

**CASE ME/6963/21**

**COMPLETED ACQUISITION BY DYE & DURHAM LIMITED, THROUGH ITS SUBSIDIARY DYE &  
DURHAM (UK) LIMITED, OF TM GROUP (UK) LIMITED**

---

**TM GROUP (UK) LIMITED'S RESPONSE TO THE NOTICE  
OF POSSIBLE REMEDIES**

---

**22 JUNE 2022**

## **DEFINITIONS**

Unless otherwise indicated, any defined terms and acronyms used in this response shall have the same meaning as those provided in the Provisional Findings and Notice of Possible Remedies.

## TM GROUP (UK) LIMITED'S RESPONSE TO THE NOTICE OF POSSIBLE REMEDIES

### 1. INTRODUCTION

- 1.1 In its provisional findings dated 18 May 2022 (**Provisional Findings**), the Competition and Markets Authority (**CMA**) provisionally found that the completed acquisition by Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**) of TM Group (UK) Limited (**TMG**, together with D&D and D&D UK, the **Parties**) (the **Merger**) may have resulted in a substantial lessening of competition (**SLC**) in the supply of property search report bundles (**PSRBs**) in England and Wales (**E&W**).
- 1.2 TMG does not agree that there are grounds for a finding that the Merger may be expected to result in an SLC. This response should therefore not be considered as an acceptance of the Provisional Findings and it is made solely on the basis that an SLC finding is upheld in the CMA's final decision and without prejudice to any of the Parties' rights and further submissions.
- 1.3 The Notice of Possible Remedies dated 18 May 2022 (the **Remedies Notice**) sets out the CMA's initial views on potential remedies that may address the SLC identified in the Provisional Findings. It identifies one potential structural remedy: full divestiture of TMG to re-create a similar market structure to that which existed at the time of the Merger.
- 1.4 The Remedies Notice also noted that TMG and each of the Shareholders<sup>1</sup> entered into agreements for the supply of PSRBs (**Supply Agreements**), including property search reports supplied by other D&D businesses, for at least [X] years on the same date as the share purchase agreement (**SPA**).
- 1.5 The CMA is considering whether any action should be taken in relation to these agreements in conjunction with its assessment of a potential divestiture remedy.

### 2. THE PROPOSED REMEDY

- 2.1 Without prejudice to the Parties' position as regards the finding of an SLC or any of their other rights, TMG makes the following submissions in relation to the remedy proposed as a comprehensive solution to the concerns raised by the CMA in the Remedies Notice:
- (a) That any divestment package relating to TMG must cover the entirety of the TMG business, including:
    - (i) all of TMG's operations in E&W, namely tmConvey, tmConnect, Conveyancing Data Services (**CDS**) and Mio and all associated assets; and
    - (ii) TMG's Property Searches Scotland (**PSS**) operation (together, the **TMG Divestiture Package**); and
  - (b) That the benefit of the Supply Agreements must remain with TMG and form part of the divestment package, with the exception of clause 2.1 of the Supply Agreements (and the associated obligations set out in Schedule 1 to the Supply Agreements) which should no longer apply in the event of any divestiture of TMG; and

---

<sup>1</sup> Countrywide Group Holdings Limited, Connells Limited and LSL Property Services plc (i.e. TMG's majority shareholders before the Merger).

- (c) That the divestment package should contain no new mechanism through which TMG is tied to D&D and/or through which D&D is permitted, as part of the sale process and/or divestment package, to agree with any prospective purchaser additional arrangements for the future supply of search reports to TMG. TMG must be permitted to operate as a wholly independent business.
- 2.2 The above points are explained in further detail below. Note that TMG has also responded separately to the CMA's Section 109 Notice dated 16 June. The response herein should be read in conjunction with TMG's Response to the Section 109 Notice (**Section 109 Response**).
- 3. TMG DIVESTITURE PACKAGE**
- 3.1 The Remedies Notice sets out the CMA's preliminary view that a full divestiture of TMG would represent a comprehensive and effective remedy to all aspects of the SLC that it has provisionally found, and any resulting adverse effects.
- 3.2 D&D's revised Response to the Remedies Notice dated 17 June 2022 (the **D&D Response**) indicates that a partial TMG divestment, in which the PSS operation of TMG is separated from the divestment package, would comprehensively address the SLC.
- 3.3 TMG considers that a partial divestment would not be an effective and proportionate remedy to address the SLC. A partial divestment would put TMG in a significantly weaker position than it was pre-merger, with the effect of (a) [X] and (b) [X].
- 3.4 TMG agrees with the CMA's preliminary view on remedies: only a full divestiture of TMG would be an effective and proportionate remedy that constitutes a comprehensive solution to the SLC and its resulting adverse effects.
- 3.5 These points are considered in further detail below.

