure strategy unrealistic.

4. LSEG’s commitment to open access and customer partnership

18. LSEG and LCH’s commitment to open access and customer partnership is long-standing and a cornerstone of its business model. This is both because (i) open access is now a regulatory requirement for CCPs and (ii) LSEG considers that open access works to the benefit of LCH and its customers (indeed, LCH’s open model predates the regulatory obligations). The Phase 1 Decision and the evidence provided to the CMA in Phase 1 show that LCH has not deviated from this open access model even where its own businesses may have suffered commercially.
19. This open access principle is enshrined in LCH’s governance structure (as required by regulation and regulatory expectation), which is composed of independent non-executive directors (“iNEDs”) and User Directors (i.e., directors from its customer base), as well as a minority of LSEG/LCH executives. LCH Limited governance ensures LCH acts in its own, and customers’, best interests. The view in the Phase 1 Decision that “*it is irrelevant that LCH and Quantile are not part of the same legal structure*”¹⁴ misunderstands the structure, role and regulatory framework of the CCP.
20. Similarly, the business model of SwapClear, LCH’s OTC IRD clearing service, requires consultation with the SwapClear Banks, its 14 largest customers, many of which hold a

¹² <https://www.bis.org/cpmi/publ/d101a.pdf>.

¹³ See <https://www.bankofengland.co.uk/-/media/boe/files/annual-report/2021/supervision-of-financial-market-infrastructures-annual-report-2021.pdf?la=en&hash=29E84920189A7118276BCA79DEBAE2F2F8309FBE>, page 9.

¹⁴ Paragraph 103 Phase 1 Decision.

minority stake in LCH Limited's parent company, on a broad range of matters, including [...], and therefore ensures that the SwapClear Banks are appraised and consulted [...]. [...].

21. Clearing members are also consulted on Rulebook changes¹⁵, a process with which clearing members are very familiar and engaged.¹⁶ Clearing members can also engage via other fora, such as regional and customer persona user groups, which provide non-OTCDN SwapClear users (both clearing members and clients) a platform to voice concerns as it relates to specific changes that may have a material impact on their own markets.
22. These arrangements are part of LCH's open access and customer partnership ethos and act as an early warning system to customers and stakeholders if a decision or action by LCH may be contrary to these principles. There are therefore multiple opportunities to identify and influence any changes in behaviour, such as foreclosure, and multiple opportunities for escalation. This is recognised by the market investigation in the Phase 1 Decision, where "customers" said that they would complain through a trade association, as part of an industry effort with other banks or through their representatives on the LSEG/LCH board.¹⁷
23. The Phase 1 Decision seeks to downplay the role of LCH's customer partnerships model by stating that these can "merely influence (and even then not control) decision-making within LCH"¹⁸ and that these do not have "any veto powers in matters that relate to open access". Whilst these statements are true, they misrepresent the fundamental purpose of the governance arrangements and do not reflect the realities faced by LCH. Indeed, it would be surprising that LCH would subject itself to such broad and extensive consultation obligations if it felt it could simply ignore the outcome of any consultation or hide any attempted foreclosure of a service in which the SwapClear Banks, and other customers, have a keen interest (such as the ability to multi-source compression services).
24. The starting point for any analysis of ability and incentives has to be this commitment to open access and the deep involvement of customers. Open access is not just today's strategy that could be jettisoned tomorrow. It is engrained into LSEG's DNA, permeating its reputation, brand, business model and compliance ethos across the organisation and business areas. Any deviation from this business model would be so much more visible to the market and prompt greater reputational damage than for a different business, without the same history. Whilst the CMA appears to take past behaviour into account as an indication of lack of commercial incentives in its decision in relation to CME/IHS Markit¹⁹, the Phase 1 Decision fails to do the same, despite similar markets. Similarly, whilst an "active interest to preserve a good relationship" with customers was taken into account in the CME/IHS Markit JV decision, the same is not true of the Phase 1 decision.²⁰

¹⁵ LCH's Rulebook is a set of clear and comprehensive rules that enable LCH's clearing members and other market participants to fully understand their risks, processes and obligations. LCH publishes its rulebook on its website and all rule changes are filed with regulators and posted online.

¹⁶ Rulebook changes are filed with the US CFTC after member consultation and published on LCH's website: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

¹⁷ Paragraph 135 Phase 1 Decision.

