

Response to Provisional Findings and Possible remedies referring to The Completed Acquisition by Dye and Durham Ltd of TM Group Ltd.

By: Andrew Prismall, owner of HW Conveyancing Searches and as Chairman of IPSA (Association of Independent Search Agents)

1. Provisional Findings:

This is a report of my views on the CMA (Competition and markets Authority) report, which has the official title:

Completed acquisition by Dye & Durham Limited, through its subsidiary Dye & Durham (UK) Limited, of TM Group (UK) Limited. Provisional Findings Report Dated 18th May 2022

SUMMARY, Overview:

Page 5. Sources of Evidence (9-15):

The report shows extensive use of research and evidence gathering. I am very happy with the scope, including rival / non rival search firms, internal documents and consumers (being law firms).

Page 6. What is the Market? (18. – 28):

This gives a very accurate assessment of the market and how it can work. It is correct to say that the market is divided already by type of search, a further division by client size and type is not helpful. There should be a level playing field for the sole trader licenced conveyancer and the multi-office Top100 legal practice.

Commercial v Residential Searches

The report as a whole continually expresses a difference between these two types of searches. In my 35 years search experience, I have never differentiated the two in terms of **complexity, price or quality**. It is correct, however, to explain how many smaller search companies remove themselves from some commercial work by only having £2million indemnity (industry standard), providing £5million cover opens doors to the bigger law firms.

It is my experience that shows me that there should be no difference in price or quality between a commercial or residential search.

Example: I have carried out a commercial search on the hole of Cowes Marina on the Isle of Wight, which had a total of less than ten planning applications or Land Charges. A search on a flat at Gunwharf Quays, Portsmouth reveals over 200 planning applications. It is sometimes down to how the local authority record data, rather than the amount of it.

Further Comment: It is not correct to say that only large law firms deal with commercial and smaller ones only deal with residential. I find that large and small deal with both, they must in order to be competitive. The mix would be different admittedly.

Page 7. Effects of the merger (29 – 40):

I agree with the assessment on the damage to competition this merger creates. Including InfoTrack, these new firms would account for 80% of the market. Smaller firms share is evidenced to have shrunk since 2018 (When the first D&D purchases occurred). That is a very unhealthy situation. 3 firms having 80% with 70-90 small to medium firms sharing 20%

It is further proved that the two parties I this entity are most definitely competitors. This shown by the CMAs investigation of internal documents.

In point 37, it is interesting that internal documents show no acknowledgement of smaller firms as competition. Unhealthy again. And I agree with your assessment that market share will further diminish for smaller firms with the increased digitisation of conveyancing. Supply will be a major factor if the contributors of various reports needed (environmental for example) are all supplied by companies within the ownership of the 80% market shareholder firms.

Page 12. Provisional Findings – The parties:

Dye and Durham:

Has acquired the following

2017 – Easy Convey

2019 – Index

2020 -PIE and PSG

2021 – Terrafirma, FCI, Lawyer Checker, GlobalX UK, TM Group

TM Group:

Owns:

tmConvey, a search provider and supplier. TMConnect is a software case management system.

CDS – another compiler and supplier of searches

PSS – property Searches Scotland

Mio – a proprietary sales platform for Estate Agents

And, pre-merger, TM Groups majority shareholders were Countrywide Estate Agents, Connells Ltd., and LSL

The Transaction:

D&D acquired the entire share capital of TM Group for £91.5 million. In addition to this share purchase agreement, TM entered into exclusivity agreements with LSL and Connells for the exclusive supply of searches supplied by D&D businesses.

My comment: These exclusivity agreements are at the heart of anti-competitiveness. They mean that all new work garnered by the Estate Agents was guaranteed business for the search companies regardless of **quality, customer service or price**.

Page 18: D&Ds rationale (cont):

Price Rises:

Despite claims from D&D, internal records and past behaviour show that imminent price rises post merger are extremely likely.

Page 19: The Shareholders rationale:

In 2016, the shareholders, driven by Countrywide, wanted a cash sale. The timing was unfortunate as the market started to decline for various reasons. When D&D came in during 2020/21 the timing was very different in a buoyant housing market. The key shareholders views can be described as:

Connells, wanted to sell at a profit. Countrywide, led the push to sell and LSL had only acquired TM as part of the Halifax Group purchase they made in 2009.