### ***Effectiveness***

- 3.6 When deciding on remedial action, the CMA is under a duty to seek remedies that are effective in addressing the SLC and any resulting adverse effects<sup>2</sup>.
- 3.7 The effectiveness of a remedy is assessed by reference to several distinct factors, including the duration, timing and practicality of implementation and, in particular:
- (a) The impact of the remedy on the SLC and resulting adverse effects. The CMA will seek to restore competitive rivalry through a remedy that re-establishes the structure of the market expected in the absence of the merger, thereby comprehensively remedying the SLC; and
- (b) The risk profile of the remedy in terms of its effectiveness: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.<sup>3</sup>
- 3.8 The TMG Divestiture Package would re-establish the structure of the market and thereby restore the associated levels of rivalry existing on the market immediately prior to the Merger, thereby directly remedying and comprehensively addressing the SLC at source<sup>4</sup>.

---

<sup>2</sup> Merger remedies guidance CMA87 paragraph 3.4; The Enterprise Act 2002, Section 35(4).

<sup>3</sup> CMA87, paragraphs 3.5 and 3.38

<sup>4</sup> TMG has previously explained, including in its oral statement at the CMA hearing on remedies, the current market conditions for the supply of PSBRs in E&W. The market changed considerably between September 2020 and July 2021, through strategic acquisition and consolidation.

- 3.9 Since there has been no integration between TMG and D&D since completion of the Merger as a result of the hold-separate requirements under the CMA's initial enforcement order dated 27 August 2021, a full divestiture would be a straightforward process and would be capable of effective and timely implementation. It would also have a low risk profile in terms of its effectiveness. A full divestment would therefore represent a comprehensive solution to the SLC and its adverse effects.
- 3.10 A partial divestment of TMG, on the other hand, would involve a much higher risk profile that would significantly impair its effectiveness in addressing the SLC. The divestiture package (involving the separation of PSS from the wider TMG business) would be too constrained to attract a suitable purchaser and, even if such a purchaser were to be found, the divested business would [X] so as to restore competition to the level that prevailed pre-merger. Consequently, a partial divestment would fail to comprehensively address the SLC and any resulting adverse effects.
- 3.11 There are a number of key risks associated with a partial divestment of TMG:
- (a) **Risks associated with common proprietary IP:**
- (i) TMG's **Section 109 Response to Questions 1 and 13** describes the key software and applications that are common to and integral across the entire TMG business, including PSS, namely: tmConvey and ATOMIC. All reports produced by PSS are generated using the ATOMIC workflow application and customers of PSS place orders through a white labelled version of tmConvey (this software is not, as is suggested at paragraph 3.4 of the D&D Response, 'retrofitted' for the Scottish market).
  - (ii) ATOMIC is a key part of the service differentiator in TMG E&W and Scotland. It provides significant operating advantages and enhanced efficiencies (for example, automation features and the ability to deliver an operational, skills based, workflow distribution system – see TMG's **Section 109 Response, Question 1**) that provide TMG with a significant competitive advantage. The effect is that, through ATOMIC, TMG is able to operate at much higher productivity levels than its competitors and is able to continuously monitor, measure and improve its operational efficiency and customer service levels – it is the essence of the business.
  - (iii) The intellectual property (**IP**) contained within both the PSS version of tmConvey and the ATOMIC workflow application is unique to TMG. The competitive advantage is also driven by the platform functionalities that one party has, but a competitor does not. It has taken many years for TMG to develop this and would, as it represents a distillation of TMG's knowledge, experience and expertise gained over decades, be very difficult for a third party to reproduce. TMG ultimately considers tmConvey and ATOMIC to be its 'USP' in the market and to be the fundamental driver of its competitiveness.
  - (iv) In the event of a potential partial divestiture of TMG (in which PSS were to remain with D&D), TMG would not be prepared to divulge access to and use of the IP contained within these two applications to a key competitor on the