¹⁸ Paragraph 202 Phase 1 Decision.

¹⁹ See e.g., paragraph 149 of the CMA decision of 27 July 2021 on the Anticipated joint venture between IHS Markit Ltd's MarkitSERV Business and CME Global Inc.'s Optimization Business.

²⁰ See paragraph 147 of the CMA decision of 27 July 2021 on the Anticipated joint venture between IHS Markit Ltd's MarkitSERV Business and CME Global Inc.'s Optimization Business: "The Parties have an active interest to preserve a good relationship with their customers, which seem to be important across a number of products. Any bundling strategy would negatively impact customers in light of their diverse needs for risk mitigation providers, including compression services providers. Furthermore, there is evidence that customers could retaliate should JVCo decide to pursue a bundling strategy and the costs of such retaliation would likely be significant."

5. LSEG does not have the ability to carry out the type of foreclosure detailed in the Phase 1 Decision

25. The Phase 1 Decision does not accurately represent the relationship between the CCP and ACSPs.
26. The Phase 1 Decision fundamentally mischaracterises the relationship between LCH and ACSPs as one in which quality of the service that LCH provides can vary in a meaningful way. In practice, the role LCH plays in the process is limited to *implementing* its customers' requests. The multilateral compression process itself is highly standardised and largely automated, and takes place over the course of three days to established deadlines with limited or no "quality" parameters and where the majority of processes are not time critical. Similarly, for the reasons explained below, the examples of partial foreclosure strategies to which the Phase 1 Decision refers are not practicable and do not match the operational reality of the market.
27. The Phase 1 Decision also fails to give weight to the important role that customers play in the multilateral compression process. Customers derive enormous benefits from multilateral compression in terms of reducing their capital requirements and thus significantly lowering their costs. They are also closely involved in every step of the process, from investing in supporting and testing a new ACSP to identifying the trades for compression, agreeing tolerances for offsetting trades, consenting to the release of their trade data, and accepting the ACSP compression proposal (which is then merely implemented by LCH). This ensures they have both the means and incentive to closely scrutinise LCH's behaviour and detect any conduct that does not maximise effective and efficient compression.

5.1. Refusing to approve ACSPs as a foreclosure strategy would be contrary to established practice, international standards upon which LCH reports and its own internal processes

28. The Phase 1 Decision concludes that LCH has the ability not to approve ACSPs because: (i) it has a degree of discretion built into its criteria; and (ii) it could change the criteria for ACSP approval (and it is irrelevant that external stakeholders become aware of it).
29. LCH was committed to open access principles long before the current financial regulatory framework was introduced. It now, however, operates in a highly regulated environment where open access is required for a large proportion of its activities.
30. Whilst EMIR does not directly refer to multilateral compression, it is referred to in the Principles, which are seen as the international standards for financial market infrastructures. In particular, Principle 18 sets out that "*An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access*", including in relation to "*service providers (for example, matching and portfolio compression service providers)*"²¹.
31. Whilst this principle is not legally binding, LCH is required to perform regular self-assessment (at least annually) against the Principles which it submits to the Bank of England, as well as a number of other regulators world-wide. The Bank of England considers itself an influential member of the CPMI, the international standard-setting body composed of central banks which participated in establishing the Principles.

²¹ Paragraph 3.18.1 Principles.

32. The Phase 1 Decision ignores the important role played by the Bank of England on the basis that it does not have competition powers²². Competition powers are however irrelevant for the purposes of determining whether LCH is compliant with its obligations under the relevant financial regulation and international standards (which include open access to use an FMI's services).
33. Approval of (or refusal to approve) an ACSP must be a decision taken by LCH as CCP subject to the regulatory framework applicable to CCPs, rather than LSEG. ACSP approval/onboarding would need to go through internal governance [...]. [...].
34. The Risk Committee is composed of iNEDs, whose suitability and independence are verified closely by the Bank of England, as well as users and their clients (with LCH representatives being in attendance in a non-voting capacity). Under EMIR, the iNEDs need to be of sufficiently good repute and have adequate expertise in financial services, risk management and clearing services. The Bank of England expects to approve key Director appointments, such as the senior iNED or the chair of the Risk Committee, (so-called non-objection) further to an assessment of competence and suitability. The terms of reference of the LCH Risk Committee state that "[t]he Committee shall ensure that summaries of significant decisions implicating the public interest, including all decisions relating to (i) open access; (ii) membership; and (iii) the finding of products acceptable or not acceptable for clearing, including a description regarding whether the Board has rejected or superseded an action of the Committee, shall be made public on [LCH's] website in an up to date, clear and accurate manner".²³
35. Refusal to approve a rival ACSP, especially where it has never refused approval before, would inevitably attract very intense scrutiny both externally and by the iNEDs. In practice, since there are currently two existing ACSPs, Quantile and TriOptima, this theory of harm essentially envisages LCH withdrawing approval for TriOptima and leaving an LSEG-owned entity as the only multilateral compression provider. Given LCH's obligations as a CCP, the scrutiny of the Bank of England, and the role of iNEDs and customers in the decision-making process, it is simply not credible that LCH would take such a momentous step except based on well-reasoned, robustly evidenced, risk-based grounds.