Page 20: Our Investigation:

I am pleased to see the scope of evidence gathered in this exercise by CMA.

Internal documents

Competitors in the market

Market research agency DJS were instructed to interview 170 customers of the Parties.

Several "Top 100" Law firms

Potential new entrant firms to the market

Phase One evidence already received. Indeed, a lot of evidence from IPSA and its member firms.

Page 21: 3. Industry Background:

The Supply of PSRBs:

The industry term is a “search pack” which typically includes a Local Authority Search (LLC1 and CON29), a Drainage report (CON29DW) and an Environmental Report obtained from Landmark, Groundsure or FCI.

For the purpose of the investigation, Search Packs are referred to as PSRBs (property search report bundles).

Page 23: Types of reports:

I would question DandD’s claim that large law firms only use Council searches. The last line is more correct: the two types are “largely substitutable”. It would cut into their profits too much to use Council searches for large transactions.

Lenders -The most important factor when a conveyancer is selecting Council or PSRBs is the lender. There is a list of lenders available who (as shown in their entry in the CML lenders handbook) do not accept personal searches. I have significant experience of firms who are lifelong users of PSRB to have to order a Council search as the lender dictates. And firms who insist on Council searches but use search provider firms to provide them as part of a pack or bundle for efficiency.

Even when this happens, that firm can still order a search pack or bundle to include that Council search from their Personal Search Company.

Page 24: Types (cont.):

3.11:

Despite the DD claims, there is not necessarily more work involved in a commercial LAS than a residential one. Water Authorities will charge significantly more, as will the environmental report provider, so the bundle cost will increase dramatically. But that increase should not be down to the LAS (Local Authority Search).

I have also known some fairly small law firms to deal with big commercial transactions. They can also be using case management systems (3.16)

3.17:

It is the referral fee which, in my opinion, is most unhelpful and costly to the consumer. A search pack costing £195 can be costed to the consumer at £400 - £600 to cover the referral fees involved.

3.19 – 3.26: Ancillary Services:

All search firms, no matter how small must offer these extra services or products in order to compete with the bigger rivals. These range from development report from DevAssess for example, to insurance products (by referral), cyber crime and AML services.

Page 27: Industry participants:

The report defines conveyancing firm size as follows:

1. The top 100 law firms
2. Medium – more than 240 transactions annually
3. Small – less than 240 transactions p.a.

Intermediaries are also mentioned. The bodies that earn referral fees for guaranteeing volumes of work.

EXAMPLE: The group of law firms which come under the “Quality” umbrella are guaranteed a high volume of referrals from national estate agents so long as all the searches are carried out by PIE/PSG. Individual conveyancers are not allowed to choose the best search firm for their client and must charge a very high referral fee for the privilege.

3.13: Highlights this chain of payments that work against the consumer. Both the panel manager and the conveyancer BOTH get referral fees funded completely by the consumer paying a grossly inflated price for the PSRB.

3.46: It is incorrect to say that Search Acumen focuses on commercial transactions. That may be their aim, but they provide searches for at least 1,000 residential transactions per annum in Hampshire alone.

Page 33:

3.48: The Daily Mail Group:

The main rival to D&D other than ATI is this group. It includes Searchflow and OneSearch Direct who provide search report bundles including reports from their sister company Landmark. It is stated that Searchflow has lost market share in recent years.

3.50: Smaller suppliers:

There are 84 smaller search firms identified in the report. 40 of which engaged in the research via responding to questionnaires sent by the CMA. Any which were IPSA members were encouraged to do so by IPSA. The combined share of the market is less than 5%.

Some smaller search firms operate nationally, others regionally. Xpress legal being the biggest with 27 franchisees.

3.53: Horizontal Consolidation:

D&D entered the UK market in 2016 when they purchased EasyConvey.

2017 – bought remaining shares of EasyConvey

2018 – acquired Finlay Associates

2019 – Index

2020 – PIE / PSG

2021: FCI, Terrafirma, Lawyer Checker, GlobalX and TM Group, which already included CDS, bought in 2018.