---

Currently, there are three key players: ATI Global; Dye and Durham; and Landmark Group. These three major consolidated groups have a much wider range of businesses in their groups than TM Group, with vertical integration in particular in relation to the supply of environmental reports, and all have access to substantially greater funds than TM Group.

market for the supply of PSRBs, since doing so would give D&D insight into highly commercially sensitive information and know-how belonging to TMG.

- (v) If TMG were required to grant such access to D&D in the event of a partial divestiture, it would significantly damage the entire TMG brand. It would also mean that D&D obtains a competitive advantage because it would know the purchaser's (i.e. purchaser of TMG) technology capabilities. It would also fundamentally restrict TMG's ability to compete on the market in E&W and would, as a result, undermine the fundamental objective of the divestiture remedy imposed by failing to comprehensively address the SLC. There is equally no form of licensing framework which would allow D&D to access the IP in tmConvey and ATOMIC and which would adequately protect TMG's business in E&W.
- (vi) Without the IT system, PSS would have no product. D&D does not currently own or use an operating platform remotely similar to ATOMIC and they have no experience of operating in the Scottish market. The Scottish market for PSRBs has specific features that any viable competitor on the market must be able to respond and adapt to, efficiency being key. An IT platform that is able to integrate and respond to these features would take 10-20 years to create. It is not easily replicable e.g. through in-house resources, nor can it be bought 'off-the-shelf' through external providers. Without access to ATOMIC, PSS's ability to operate on the Scottish market would be significantly reduced and, in turn, this would have a downstream adverse impact on price and service quality across the market.

(b) **Risks associated with current level of integration:**

- (i) Contrary to what is stated in the D&D Response (paragraph 3.4) PSS is not a separate or standalone business from the business of TMG in E&W. TMG operates as a single business. PSS is an operating brand of TM Property Searches and it is fully integrated within TMG.
- (ii) The current level of integration between PSS and TMG is evident through the shared IT system and technology, namely tmConvey and ATOMIC, which is the manufacturing arm of client servicing in E&W but also manufactures the product for PSS, but also in other material respects.
- (iii) PSS' financial figures are included within the accounts of TM Property Searches Limited and are consolidated into TMG (there is no separate reporting for PSS) and all the IT support, business analysts, QC, maintenance and system development staff that support tmConvey and ATOMIC (on which PSS is wholly dependent for its products) are based in E&W. All finance, HR, marketing resource, CRM and other back office support are also based in E&W. It is therefore clear that the governance, reputation and consistency of the PSS brand is all managed from E&W as part of TMG. See TMG's **Section 109 Response to Question 7**.
- (iv) The Managing Director of PSS, [X], is integrated within the Senior Management Team of TMG and reports to the TMG CEO, [X]. [X], as described in TMG's **Section 109 Response, Question 7**. This makes clear that PSS is not run as a standalone business within TMG and that it should more properly be considered an operation of TMG, as opposed to a business which would easily be capable of being severed from TMG and

thereafter operating in a sustainable manner in the Scottish market, even with a degree of 'back-office' support from, for example, D&D.