5.2. Partial foreclosure – LSEG could not foreclose Quantile's rivals by changing the fees it charges to ACSPs

36. The Phase 1 Decision concludes that another potential foreclosure mechanism includes increasing LCH's fees for Quantile's rivals. LSEG does not have the ability to engage in partial foreclosure for the following reasons:
 - a. Changes to Quantile's contract to favour Quantile would have to be approved by a Committee of the LCH iNEDs to say that it was on *bona fide* arms' length terms. [...] Any such change would fail that test.
 - b. Under EMIR, CCPs have to publicly disclose prices and fees for each service provided separately²⁴ and it would be illegal for LSEG to bundle fees for services provided by LCH with those of Quantile.

²² Paragraph 104 Phase 1 Decision.

²³ Paragraph 14 of the Terms of Reference at: https://www.lch.com/system/files/media_root/Project%20Gem%20-%20LCH%20Limited%20-%20RiskCo%20ToRs%20242866-4-54%20v6.0.pdf

²⁴ Article 38 EMIR.

- c. [...].²⁵
- d. Whilst the Phase 1 Decision notes the Parties' submissions that fees to ACSPs would have to increase by [...] % in order to bring about a 5-10% increase in total multilateral compression costs²⁶, it does not explain how the Merged Entity can *realistically* raise fees (given supervision and transparency outlined above) by such a significant amount that it would lead to foreclosure of compression providers.

37. It is not realistic to conclude that LSEG would be able to partially foreclose TriOptima's rivals through changes to its fees.

5.3. LCH cannot foreclose Quantile's rivals by manipulating run schedules

- 38. The Phase 1 Decision states that LCH could manipulate the schedule of multilateral compression runs.²⁷
- 39. The Phase 1 Decision fails to take into account the Parties' submissions that LCH does not play a central role in scheduling of multilateral compression runs and has resisted previous attempts by ACSPs to convince it to play such a role (in order to encourage competition between ACSPs). Scheduling is left to clearing members and ACSPs themselves, and LCH is not involved in these interactions, with its role being limited to confirming currency compression runs within published constraints. Where there is a conflict in scheduling (where LCH is not able to accommodate both runs), LCH will let ACSPs know of any event constraints and leave it to the ACSPs to resolve in consultation with their customers.
- 40. The Phase 1 Decision notes that changes to scheduling compression runs to favour Quantile may lead to a suspicion that the Merged Entity is favouring Quantile, but it may be difficult for Quantile's competitors to determine whether such actions were being taken deliberately and to explain this to their customers²⁸. LCH does not have the ability to partially foreclose TriOptima in this way; any attempt to do so would be highly detectable as, to have an effect, they would need to persistently change the run schedules so that TriOptima's runs are consistently less efficient than those of Quantile. This would be obvious to Quantile's sophisticated customers.
- 41. The dates proposed by ACSPs are accepted with very limited exceptions, related either to key dates in the calendar (e.g., elections or public holidays) or (exceptional) system constraints. As a result, ACSP runs are almost always accepted by LCH: out of around 200 runs per year, there were only four days last year where ACSP were not allowed to schedule runs due to the extraordinary conversion of a large number of LIBOR trades to risk-free-rates when LIBOR in a number of currencies was discontinued towards the end of last year. For each of these, LCH informed members and the ACSPs well in advance.
- 42. The run schedule is published quarterly, and any change in approach would be highly detectable. In order for the manipulation of run schedules to be successful as a foreclosure strategy in marginalising or eliminating the incumbent provider with a 70-80% market share, it would have to involve the widespread cancellation or re-scheduling of runs all adverse to Quantile's rival(s). In circumstances where cancellation/re-scheduling by LCH is extremely rare, such a strategy would be obvious to customers and would attract enormous controversy.