ATI Entered in 2014 with the acquisition of STL, then Search Acumen and Groundsure in 2019.

Page 34: INDUSTRY BODIES

3.54: COPSO was set up in 2003 and has over 150 member firms. Mostly as all firms must be members of the Search Code in order to trade. As COPSO now own the code, those firms are all counted as COPSO members.

3.55: Membership of IPSA is, however entirely voluntary. Its 70 members are smaller search providers, all independently owned and managed.

Page 45: Provisional Conclusion on the counterfactual:

I wholeheartedly agree that TMG would continue as before despite the merger, no significant lack of investment or reduction in market share would have been caused. They may have even been able to grow.

Page 48: Customer Groups:

There is definitely a feeling among smaller search firms that they cannot compete with the bigger rivals for large conveyancing firms. However, a larger conveyancer does not necessarily share this view and may well prefer a smaller firm to deal with.

Page 49: Geographic market:

The parties claim that for residential conveyancers, small regional suppliers have a DISTINCT ADVANTAGE over the parties. This is completely untrue. Even small firms want case management and ancillary services. If their claim was true, then why do the parties aggressively market small conveyancing firms?

Page 50: 6.20: Feedback on coverage:

The CMA customer survey said that “Neither a suppliers regional or local expertise, nor its national coverage are given significant weight when choosing a PSRB supplier”.

Page 52: Market Dynamics.

The PQRS – Price, Quality and Range of Service.

The parties claim that the most important points when choosing a search provider are:

1. Timeliness
2. Accuracy
3. Quality
4. Customer Service

Customer service is not a “core driver”

I agree to an extent with TMG that quality can only be truly assessed once the conveyancer starts using the supplier.

Page 53:

6.31: While the parties put the attributes in the above order, the CMAs own customer survey resulted in this order of priority when choosing a search provider, based on 170 respondents):

1. Quality – 64 said this was MOST IMPORTANT
2. Price – 30 ditto
3. Quality of platform – 29
4. Customer Service – 28
5. Range – 4
6. Brand Strength – 2

The CMA conclude that customer service is a driver.

6.35 Gives details of some individual responses highlighting the need for customer service, and the ability to answer questions promptly.

One Top 100 firm chose Search Acumen over any other repeat bidders owing to its *map search tool and address search tool* which can outline flood zones, planning histories etc.

Something too costly for a small firm to replicate. I've tried it.

Ward Gethin Archer (top 100) considers all search reports effectively the same, but photos, graphs and bar charts can influence choice of supplier.

Page 58: Provisional Conclusions on Quality

6.41: The Parties judge that the most important factor in quality is timeliness and accuracy. The CMA agrees to a point but adds that customer service and ease of ordering as well as ancillary services are also important to customers.

6.43: Quality Costs Money.

Maintaining a quality service costs all sizes of search provider firm. Investment in IT both hardware and software, increase staffing levels to cover routine absences effectively.

The CMA concludes that the higher the level of competition fuels this investment and rise in quality. The merger risks it going the other way. Lack of competition could lead to those costs being reduced in the name of profit.

Page 59: Price:

6.45: Handling fees are not desirable. They cannot be justified and only hit the consumers pocket.

6.47: While the cost of the bundle will increase notably for a commercial PSRB, the cost of the LAS should have no reason to cost more. I have seen “complexity fees” added to commercial LAS’s when there was no real complexity at all.

6.49: I wish I could increase my prices every 5 years, let alone every year. Most IPSA member firms rarely increase prices. I have had 2 price rises in 15 years.

Page 60: Discounts and Negotiations

Bulk pack price reductions are commonplace. A small search firm will also need to do this in order to compete, even when the economies of scale are not really evident. A small supplier with one conveyancer ordering 70 plus searches per month would almost certainly offer a discount to that firm for all their searches. This is only possible due to the increased fees obtained from drainage and environmental bodies.

6.52 (b):

TMG planned and announced a price rise for its customers and those of CDS in October 2021. Customers threatened to switch and they reversed that decision.

Page 61: Importance of price.