- (v) The practicalities of attempting to separate PSS from TMG E&W, in the event of a partial divestiture, would be enormously complex, challenging and costly and would require significant management time, oversight and resource from TMG. It would inevitably detract from TMG's ability to give the necessary degree of attention to any sale process and would be [REDACTED]. It would also likely adversely impact TMG's [REDACTED]. See TMG's **Section 109 Response to Questions 10, 11 and 13**.
  - (vi) The complexity and costs associated with attempting separation in these circumstances, coupled with the inevitable transitional services support that TMG would be required to commit to for years to come, would [REDACTED]. The (partial) divestiture package would likely become dependent on an appropriate match with the [REDACTED], which, in turn, [REDACTED] and/or [REDACTED].
  - (vii) The CMA's guidance states that remedies that address competitive concerns quickly are preferably to remedies that are expected to have an effect only in the long term, or where the timing of the effect is uncertain<sup>5</sup>. In this case, it is clear that a partial divestiture of TMG would be disruptive and time-consuming and would risk reducing the competitive capability of the business compared to the pre-Merger situation
- (c) **Risks associated with financial resilience of TMG:**
- (i) D&D's Response (paragraph 3.6) states that a partial divestment would not adversely affect TMG's ability to compete in relation to the supply of PSRBs in E&W is incorrect.
  - (ii) PSS is the [REDACTED] area within TMG and a core driver of its overall financial performance, enabling TMG to spread central overheads/costs over a greater revenue-generating base (see TMG's **Section 109 Response to Question 13**).
  - (iii) Separating PSS from TMG would put TMG on a [REDACTED] relative to the pre-Merger situation. [REDACTED].
  - (iv) As a consequence, TMG would become [REDACTED] on the market in E&W than pre-Merger, and would be significantly [REDACTED]. This scenario would also lead to further [REDACTED].
- (d) **Risks associated with breaking up assets and staff:**
- (i) PSS is an operation of TMG. Any partial divestiture of TMG that would allow PSS to function as a business able to compete in the Scottish market would require a separation of assets, resources and staff between PSS and TMG.
  - (ii) PSS cannot simply be treated as being comprised of a brand and customer lists of TMG: PSS also depends on goodwill, reputation and, more importantly, the use of TMG's know-how and system (as reflected in

---

<sup>5</sup> CMA87, paragraph 3.5(b)

tmConvey and ATOMIC). Absent that know-how and system, PSS could not exist as a viable competitive Scottish business, even with the support of an entity such as D&D.

- (iii) There is a significant degree of risk associated with any separation of PSS from TMG, since a divestiture that gives due regard to ensuring the survival of PSS will also inevitably make TMG more likely to have to rely on the [X]. This, in turn, means that those [X] of TMG's business as it was conducted pre-Merger, both in E&W and in Scotland.
- (iv) Further, to the extent that any transfer of staff from TMG to PSS were to be required, which cannot be discounted and would depend on a rigorous assessment of how any partial divestiture would be structured, this would also be dependent on staff granting their consent to such transfers (and any refusal by some would give rise to additional risks around the coherence of the operations).
- (v) There are also risks associated with the scope of the divestiture package itself (i.e. TMG E&W), not only in terms of its configuration (which, as explained above, would fail to replicate the competitive constraint exerted pre-Merger), but also in terms of D&D's limited incentives to specify a package that comprises the appropriate assets to allow the divested business to effectively operate in the market for the supply of PSRBs in E&W post-divestment.

3.12 For these reasons, a partial divestiture of TMG would not be an effective remedy and would not comprehensively restore the competitive constraint lost as a result of the Merger. The TMG Divestiture Package, involving a full divestiture of TMG, therefore represents the only effective comprehensive remedy to the SLC and its resulting adverse effects.

### ***Proportionality***

3.13 In determining the suitability of a remedy, the CMA will seek to ensure that the remedy is not disproportionate in relation to the SLC and its adverse effects<sup>6</sup>.

3.14 The D&D Response considers that a full divestment of TMG, including its PSS operation in Scotland (i.e. for these purposes, the TMG Divestiture Package), would be 'disproportionate' and 'overly intrusive'. TMG disagrees with D&D's view that the TMG Divestiture Package would be disproportionate and overly intrusive.

3.15 In assessing the proportionality of a remedy, the CMA will consider a set of established criteria which require the remedy to:

- (a) be effective in achieving the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects (i.e. effectiveness);
- (b) be no more onerous than is required to achieve that aim;
- (c) be the least onerous, if there is a choice of equally effective measures; and

---

<sup>6</sup> CMA87, paragraph 3.4



(d) not produce adverse effects which are disproportionate to the aim pursued<sup>7</sup>.