²⁵ [...].

²⁶ Footnote 86 Phase 1 Decision.

²⁷ Paragraph 69 and 94 Phase 1 Decision.

²⁸ Paragraph 143 Phase 1 Decision.

Given the regulatory and governance context in which LCH operates, it is simply not a realistic strategy.

5.4. Data security and confidentiality is paramount to a CCP and a foreclosure strategy based on discriminatory access to data is not credible

43. The Phase 1 Decision states that LCH could grant Quantile preferential access to data or disclose detailed trade data generated by its rivals to harm the competitiveness of competing multilateral compression providers. This would not be possible due to the strict information security and confidentiality protocols required of a CCP given its systemic role.
44. CCPs are subject to strict conflict of interest requirements, including in relation to customer data. Art 33(5) EMIR provides: “A CCP shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. A [...] legal person that has a parent undertaking or a subsidiary relationship with a CCP shall not use confidential information recorded in that CCP for any commercial purposes without the prior written consent of the client to whom such confidential information belongs.”
45. As such, preferential exchange of disaggregated, confidential trade data with Quantile (which will not legally sit within LCH) without consent from clearing members/clients would be illegal and prohibited pursuant to LCH’s legal obligations under EMIR. For the same reasons, LCH would not be able to disclose detailed trade data generated by Quantile’s rivals to Quantile.
46. The position in the Phase 1 Decision that LCH could simply “include standard non-negotiable provisions in its contracts with customers to ensure that it is able to share customer trade data with Quantile”²⁹ is not supported by evidence and LCH considers that this information is protected by confidentiality under English law. Sophisticated customers in this industry (which includes data vendors) are highly alert to the value of their own data and it is inconceivable that they would give LCH such broad open-ended consent to use/share their data. [...] ³⁰.
47. Under EMIR, a CCP is also required to “maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained” (emphasis added).³¹
48. LCH has a number of policies, standards and controls in place for safeguarding its physical and information security. Access to trade data, in particular, is restricted even within SwapClear. Trade data is held [...], to which only certain individuals have access (primarily [...] within SwapClear). Access to systems is monitored quarterly.
49. LCH (and LSEG more broadly) ensures that its employees are aware of the appropriate use of information. [...].
50. Given the open access nature of LCH and LSEG, employees are accustomed to working with in-house and third party providers that compete (e.g., trading venues) and there is no suggestion or evidence that this results in preferential access to data for in-house providers.
51. In light of this robust framework, and the regulation around appropriate data security, integrity and confidentiality for CCPs given their systemic role, LCH would not realistically be able to partially foreclose Quantile’s rivals by granting Quantile preferential access to data.

²⁹ Paragraph 96 Phase 1 Decision.

³⁰ [...].

³¹ See Article 26.6 EMIR.

5.5. Changes in process and “other foreclosure mechanisms” are at odds with LCH’s past practices and risk management role, and are not credible