6.56: 30 out of 170 survey respondents said that price was the most important factor after quality and timeliness. And it was slightly ahead of customer service here too.

96 rated price as important but behind quality and above service.

74 respondents (44%) did not mention price as an important factor.

6.57 Engagement with the largest firms showed price to be not the most important factor.

6.58: Panel managers are more concerned about price.

While some very large firms said that prices were very similar and reasonable prices are not challenged, panel managers focused on their commission rather than price.

It was widely found that all customer groups are very sensitive to price. The CMA does not believe that all customers are highly price sensitive. I definitely agree with that statement. I have “won over” three firms in the last few years where price was not even discussed until after the deal had been shaken on. “oh, cheaper too” comes to mind.

Page 65: Multisourcing and switching:

6.67 The parties claim that 55% of their customers multisource (i.e. use more than one search provider). They claim this rises to 80% when using HMLR score. They say how it is widespread and makes switching easier.

6.68: The parties, ATI and Landmark all agreed that multi-sourcing is common. Sometimes it is to have a back up provider should systems fail. But conveyancers generally want to only have to train staff in the use of one platform.

6.69: 110 of the 170 respondents (65%) use two or more providers. The remaining 60 firms stick to one search firm.

6.70 why do they do it?

“Shopping around encourages suppliers to remain competitive”.

Using two or more manages risk of only using one

Some providers are stronger for different transaction types

Different preferences of individual colleagues. This is very common as conveyancers who switch firms may take their trusted search firm with them to the new employer.

It should be noted that 36 respondents of the 170 agreed to some extent that their hands were tied by panel managers.

Page 67: Ease of switching

6.75: The parties claim that switching is “extraordinarily easy”. I agree – most firms will simply stop ordering from one firm without communication and start ordering from the new supplier. This seems impolite and unprofessional but as there are no supply contracts, there has probably been a breakdown of confidence in the old supplier for some reason and a feeling of “they get what they deserve” is prevalent.

The parties claim that there are substantial levels of switching particularly those leaving D&D! I can testify to that.

Page 68: 6.79: Landmark claim that there is a lack of incentive to switch, leading to a “sticky market”.

Page 69: 6.83: The CMA customer survey showed significant switching of providers. I would definitely agree with this.

49 of the 170 respondents (29%) have switched since January 2020, this relates to an annual switching rate of about 15%. The rate is 19% among D&D customers and 10% for TM Group.

Page 70: 6.86: It is felt from the survey and other sources that switching doesn’t happen very often, and is mostly not sought, but instigated by bad poor experience or other reasons.

Page 71: 6.89: Quality as well as price affects the switching decision. Quality of service is mostly only evident after the switch has taken place. Good firm to firm relationships keep customers for very long periods of time. I agree very much. I have very long-standing clients. 10 years or more.

6.91: Search providers will often give discounts to attract new clients. I completely disagree with this practice and would never do such a thing. Searches are legal, incredibly important documents and should not be treated as a commodity.

Economies of Scale

Page 71: 6.93: Smaller firms are at a significant disadvantage when it comes to economies of scale. A small firm will have to sometimes take 3 hours and incur travel costs just to make a Council visit for one search for a valued client. The same trip could be made by their bigger rival for 8 searches. There are also significant bonuses available from the environment report suppliers to search firms who hit certain volume targets, hence enabling them to charge less for the same product.

If I manage to sell 200 environmental searches per month, I can sell them for £XX. A bigger firm ordering 2000 per month, will be able to charge £XX minus 10% owing to the commission uptick for the volume selling.

Page 72: 6.94: The economies of scale allow very aggressive marketing and pricing campaigns. I know that my biggest client is always receiving gifts from a big national provider despite having told them numerous times that they are happy with us.

The larger firm will typically have a whole marketing department of sales professionals all desperate for more commission with large expense accounts. The smaller firms either must find time to do their own “amateur” or self-taught marketing or outsource to a marketing firm at considerable cost.

6.95: Larger firms also have developed technology exclusive to themselves and can try to blind my clients with science.

Page 73: 6.97: All of the above make it very difficult to compete on price. The merger would just amplify this problem.