- 3.16 As regards effectiveness (i.e. criterion (a)), TMG sets out in Section 2 above the basis of TMG's view that, out of the two remedy options available, only the TMG Divestiture Package would be effective in achieving the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects.
- 3.17 Criteria (b) to (d) above relate to the question of proportionality. However, given that the TMG Divestiture Package is the only effective remedy, then in practice the only criterion to consider is (d), i.e. that the proposed remedy will not produce adverse effects which are disproportionate to the aim pursued. This is because criterion (b) only applies where there is a choice of equally effective remedies, and criterion (c) must always be met where there is only one effective remedy.
- 3.18 In considering criterion (d), i.e. whether the TMG Divestiture Package would produce adverse effects which are disproportionate to the legitimate aim of remedying the SLC and its resulting adverse effects, the CMA's usual approach is to compare the level of harm which is likely to arise from the SLC (and its resulting adverse effects) with the costs of the proposed remedy.
- 3.19 The CMA states at paragraph 4 of the Remedies Notice that its analysis provisionally indicates that the SLC has resulted, or may be expected to result, in adverse effects, for example in the form of higher prices or lower quality and reduced innovation compared to what would otherwise have been the case absent the Merger.
- 3.20 A full divestiture would re-establish the structure of the market and thereby fully restore the dynamic process of competition existing prior to the Merger. The costs associated with a full divestiture under the TMG Divestiture Package would also be low. Unlike a partial divestiture, a full divestiture would not cause any distortion in market outcomes and would require no ongoing compliance costs. Therefore, there are no relevant costs to this remedy and the SLC and its resultant adverse effects would be avoided by implementing the TMG Divestiture Package.
- 3.21 It follows that, in TMG's view, a full divestiture of TMG would not be disproportionate to its legitimate aim.

#### **4. SUPPLY AGREEMENTS**

- 4.1 TMG agrees with the D&D Response that there is no need for the CMA to take any action in relation to the Supply Agreements and that it is important that they remain in place, subject to the submissions made below in paragraph 4.5 onwards, for the ongoing benefit of the TMG business.
- 4.2 The Supply Agreements were entered into between TMG and each of its former shareholders on 8 July 2021. The Supply Agreements effectively documented and, subject to an important exception highlighted in paragraph 4.5 below, broadly replicated the pre-merger supply arrangements that existed as between TMG and its (now former) shareholders pursuant to the shareholder agreement. Maintaining the Supply Agreements effectively therefore preserves the pre-Merger conditions in respect of their procurement behaviour.

---

<sup>7</sup> See *Tesco plc v Competition Commission* [2009] CAT 6 at [137], drawing on the formulation by the European Court of Justice in *Case C-331/88 R v Ministry of Agriculture, Fisheries and Food, ex p. Fedesa*, ECLI:EU:C:1990:391, para 13. See also CMA87, paragraphs 3.4 and 3.6.

- 4.3 The benefit of the Supply Agreements should remain with TMG, as its former shareholders are an important part of its client base and TMG's [REDACTED].
- 4.4 Altering the terms of supply, so as to weaken the purchasing commitment and the certainty of supply under the Supply Agreements, would [REDACTED] and put TMG [REDACTED] than it was in pre-Merger. This would not only be unnecessary and disproportionate – it would [REDACTED] on the occurrence of any divestiture of TMG.
- 4.5 The key exception to this relates to the obligation under clause 2.1 of the Supply Agreements, pursuant to which TMG agrees to respectively supply the former shareholders with services that comply with the description and specifications set out in Schedule 1. Paragraph 5 of Schedule 1, in turn, effectively provides that the future search reports to be included within the property search packs supplied by TMG to LSL and Connells [REDACTED] (the **Exclusivity Arrangement**).
- 4.6 TMG considers that, in the event of a divestiture of TMG (whether in whole or in part), [REDACTED] the Exclusivity Arrangement itself should, [REDACTED] fall away.
- 4.7 A failure to end the Exclusivity Arrangement along with any divestiture would, TMG submits, not constitute the restoration of the pre-Merger situation. It would leave TMG in a [REDACTED] in relation to the provision of the search reports in question. It would also [REDACTED]. This, in turn, would [REDACTED].
- 4.8 These points are explained in further detail below.

