

Please note that [X] indicates text or figures which have been deleted for reasons of commercial confidentiality.

### Company A comments on notice of possible remedies

On behalf of [X] we would like to make the following comments regarding possible remedies.

We had not previously commented on the CMA's Remedies Notice, as we agreed with the CMA's position that the only possible remedy is a structural one, that is to say the divestiture of the whole of the TM Group. However, on Monday 13 June the CMA published the Parties' response to the Remedies Notice, and we note that Dye & Durham are arguing that all the Supply Agreements, negotiated as part of their merger Transaction, should remain in place.

There is very little information that can be gleaned publicly about the terms or scope of these Supply Agreement from the CMA's published reports and the various submissions. However, based on our understanding we would submit the following significant concerns:

1. D&D argue that the Supply Agreements entered into between TMG with the former shareholders of the TM Group (3 of the largest UK estate agencies: LSL/Connells/ Countrywide) should remain in place for the benefit of a future purchaser of the divested business. We disagree, we submit there should be no agreements at all, or at the very least only short term and non-exclusive ones renegotiated between each former shareholder and TMG.
  - a. The current Supply Agreements have been negotiated by Dye & Durham as part of that specific merger and they should not automatically be retained for the benefit of a future purchaser of the divested TMG business.
  - b. In particular to the extent that such agreements are exclusive and longer than 1-3 years, such agreements go beyond what is industry standard and as such, if the CMA is willing to allow for some form of supply agreement to be retained for the benefit of a new purchaser, it should be a short term and non-exclusive agreement.
  - c. The CMA should be aware that even pre-merger TMG did not exclusively supply its three shareholders, or at least not only with its own search reports, others including [X] also supplied reports for the shareholders. It had for example approx.. [X] of business with the 3 shareholders last year. We see no legal or competitive need for any agreement between TMG and the 3 former shareholders to be exclusive, and believe consumers would benefit if the shareholders are free to purchase [X] based on merit and price, and not based on a contractual agreement negotiated as part of a prohibited corporate transaction.
  - d. The CMA will be well aware that agreements entered into to provide a smooth transition to a changed company structure, notably to ensure continuity of supply for an interim period when replacing previous intra-group supply, are not considered ancillary to a merger transaction if *exclusive and longer than necessary* (see the CMA's own guidance on ancillary restraints in CMA2 revised 4 Jan 2022, Annex C para C25-C28).
2. It would appear that as part of the merger transaction Dye & Durham also entered into one or more agreements to ensure that the [X] from the wider Dye & Durham Group. We strongly submit that allowing/retaining *any* such agreements by D&D would be wholly inappropriate and not re-creating the pre-merger competitive structure.
  - a. All agreements between Dye & Durham (as purchaser) and the former sellers of the business and any agreement with TMG should be terminated. These agreements were negotiated contemporaneously with the prohibited merger transaction, and Dye &

Durham should not be allowed to benefit commercially from its failed acquisition, where the CMA has concluded it raises SLC concerns.

- b. These agreements are even more clearly not ancillary to the actual merger transaction, but contemporaneous commercial agreements, [X].
  - c. Had the merger transaction not been a completed transaction, but conditional on CMA approval, one assumes that any such agreements would equally not have been implemented if clearance had not been forthcoming, and that outside of the context of any merger transaction, any supply agreements would very likely have been entered into on very different commercial terms.
  - d. Pre-merger all 3 shareholders and TMG were able to go out to market and could seek competitive quotes from a range of providers. For example [X] submitted a competitive bids and as a result [X] with TMG and indirectly the 3 former TM shareholders. Note [X] sold to TMG, who then resold them to the 3 shareholders and its other customers (e.g. as part of a bundle), We would strongly argue that Dye & Durham should not be allowed to contractually force either TMG or any of its 3 former shareholders [X].
  - e. From Dye & Durham's comments it is clear they are seeking to contractually foreclose [X] from supplying TMG and TMG's former shareholders. [X] (i.e. based on competitive pricing and good services and products), Dye & Durham [X] will have entered into their exclusive Supply Agreement within the wider commercial context of the merger transaction and agreed purchase price for the TM Business. [X] will deliver the most beneficial and competitive results for consumers (customers of the TM former shareholders and other TMG customers), while the Dye & Durham supply agreements were entered into with very different commercial incentives, aimed presumably at recouping over time the purchase price for Dye & Durham, and an acceptable financial return for the former sellers/Shareholder, but not necessary for consumers.
  - f. If the CMA were to insist on the termination of all the Dye & Durham [X] and any Dye & Durham agreement with TMG, nothing would prevent Dye & Durham [X] from competing against other market players for all or part of the same business (the supply of search reports and/or environmental reports). This would be a far more fair and pro-competitive outcome following the CMA's SLC findings in its merger investigation.
3. With respect to any agreement between Dye & Durham and TMG, there is a further very serious concern. The CMA has concluded that the merger would raise SLC concerns as the merger would reduce the number of national search providers. If Dye & Durham is allowed to retain a significant supply agreement in place with TMG, there is a real risk that by being contractually bound to purchase reports from Dye & Durham, TMG ceases to have an incentive to continue to develop its own products, and in effect it becomes merely a reseller for Dye & Durham products. This would mean Dye & Durham would have achieved commercially most of its benefits of the merger transaction through a contractual agreement, stifling actual and potential (independent) competition from TMG in the market