Page 75: 6.103: I agree. Just because we are here does not mean it was easy to get her, nor to stay here.

Page 76: 6.107: I agree that it is incredibly important that all firms can have an online ordering experience.

6.108: The HMLR project is gathering pace but it won't necessarily reduce the need for physical inspection of public records. Even when the LLC1 is digitised (which is all the project will achieve) there may be visits to planning or highways offices needed to produce the larger part of the Local Land Charges Search, that being the CON29.

6.109: A very important point. The access to everything you could possibly need for one site is just not possible for smaller firms, try as we might. For example, insurance. We are not able to sell financial products unlike them, so we have to set up separate accounts for our clients, the same can be said for AML and lawyer checking, as well as flood or mining screening. As D&D already own FCI and Terrafirma, a D&D search client could carry out automatic mineral

or flood risk screening all within the same company. Indeed, since January 2022, FCI, Lawyer Checker and Terrafirma have all been merged and renamed into the D&D brand.

Page 77: 6.114: I would disagree with the Parties here. Clients want the easiest experience possible. If their case management system can order their searches for them, of course this may sway their decision.

6.115: The Parties appear to contradict themselves here.

Page 78: 6.116: in fact, despite their claims in 6.114, 24 out of 170 firms expressed this to be important in some way.

Page 79: 6.120: Evidence shows that it is a very important factor, the CMA classes it as “significant”. And it will only get more important.

Page 80: 6.125:

Groundsure, owned by ATI and therefore a sister company to InfoTrack and Search Acumen (with the discounts that entails) hold 60-70% of the environmental search market.

Landmark hold 3-40% with their reports easily available to their sister search companies including SearchFlow.

D&D own FCI who have 5-10% and can offer discounts to all their search firms.

Page83: 7.5/7.6:

There appears to be significant evidence, and previous behaviour analysis to suggest that a post merger price increase would occur.

The claim that the parties are not competitors is one I cannot agree with. Taking them apart again to how things were prior to merger, I would consider CDS, Index, PIE and PSG to be very close competitors indeed. D&D have shown in 2022 how they desire to merge and rebrand all member firms. This simply means that these competitors, acting as one, could look upwards in terms of the size of law firm that they would target.

Market Shares

Page 83: 7.11:

I would estimate the market to be 1 million transactions per year in a normal year. The last of these was 2017 and it was almost exactly one million (completions as recorded by HMLR). By 2019 this had dropped by around 25%. Since 2020 the market has been very buoyant. I am not a conveyancer so I do not know how many proposed transactions fail, maybe 35% is a fair assessment, this would be far better than asking firms to submit figures. Many would be reluctant to do so.

But all of those 1 million recorded completed transactions would need a search pack.

Pages 89/90: 7.25:

This clearly sets out the combined size of D&D owned firms, in a figure that I agree with merged company would hold 40-50% of the market, with small firms at 10%.

“Competition only takes place among a few firms”. I would question this. As a small firm, I have recently gained a 6 office law firm who have tried both ATI and D&D, and been unhappy with both.

Page 96: 7.46:

One law firm thought that commercial bundles cost more due to the extra insurance premium. As a firm with £5million indemnity across the board, this rarely applies to me. But I accept that higher value policies may be required.

I agree that search packs for high value commercial transactions could range from £700 - £1,100. The drainage and environmental reports would take up a large percentage of that.

Also, the example of a large transaction involving multiple titles cost into the thousands as a result of the Council charging for extra parcels of land. I defend the council here. Under the Local Land Charges Rules 1977 they should be doing this. They can charge for one search on the main building but must charge for each additional parcel. That cost only tends to be something less than £50 per parcel, so not entirely responsible for the inflated price. It is more likely that the search provider has charged the conveyancer for individual searches (which would all be very similar) for each unit.

7.48:

Research showed that conveyancers care not for the size of the search provider so long as they have the technological infrastructure needed to action the requests quickly and efficiently. This would be good news for smaller firms with reliable online ordering processes. For the small firm to compete, they must demonstrate reliability, speed and efficiency in their ordering and other processes.

Eversheds say that they only consider (have heard of with any reputation): TM Group, Searchflow and InfoTrack. All firms with very large and aggressive marketing divisions.