***Exclusivity Arrangement offers no benefit to TMG***

- 4.9 The Exclusivity Arrangement was negotiated and agreed in the specific circumstances of the Merger and was plainly, even if this is not set out in the Supply Agreements in a strict textual sense, predicated on TMG being owned by D&D. It is, for example, evident from the fact that the Exclusivity Arrangement offers no obvious independent commercial benefit to TMG, as compared with the circumstances that existed prior to TMG's entry into the Supply Agreements.
- 4.10 Instead, the Exclusivity Arrangement benefits D&D, something that would only justify TMG entering into the Supply Agreements in the wider context of the Merger (where the Exclusivity Arrangement would benefit TMG indirectly through strengthening the wider group of companies of which TMG, post-Merger, formed part).
- 4.11 TMG submits that, in light of the above, it is simply not correct to assert at paragraph 4.5.3 of the D&D Response that the Supply Agreements are on 'arms-length commercial terms'.

***Exclusivity Arrangement is not pro-competitive***

- 4.12 Contrary to D&D's submission in paragraph 4.5.2 of the D&D Response, maintaining the Exclusivity Arrangement within the Supply Agreements in the event of a divestiture of TMG would not be pro-competitive. Moreover, TMG does not agree with paragraph 4.5.4 of the D&D Response that there would be no difference in terms of incentive, motivation and competition risk if the environmental reports were to be supplied by Groundsure, Landmark or FCI.
- 4.13 Firstly, [REDACTED].

- 4.14 This means that, if the Exclusivity Arrangement were preserved (or a comparable structure put in place to replace it), TMG would be required post any divestiture to source a [X] of search products provided to the former shareholders [X], hence restricting its ability to choose freely between any third party search provider by reference to key parameters such as price and quality, a choice that TMG had retained pre-Merger. In turn, this would [X].
- 4.15 Preserving the Exclusivity Arrangement would also affect competition on the upstream market for the supply of such search products (including environmental reports, local and drainage reports). There has been no provisional finding by the CMA of any SLC in relation to the upstream supply of search reports to TMG and, therefore, there is no justification or necessity for the CMA to take any action in relation to this aspect of competition on the market.
- 4.16 Any future trading relationship between TMG and any D&D business for the supply of search reports must be left to market forces: it should not be artificially determined or restricted by the Exclusivity Arrangement, and (contrary to the D&D Response at paragraphs 2.1.2 and 5.1) there should be no new mechanism introduced through which D&D is permitted to agree additional arrangements for the future supply of search reports to TMG as part of any divestment package to be agreed with any prospective purchaser.

**Damage to TMG relationships [X]**

- 4.17 Retaining the Exclusivity Arrangement within the Supply Agreements that form part of any divestiture of TMG will have the potential to [X].
- 4.18 [X]. In turn, this will have an impact downstream on the provision of search reports to customers with the result being [X] on the occurrence of any divestiture of TMG.
- 4.19 Paragraph 4.5.5 of the D&D Response states that TMG and the Supply Agreement counterparties will lose the benefit of FCI's efforts if the Supply Agreements are not honoured in full. TMG understands this to be [X]. TMG submits that this is not a valid concern, because following completion of the Merger there has been no integration between TMG and D&D as a result of the hold-separate requirements under the CMA's initial enforcement order dated 27 August 2021, and hence [X].
- 4.20 In any event, [X].