52. The Phase 1 Decision misstates the nature of the process between LCH and ACSPs, which is largely standardised, with few changes to the process over time and in which customers are involved at every step. LCH is merely executing on its clearing members’ wishes, with checks limited to ensuring that the CCP’s cashflow remains flat and that only eligible trades are compressed.
53. The workflow followed by TriOptima and Quantile is identical and the process between LCH and the ACSPs is largely automated (as is the process between the ACSP and its customers).
54. The process is a series of file exchanges which takes place over 3 days (including a dress rehearsal), with engagement of the customers at every stage (and as such, there is no information asymmetry). Given the structured nature of the workflow process, with which both ACSPs and customers are very familiar, any changes would be clearly detectable. Participants sign their adherence to the LCH Compression Protocol, which sets out the process description in detail in its Annex 7.³²
55. LCH is required to carry out checks and balances to the compression run. However, these are the result of operational controls to ensure that the run (i) can be accurately processed, as LCH is responsible for this element; (ii) does not create additional risk for SwapClear or its members and (iii) is in line with member requests. As mentioned above, multilateral compression reduces notional and line items without materially changing the original risk profile that those trades represent. All checks are automated with the exception of the checks [...].
56. Given the current number of runs (approx. 50 per quarter), there are no advantages to rivals of delayed or failed checks as these (i) can be rectified ahead of the run taking place (i.e., no effect) or (ii) would lead to the run failing, negatively impacting the common customers who wish to participate in the run. Indeed, rejection of a run is very infrequent (estimated at as little as [...]); whilst delays to runs are more frequent, these are almost exclusively related to the ACSP not receiving the approvals from members in time, rather than to any delays to LCH’s process.
57. The Phase 1 Decision proposes that LCH could “change the automated nature of the process or manipulate this while carry out regular updates to the process that would favour Quantile”³³. However, automation of the process is an important means of minimising risk: introducing manual elements or creating a separate workflow for TriOptima that is different to and less efficient than that used by Quantile would introduce operational risk into the process, which is contrary to LCH’s primary objective as a risk manager. These operational risks may lead to reduction, deterioration or breakdown of services provided by LCH. It may therefore make a run more likely to fail, with negative consequences for participants that are also SwapClear customers. Given the role of the CCP, operational risk is carefully monitored and managed.
58. In any event, such a strategy would not be possible in practice because it is not the case that competing compression runs on LCH are carried out on the same day (let alone at the same time within a given day). Where rival ACSPs do conduct compression runs on the same day, these runs are in relation to different currencies – meaning that they are not in competition

³² Annex 14 MN.

³³ Paragraph 96 Phase 1 Decision.

with one another. Changing the relative timing of these compression runs in this context would thus have no meaningful effect on competition between ACSPs.

59. Finally, in order for the manipulation of the compression process to be successful as a foreclosure strategy in marginalising or eliminating the incumbent provider with a 70-80% market share, it would have to involve the widespread rejection of runs all adverse to Quantile's rival(s). Merely delaying runs, where the run would nevertheless take place, would have no adverse impact. In circumstances where cancellation/re-scheduling previously affected just one run every other year, such a strategy would be obvious to customers and would attract enormous controversy. Given the regulatory and governance context in which LCH operates, it is simply not a credible strategy.
60. The highly structured and narrowly focused nature of the process means that it is difficult to envisage any other foreclosure mechanisms. It is notable that all the evidence cited in the Phase 1 Decision in relation to foreclosure derives from competitors, rather than customers that appear largely to favour the Transaction. [...]. This refutes the assertion in the Phase 1 Decision that *"there are a wide range of mechanisms through which the Merged Entity could potentially harm Quantile's rivals in multilateral compression for OTC IRDs"*.³⁴

6. Any foreclosure strategy would be detectable and identifiable as such

61. The Phase 1 Decision concludes that partial foreclosure strategies aimed at Quantile's rivals in multilateral compression *"may not entail any material cost for the Merged Entity, especially those that are less detectable by rivals or for which a justification could be found"* (emphasis added). The Phase 1 Decision also concludes that this is why LSEG/LCH is unlikely to suffer reputational damage from any foreclosure strategies. For the reasons set out below, in order to foreclose the incumbent provider with a 70-80% share of supply, any foreclosure strategy would have to be of sufficient force and relentlessness to be effective and would therefore be highly visible to sophisticated users of the service and to the competitors themselves.
62. The Phase 1 Decision identifies as *"more immediately detectable"* an increase in ACSP fees and scheduling compression runs to favour Quantile³⁵. In both these cases, the Phase 1 Decision however notes competitor responses that point to LCH being able to find justifications to differential treatment without however providing any evidence. Given that LCH has had two ACSPs for five years which it has treated equally, it is difficult however to envisage what explanation LCH would credibly give for any differential treatment. Both schedules and pricing are transparent to market participants.
63. LSEG submits that a failure or delay to provide trade data would similarly be immediately detectable by customers. To have any effect on a rival's ability to compete, it would have to result in cancellation of the run. Given the infrequency with which this has occurred to date, any widespread cancellation of runs all adverse to Quantile's rival(s) would be obvious to customers and competitors alike and, for the reasons set out above, would equally not be *"justifiable"*. Again, there is no evidence in the Phase 1 Decision to suggest how partial foreclosure could occur in this way without being *"detectable"*.
64. For the reasons set out above, even if LCH were to *"change the automated nature of the process or manipulate this while carrying out routine updates to the process"*, even if not immediately detectable, to have a foreclosure effect, it would be necessary for the processing of the files to put the run itself at risk, or to have another clear impact on the timing or efficiency of the run, which could clearly be detectable by both customers and Quantile's competitors.