During the 2020 lockdown, Searchflow were reprimanded by the Advertising Standards Authority for falsely claiming that all their search reports contained a full HMLR Land Charges search.

At the same time, as an example of their aggressive marketing, they wrote to all conveyancers using smaller firms to advise them that their search provider was unlikely to survive Covid, giving them a clickable link to sign up with them. This appalling behaviour was reprimanded by the Search Code. I do not know of a single search firm that has closed as a result of Covid.

Page 98: 7.51:

I agree with the uncovering of Searchflows claims to be a top end provider of commercial search reports. In my experience, they deal with high volume, low price residential transactions. It is impossible, absolutely not possible, for a smaller firm to compete on the

prices they charge to these high-volume clients. I have tried very hard over the years to get one of their large firms. But every time we discuss price, I simply cannot match it. I do not have their economies of scale.

All the firms in this merger have considerable reliance on medium to lower value residential transactions. To merge the 4 main providers, giving even greater economies of scale would be the death knell for their competitors.

They overlap to a huge degree. I would say that there is at least 90% overlap.

7.4: Simply, not true. A ridiculous claim. Nonsense.

Page 101: 7.62:

It would be nice if this were true. “regional experts” winning significant numbers of customers from the merger parties.

Page 104: 7.70:

The switching figures when properly researched back up the fact that the companies are close competitors. The following paragraphs give further examples of customers switching between the firms in large numbers.

Page 105: 7.71:

ATI (InfoTrack) has grown its market share significantly citing “innovative offering” not aggressive marketing, cheap and low-quality searches and trapping firms via LEAP case management systems.

Their share has grown 60% year on year 2018 – 2020.

Page 106: 7.73:

The CMA rules that there is some evidence that ATI’s growth is slowing and there is limited evidence to suggest that it will continue to grow its market share. I am aware of claims that the “life expectancy” of a client relationship with ATI is often very short. There was a saying in the industry a short while ago that it was 6 months. So, while their growth can look good on paper, retention should be considered.

Page 108: 7.82:

Gives multiple evidence of how D&D’s internal documents show evidence that TM Group are key competitors. 7.82 (c) even states that “Out of all our competitors, who are the biggest threat to us? TM is listed as one of the biggest threats to D&Ds acquired firms”.

Opinion: It is abundantly clear that D&D have been trying to buy out a major competitor in order to reduce competition in this market.

The same has been found while examining TM Group internal documents. Different documents have list CDS, PIE and PSG as their main competitors.

TM listed 4 D&D firms in its 12 competitors list. Another document identifies Index and its franchise model as being a major threat as “The PSG of 10 years ago” and winning on personal service.

Page 111: 7.87 – 89:

Telephone conversations with major law firms identified a feeling that D&D are an option for some, but not for others, owing to their lack of reputation with large transactions.

Out of 83 D&D clients, 37 could identify at least one alternative.

Of the 87 TM customers contacted, 47 named a good alternative firm.

The encouraging news for smaller firms is that while 9 firms identified ATI as the best alternative supplier to D&D, another 9 quoted “other supplier”. The other supplier category does not include PIE, TM, ATI, Xpress, Landmark (Searchflow), Council searches, Move Reports.

“Don’t Know” was by far the most common answer. Encouraging opportunities, I think.

Page 117: Current View:

They both consider one another as close competitors

Customers see them as close competitors.

Competitors see them both as competitors to each other.

Page 122: Smaller Competitors: 7.131:

The Parties, surprisingly, claim that smaller competitors on the basis that: (a) there are no economies of scale”!

Fact: Larger firms like D&D, ATI, TM, CDS and Searchflow tend to use sole traders who, working from home with few overheads and limited training or experience will produce many searches for them for £15 each. A small competitor invests in training, has experience and office overheads as well as having to fund its own insurance premiums and membership of the search code and trade bodies.

(b) smaller firms can replicate national coverage through IPSA . This is true to an extent. It allows members firms to offer a national service to its local clients, it does not facilitate gaining clients on a national basis. National searches – yes, national client list – no.

(c) competition overlaps in areas to many firms.