**Exclusivity Arrangement is not cost-neutral**

- 4.21 Contrary to the suggestion in paragraph 4.2 of the D&D Response (which states that the existence of the Supply Agreements "*effectively [...] preserves the pre-merger conditions in respect of [TMG's and its former shareholders'] procurement behaviour*"), it is not the case that the Supply Agreements containing the Exclusivity Arrangement are inevitably cost-neutral as compared with competing products that TMG supplied prior to its entry into the Supply Agreements.
- 4.22 While the sub-paragraphs of paragraph 5.1 of Schedule 1 of the Supply Agreements, in particular sub-paragraph (d), offer certain protections ([X]), if we consider the Supply Agreement relating to [X], those protections apply only to 'Exclusive Services' offered by D&D.
- 4.23 However, paragraph 5.1 of Schedule 1 of that Supply Agreement requires the shareholders to [X]. This indicates that the Exclusivity Arrangement with [X] has the potential to [X] contained in sub-paragraphs 5.1(a)-(e).
- 4.24 [X]

- 4.25 Such risks would, in practice, operate to create material restrictions [X] and would, beyond even what would be strictly required under the Exclusivity Arrangement, restrict TMG's ability to choose between the providers of relevant search reports. This would also, TMG submits, [X] on the occurrence of any divestiture of TMG.

## **5. SUITABLE PURCHASER CRITERIA**

- 5.1 The CMA's standard suitable purchaser criteria should be considered as a starting point for the criteria for a suitable purchaser of TMG, with some additional aspects as follows:

(a) **Independence:**

- (i) Following divestment, the purchaser should be fully independent of D&D (for example, no financial, ownership or management links) that could compromise its incentives or ability to compete after the disposal;
- (ii) Any trading relationship that may be agreed between the purchaser, whether on its own behalf or on behalf of TMG, and D&D should be done so in the ordinary course of business, post-divestiture;
- (iii) The Exclusivity Arrangements set out in Clause 2.1 and Schedule 1 of the Supply Agreements should not form part of any divestiture package and, contrary to paragraphs 2.1.2 and 5.1 of the D&D Response, there should be no new mechanism introduced through which D&D is permitted to agree additional arrangements for the future supply of search reports to TMG as part of the divestment package to be agreed with a prospective purchaser.

(b) **Capability:**

- (i) The purchaser must have access to appropriate financial resources, market sector expertise, assets and infrastructure to enable TMG to be an effective competitor in the market.
- (ii) The purchaser needs to have a capital structure that permits adequate resources to continue to invest in, develop and grow the business competitively. It also needs to have sufficient financial resources and strength to absorb the risk from any new acquisition.

(c) **Commitment:**

- (i) The purchaser must be able to demonstrate that it has an appropriate business plan and objectives for competing in the market for the supply of PSRBs, and to continue competing as a viable and effective business in competition with other competitors.
- (ii) Any purchaser should also be required to commit to maintaining the culture and management approach that has made TMG the successful business that it is now. This would include, TMG submits, its longstanding commitment to investing in its people and ensuring that the expertise they bring to the market remains within the business. While this is not a 'hard' or 'quantitative' metric, TMG considers that this underpins its success and will be key to its continued competitiveness following any purchase.

(d) **Absence of competitive concerns:**

- (i) The potential purchaser should not, itself, present any possibility of an SLC.

## **6. CONCLUSION**

- 6.1 TMG strongly disagrees with the conclusion in the Provisional Findings that the Merger gives rise to an SLC, and its views on the SLC finding are set out jointly with D&D in their Response to the Provisional Findings.
- 6.2 However, to the extent that the Provisional Findings are upheld in the CMA's final report, the only effective and proportionate way in which to address the SLC identified in the Provisional Findings is by way of a divestment remedy that:
  - (a) In relation to the TMG business, covers all of the TMG operations in E&W and Scotland; and
  - (b) Does not take any action in relation to the Supply Agreements, with the exception that the obligation under clause 2.1 (and the associated obligations set out in Schedule 1) of the Supply Agreements) should be deleted and should no longer apply; and
  - (c) Offers no new mechanism through which TMG is tied to D&D and/or through which D&D is permitted, as part of the sale process and/or divestment package, to agree with any prospective purchaser additional arrangements for the future supply of search reports to TMG.

**Fieldfisher LLP**

**22 June 2022**