³⁴ Paragraph 96 Phase 1 Decision

³⁵ Paragraph 141(b) and 143 Phase 1 Decision.

65. The only strategies that would be “undetectable” are strategies that would not do any material damage to rival multilateral compression service providers (and in particular the leading player with a 70-80% market share) and hence not result in foreclosure. Conversely, a detectable strategy that led to the foreclosure of rivals would be identified as such, irrespective of any excuse or justification that LCH tried to provide.
66. As mentioned above, customers are involved at every stage of the multilateral compression, including approval of the compression proposal (which is then merely implemented by LCH). Any alterations to the process or any changes in the implementation of the compression proposal would be immediately detected by customers.
67. The Phase 1 Decision states that “[e]xperience across a range of sectors suggests that such discrimination in favour of a related business may be very difficult to detect or prevent”. In this case, the fact that there are only two ACSPs, the involvement of highly sophisticated customers with a keen interest in the efficiency of the runs in which they participate, and the highly transparent and regulated nature of the CCP, means that it is not comparable to other sectors.
68. Finally, the Phase 1 Decision states that “customers are less likely to detect or object to foreclosure strategies when the cost of multilateral compression services is small compared to other LSEG services”. This does not, however, reflect the huge benefits that customers derive from the service and customers’ evidence that they would seek to persuade LSEG/LCH to maintain open access.

7. LCH has no incentive to foreclose Quantile’s rivals

7.1. The Phase 1 Decision overstates the financial benefits of foreclosure – which are small compared to the risks such a strategy would entail

69. LSEG submits that the Phase 1 Decision has overstated the financial benefits which it would receive in the unlikely event of foreclosure.
70. First, the Phase 1 Decision overstates the likelihood that customers would simply abandon TriOptima and switch all their activity to Quantile given customers’ clear preference for supporting and using more than one provider of multilateral compression services. In addition to driving healthy competition between ACSPs, many customers actively multi-source to take advantage of the differentiated nature of the services offered³⁶. Having a choice for multilateral compression service providers is also important to customers from a simple security of supply perspective and they would vehemently oppose any developments that left them relying on a single provider of such a service.
71. The strength of customers’ support for choice and competition in multilateral compression services is demonstrated by the proactive role larger customers have played in supporting competition between ACSPs including Quantile’s own entry (and indeed, one customer said they would support the development of another third-party compression service).

³⁶ The Phase 1 Decision appears not to give any weight to customers’ wish to benefit from different providers’ algorithms to maximise compression opportunities. The Phase 1 Decision dismisses the evidence gathered in its IHSM/CME JV decision that compression services are “highly differentiated, as different providers tend to process different types of trades and offer different algorithms”, and “customers choose portfolio compression and margin optimisation providers based on their preference for certain algorithms and the types of trades they optimise and compress” which leads to frequent multi-sourcing. CMA decision of 27 July 2021 on the Anticipated joint venture between IHS Markit Ltd’s MarkitSERV Business and CME Global Inc.’s Optimization Business, paragraph 409.