(d) the claim that individual purchasers “usually choose” local conveyancers is true, benefitting from the search firms close relationship with the Council for example. If this was so “usual” then wouldn’t it be in more than 5% of transactions?

(e) as many as 26 competitors could be chasing the same clients. That would be in a very exceptional case, perhaps only in central London. Previous chapters show how few actually

name small firms as a viable alternative. There could as few as 7/8 firms present in a region or even less.

7.132:

Despite all the evidence. The Parties claim that “regional experts” have 20-30% of the market. Not the 5% generally considered and evidenced.

Page 124: 7.135:

X press is identified as the biggest of the small competitors via its franchise network, but its market share has fallen from 5-10% in 2018 to 0-5% in 2021.

Page 125: 7.139:

Here the parties try to use environmental report data to show that smaller firms have anything up to 30% of the market. This share, if true, would exceed each of Landmark, TM and D&D. here they try to claim that the merger is a “4-3”.

7.140:

States clearly that while environmental report sales may show 20-30% share, no individual competitor has more than 0-5% share. And there is no evidence to suggest that any one small competitor has a significant share in any particular region.

7.143:

Smaller firms share of the market has diminished over the last few years.

7.145:

Internal documents show very little concern about smaller firms, in fact, barely a mention. A TM Group internal document is largely dismissive of small. Regional competitors. None of the parties show any evidence of considering small firms a significant threat.

7.148:

ATI boast that smaller firms do not have the finances to compete with them.

7.151:

IPSA Searches allows each member firm to offer a unique national service. It’s based on the experience and personal customer service of the member firms, not a call centre. The downside of this is not having a national ordering platform to compete. However, IPSA feel that if they had centralised ordering and billing, they would be just another national firm and lose their USP.

7.153:

The CMA have considered that this selling point is losing its impact. Especially as D&D, TM and CDS all have regional sales managers.

7.154:

The main reason that a small firm cannot win over a Top100 firm is the referral and portal agreements that rule out any real competition. The volumes are manageable, it's the price, borne out of economies of scale that is a key factor. Also, small firms pride themselves on quality products and service using their own trained staff, not £15 per search sole traders.

A PSG franchise was up and running after one weekend of training, my firm generally considers 1 year of training to be the minimum.

Page 130: 7.157:

As D&D own the smallest player by far in the Environmental Report market, I am not surprised to see that they rely heavily (80-90%) on Landmark and Groundsure for their Reports. It should be noted though that they appear far from happy with this and either block their clients from ordering Groundsure or try to use price to manipulate their ordering habits.

7.160:

Only 3 of the 170 firms (2%) surveyed mentioned local expertise as an important factor in choosing a search provider, these were all smaller law firms, and not one said that it was the most important factor.

However, 11 out of 60 (excluding large law firms) said that one switching reason was the supplier specialised in a local area.

23 out 110 who bought from more than one supplier cited a reason for this being using one firm for local searches, and another for national coverage.

None of the respondents mentioned National Coverage as one of the three main factors when choosing a supplier.

So, regional and local expertise is not a main factor, but then neither is national coverage.

Page 132: 7.162 cont.,:

There seems to be a misconception (fuelled by the big suppliers perhaps), that smaller firms cannot cope with volumes. That is not true. Low prices to get large volumes is mostly not an option for smaller firms due to economies of scale and compromised search quality by outsourcing.

Page 132: 7.164:

It is very bad, and possibly illegal for a group of individual firms to compete as a single voice.

Page 134: 7.169: D&D Franchisees

The Parties have claimed that PSG franchisees are totally separate to the main company and would aim to win firms from D&D. They claim to have “lost” clients to Index franchisees.

FACTS:

Franchisees operate under the D&D brand. D&D provide Index and PSG franchisees with common websites, ordering platforms and case management software. Two Index franchisees spoke of how they rely on D&D software investment.

In return, the franchisees pay D&D monthly royalties over their revenue.

Also, D&D enters into supply agreements with high value clients for the franchisees benefit.

D&D also has up to date sales and value data for all the franchisees by residential or commercial category.