72. Whilst the Phase 1 Decision points to the fact that larger customers would only be willing to multi-home so long as the benefits of multi-homing exceed the costs of using multiple providers (e.g., duplication of fees), the benefits of optimising compression opportunities are very significant in terms of capital reduction and are unlikely to diminish in future.
73. Second, the Phase 1 Decision overstates the financial benefits of additional business migrating to Quantile due to Quantile's [...] fee structure [...]. The Phase 1 Decision states that the Merged Entity would be able to raise fees or change its fee structure. This however ignores a number of factors, including (i) resistance from large and highly sophisticated customers to fee increases; and (ii) the impact that this strategy would have on the likely adoption of any of Quantile's other services, [...].
74. The Phase 1 Decision also overstates the financial benefits by including both TriOptima's revenues for cleared and uncleared OTC IRD trades³⁷. This ignores both that there are providers that offer compression of uncleared OTC IRDs without being an ACSP (and which would therefore be unaffected by any foreclosure strategy) and that Quantile does not currently offer compression of uncleared trades. The Phase 1 Decision does not explain why existing demand for multilateral compression of uncleared trades would switch to a provider that doesn't even offer this service rather than to other providers unaffected by foreclosure.
75. The Phase 1 Decision also puts forward a new benefit that, as a result of any potential foreclosure, Quantile would become a 'must have' multilateral compression provider and that the Merged Entity could prevent Quantile from compressing trades at other CCPs which would weaken other CCPs' overall post trade offering and thereby strengthen or protect LCH's market position in clearing. This argument is far-fetched and the Phase 1 Decision has no evidence to support it. In particular, Quantile only started offering multilateral compression at JSCC in October 2021 (less than 1 year ago) and it does not currently offer any compression services at any other CCPs [...]. TriOptima, on the other hand, offers multilateral compression services at 6 CCPs including CME. TriOptima is part of OSTTRA, a joint venture between CME, a CCP, and IHS Markit a provider of information, analytics and solutions and now part of S&P Global. CME simply would not switch away from its own JV company in which it has invested considerable resources. In particular, it has not explained why TriOptima could not continue to provide services on third-party CCPs even if it lost access to LCH - especially given that the modest costs of sustaining TriOptima would be small compared to the benefits of doing so if the survival of competition for OTC IRD clearing services depended on it. It is not credible that rival CCPs and their members would allow TriOptima to be foreclosed in such a scenario.

7.2. The Phase 1 Decision largely understates the financial costs rendering a foreclosure strategy unprofitable and risky - and therefore not credible

76. Whilst the benefits are overstated, for the reasons set out below, the Phase 1 Decision grossly understates the costs of foreclosure, which are significant and which mean that it is not credible that LSEG would put at risk its reputation for open access and the revenues and profits that it earns from the same customers across its business for the sake of reserving for itself the small multilateral compression market. By way of example, in 2021, LCH alone (i.e., excluding LSEG's other businesses) earned [...] ³⁸, whilst Quantile earned [...] across all services.

³⁷ Footnote 102 Phase 1 Decision notes that revenues for cleared OTC IRDs represent 70-80% of IRD revenues.

³⁸ These figures include [...]

The Phase 1 Decision does not consider the easiest form of retaliation – not adopting Quantile’s or LSEG’s new services

77. The Phase 1 Decision did not consider the Parties’ submissions that LSEG is reliant on these same customers for the development of new services which depend on customer buy-in. This relates to products being developed by LSEG but also products being developed by Quantile.
78. Quantile is reliant on maintaining a good relationship with its existing customers and expanding its customer base in order to grow its business outside of multilateral compression of OTC IRDs. Arguably the easiest means available to customers to punish LSEG would be to refuse to purchase or reduce volumes of their purchases of these other services from Quantile. [...]. The customers for these services are the same as those for multilateral compression. This growth would be jeopardised if customers decided they didn’t want to take additional services from Quantile, [...].
79. When developing new services, LSEG also relies on working with its customers to ensure the future commercial success and these customers will only be willing to work with LSEG if it is able to maintain its reputation as a trusted market partner and open access provider. Without customer support, these services will fail. [...]
80. This provides customers with a ready and available means, in a directly related market, with which to punish LSEG.

The evidence in the Phase 1 Decision suggests that customers would – and could – retaliate

81. The CMA’s own evidence shows that, in the event of foreclosure, customers would encourage LCH to retain open access through a series of actions, such as negotiating fees and other terms of service with LCH/LSEG bilaterally or complaining to a trade association as part of an industry effort with other banks or through their representatives on the LSEG/LCH board.³⁹ It is clear therefore that customers have a number of options available to them, all of which would have an impact on LSEG.
82. Switching is a real threat even according to the Phase 1 Decision, which understates its likelihood. In particular,
 - a. one of the largest 18 customers said that it *would* consider switching trades without highlighting this as particularly difficult or onerous;
 - b. feedback from the remaining customers (presumably of the top 18 customers) was mixed with some saying that they would consider switching trades from LCH but that it would be difficult/onerous to do so and others saying that they would not consider switching at all.
83. This would therefore still pose a threat to LSEG. Even if there were only a small risk of customers retaliating by moving activity out of SwapClear, this would still be more than sufficient to deter any foreclosure strategy. [...]⁴⁰.
84. The Phase 1 Decision ignored relevant evidence provided by the Parties that switching is more likely than suggested in the Phase 1 Decision:

³⁹ Paragraph 135 Phase 1 Decision.