The CMA View:

The franchises rely on D&D for important aspects of their business which influence their ability to compete with D&D. Their ability to differentiate and innovate is limited. The franchise contract clause also limit the franchisees independence and limits competition.

Page 138: 7.183 (c):

Although PSG franchisees are free to order third party reports via the ordering platform (e.g. Groundsure Environmental Reports), D&D made attempts to persuade franchisees to suggest to their clients that they should move from their preferred provider to FCI/ Terrafirma.

Two Index franchisees noted examples of D&D interfering with commercial activities and pricing.

Page 139: 7.187:

17 Index franchisees have formed a trade boy of their own. They say how D&D stop them accepting work from certain potential customers and discouraged from taking work from outside their region. They have also been prevented from adding new products because D&D wanted to promote similar products.

7.189:

There is no evidence in their internal documents that D&D sees the franchisees as a competitive threat.

Page 141: 7.194:

D&D acquired PIE in September 2020, PE had already lost a lot of clients to Index, so cannot be used as competition evidence.

7.197:

ATI do not consider franchise groups as competition, as they do not have the resources to compete. Landmark are similarly dismissive.

Page 148: 7.223/4:

The CMA Conclusions:

The merged entity is significantly larger than its two main competitors. This in a market where it has been proved that economies of scale are very important, and the great that is, the easier it is to increase market share.

Smaller firms have lost share since the buyouts started in 2018.

The parties are close competitors. Both provide the crucial (to come) ancillaries.

Both firms eye one another.

Neither see smaller firms as rivals.

The increased digitisation of the merger will only harm small firms.

Page 152: 8.12:

The Parties claim that it is easy for a new starter to enter the industry and to compete with them:

1. There are low start-up costs (insurance, premises, PI, COPSO and IPSA membership fees, IPSA exam, PCCB membership, marketing to name a few)
2. Reputation counts for nothing, it's all about quality (quality is not evidenced until after the switch, and brands breed reputation)
3. Economies of scale do not exist for search compilers (unbelievable statement, insulting)
4. No exclusivity agreements (the only true statement here)
5. Searches are commodities (what an insult to those of us who actually care about quality and our consumers).
6. Firms easily switch

I could write all day with my thoughts on these claims, but I think this report shows 5 of the 6 to be ridiculous and completely untrue

Page 153:

It is hard for smaller rivals to expand as they do not have the same financial backing at the top for the company that these entities do.

The conclusion is that the merger would seriously reduce competition in an already condensed marketplace.

2. Possible Remedies:

I agree that structural remedies are more appropriate than behavioural remedies in this case. I do, however recognise how the latter could be used to support the former.

Point 13: Agreed

Point 15: I feel that this is very important. These exclusive supply agreements are not fair and definitely not in the best interests of the consumer. Any search provider should be offering a range of products and suppliers. D and D have either enforced exclusivity or forced it by price management (charging their clients more for other suppliers products).

Example: A small local conveyancing firm who uses D&D for their searches asked me why my Groundsure products were so much cheaper than she was being charged for by D&D. her search provider was forcing her to use one of their sister companies by the mechanism of price.

Other D&D conveyancers are only allowed to buy products from D and D firms.

Point 20: The parts of the merged group should be spit up and sold separately. The danger is of one firm buying all the constituent parts and creating the same problem that we have now. If that buyer was Landmark or ATI the situation would actually be far worse than at present. I think each franchise should be sold off for example. A small search firm could potentially expand by buying a nearby franchise.

Point 22: You re-iterate my views in 20. Finding buyers with the capability to compete will not be easy. That will be the challenge.

Point 24: Timescale – by end of 2022?

Point 24: ATI and landmark must not be allowed to use this in order to increase their market share even further. Opportunities should be given for smaller search firms to be part of the divestiture.

Point 25: No firm with a market share above XX% should be allowed to purchase.

Point 27: Understandable, but the trustee must obey by the above criteria

Point 28: I don't think so

Points 30 & 31: Proportional costs should be allowed

Points 32 – 34: The primary purpose in this process is to allow the consumer (the homebuyer not the conveyancer so much) to benefit from a competitive market place where no part of the conveyancing chain is manipulated by deals and arrangements that prohibit quality, price and choice.