⁴⁰ This estimate represents [...].

- a. Clearing *new* trades with a rival CCP (which would not require switching any existing trades) would largely avoid transaction costs or margin inefficiencies associated with a switch – thereby avoiding the difficulties identified by customers above. Furthermore, this strategy alone would rapidly result in a highly damaging and costly loss of business and liquidity on LCH.
 - b. The costs of switching are likely to be overestimated by market participants [...] and are in fact lower than suggested, as evidenced by a number of customers switching in the past. In fact, the strategy of switching new trades to rival CCPs would involve no switching costs for the many market participants that are already connected to rival CCPs.
 - c. [...]
85. LCH's survival as a leading CCP for OTC IRDs depends entirely on its ability to maintain a good working relationship with its members and clients, which is in turn underpinned by its strong track record as an open access provider. Any move by LCH to foreclose rival compression service providers would bring this track record to an abrupt end and thereby remove a key motivation for LCH's customers to continue using its service in the face of ongoing regulatory and political pressure post-Brexit.
86. Customers also stated that they could negotiate on fees, which could have a significant impact on revenues [...].
87. Whilst the Phase 1 Decision states that no customer said that they would consider moving spend from other LSEG services they use to alternative providers of those services, this is not borne out by the evidence in the Phase 1 Decision. Footnote 122 refers to a customer negotiating fees for other LSEG products and paragraph 137 refers to 'limited instances' of disputes that led to an 'escalation' outside of the business unit directly using that product or service. It is also not borne out by LSEG's own evidence which demonstrates that customer can, and do, discuss their business with LCH and LSEG beyond the business area with which they may be concerned [...]⁴¹.

The Phase 1 Decision does not consider retaliation by TriOptima/OSTTRA

88. The Phase 1 Decision also did not consider the Parties' submissions that any attempt to foreclose TriOptima would create a risk that OSTTRA, the joint venture between CME and IHS Markit, would itself retaliate in a way that could harm LSEG. OSTTRA is an important partner and provider of essential inputs to LCH post trade services. Most notably, OSTTRA offers trade processing services through its MarkitSERV business.⁴² MarkitSERV's market position varies across different services, but – by way of an example – it provides more than 90% of OTC FX CCP connectivity services.⁴³ Various parts of the LSEG business are reliant on MarkitSERV, [...].
89. If LCH were to attempt to foreclose TriOptima in OTC IRD multilateral compression, then OSTTRA would be able to retaliate in kind by foreclosing LCH businesses from MarkitSERV's

⁴¹ See the Parties' response to the Issues Letter.

⁴² "MarkitSERV's core service sends and receives details of executed trades to the trading parties, the electronic trading venue, the CCP, and the trade repository. MarkitSERV provides its services through two main product lines: Centralised Platforms and FX Enterprise. These products are supplied as standalone products.", see CMA decision of 27 July 2021 on the Anticipated joint venture between IHS Markit Ltd's MarkitSERV Business and CME Global Inc.'s Optimization Business, paragraph 74.

⁴³ Ibid, Table 4.

services. Therefore, LCH ([...]) would be very vulnerable to OSTTRA's retaliatory behaviours that would have a disruptive impact on LCH's ability to provide clearing services⁴⁴.

8. Customers support the Transaction

90. It is important to note that the Transaction has been generally well received by customers, as evidenced in the Phase 1 Decision. The majority of customers who responded to the CMA's investigation submitted that the Transaction did not raise concerns as long as open access to LCH's services is maintained, with some customers adding that the Transaction would not have an impact on LCH's commitment to open access. This is in line with the Parties' submission during Phase 1 and reflects LSEG's own discussions with its customers.
91. Some customers also thought that the Transaction could produce a positive outcome such as enabling Quantile to benefit from greater scale, bolster its resilience and increase efficiencies. This is in line with Quantile's rationale for the Transaction, [...]. For multilateral compression, the Parties hope the Transaction would increase the size of Quantile's network, which will mean that Quantile can improve the amount and scale of notional reduction that can be realised by customers and that the extra financial backing provided by LSEG will also support greater pro-competitive innovation. Reducing the size, complexity and risk of the derivatives market is a critical theme for the industry, including market participants and regulators.

⁴⁴ See for example, Annex 2.16 (page 7) to LSEG's response to the third section 109 notice dated 15 February 2022.