

**Completed
acquisition by Dye &
Durham Limited,
through its
subsidiary Dye &
Durham (UK) Limited,
of TM Group (UK)
Limited**

Final report

3 August 2022

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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- B: Market shares
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- D: Views of smaller suppliers
- E: Parties' submissions on the survey and our assessment of its evidential value

Glossary

Summary

Overview of our findings

1. On 8 July 2021, Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**), acquired TM Group (UK) Limited (**TMG**) from TMG's former shareholders, Countrywide Group Holdings Limited, Connells Limited, and LSL Property Services plc (the **Shareholders**) (the **Merger**). The Competition and Markets Authority (**CMA**) has found that the Merger has resulted or may be expected to result in a substantial lessening of competition (**SLC**) in the supply of property search report bundles (**PSRBs**) in England and Wales (**E&W**).
2. The report and the appendices constitute our findings concerning the creation of a relevant merger situation, a substantial lessening of competition and an appropriate remedy.
3. We have taken all submissions into account in reaching our final decision, which has been issued before our statutory deadline, **16 August 2022**.

Who are the businesses and what services do they provide?

4. D&D and TMG overlap in the supply of PSRBs in E&W. PSRBs are bundles of a number of property search reports, which are provided together as part of single 'search packs'. They assist in assessing the value, risk, and general context of the property and its surroundings. PSRBs are ordered by conveyancers and intermediaries (eg panel managers that manage and provide access to panels of conveyancers on behalf of businesses introducing conveyancers to property buyers (**Panel Managers**), estate agents, lenders, and mortgage brokers) during the due diligence process in property transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties in E&W.
5. D&D provides products to customers in Australia, Canada, the UK, and Ireland. Its UK products include technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Northern Ireland. D&D is a franchisor to third party franchisees (**Index Indirect** and **PSG Indirect**, together **D&D Indirect**) and D&D owned franchisees (**Index Direct** and **PSG Direct**). D&D is headquartered in Canada and listed on the Toronto Stock Exchange.

6. TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries, including property search reports for use in property transactions in E&W and Scotland. TMG is headquartered in England.
7. D&D and TMG are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

Sources of evidence

8. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our findings.
9. We received submissions and responses to information requests from the Parties and held a virtual site visit and in-person hearings with each of them. We also conducted a thorough examination of the Parties' internal documents, which show (among other things) how they run their businesses and how they view their competitors.
10. We gathered evidence from competitors via written questions and discussions to understand better the competitive landscape and get their views on the impact of the Merger. This includes evidence from the Parties' third party owned franchisees, from their major competitors (Landmark and ATI), from smaller competitors, and from the Association of Independent Personal Search Agents (**IPSA**).
11. As regards customer engagement, we commissioned the market research agency DJS Research (**DJS**) to undertake a telephone survey of customers of the Parties to better understand how they purchase and use PSRBs. The 170 respondents to the survey were made up of conveyancers who varied by size and their degree of residential or commercial focus. The survey was carried out in February and March 2022. The DJS customer survey report, including the full questionnaire and the methodology of the survey, is published on the [inquiry webpage](#).
12. We also spoke to several law firms including some 'Top 100' law firms (as identified by [The Lawyer](#)) that specialise in large transactions and are among TMG's largest customers, some law firms that are large or medium-sized customers of D&D for residential and commercial services, and several Panel Managers which are either customers of D&D, or TMG, or both.
13. Moreover, we spoke to a number of companies which the Parties informed us were potential new entrants in the market.

14. Finally, we considered evidence from the Parties and third parties received during the CMA's phase 1 investigation of the Merger.

What would have happened had the Merger not taken place?

15. In order to determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
16. Having considered evidence from the Parties and the former Shareholders of TMG we conclude that the most likely counterfactual is that TMG would have continued to compete effectively in the market as it did pre-Merger as an independent entity, either having been sold to an alternative purchaser or being retained by the Shareholders.

What is the market that the Parties operate in?

17. We have looked at the impact of the Merger in relation to the supply of PSRBs in E&W. We have excluded Scotland and Northern Ireland from our assessment because the Parties do not have overlapping activities there.
18. In our analysis, we have considered whether searches relating to residential and commercial properties are different. While commercial properties require more extensive searches and command a higher price, they involve the same general process and have a similar breakdown of costs. All providers of residential property search reports also provide commercial property search reports.
19. We have also considered whether the conditions of competition vary in relation to different customer groups. We found that all of the Parties' brands serve small conveyancers, medium/large conveyancers, larger law firms and other customers.
20. On this basis, we did not think that the market should be further divided. We consider any differences between residential and commercial reports and between customer groups in relation to the effects of the Merger for competition.
21. We have also examined the competitive dynamics in this market. We found that suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers unless they have an existing relationship with the supplier concerned. Associated with this, relationships between customers

and suppliers are often long-lasting, and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.

22. In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms and by integrating them with other existing software which the customer may use.
23. Suppliers also compete on price, often by offering discounts off the list price as part of negotiations to win new customers or to retain existing customers.
24. The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
25. There are few technical or contractual barriers to switching and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing may help to facilitate switching between existing suppliers. However, given that customers multi-source with a limited number of suppliers and for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
26. Economies of scale exist in this market, and the larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volumes and number of customers supplied.
27. The market is characterised by technological innovation, and has become increasingly digitised, including through integration with case management and ancillary services. It has also become more vertically integrated, as large PSRB suppliers have acquired companies that compile environmental reports which are included in most PSRBs.

The effects of the Merger

28. We have looked at whether the Merger would substantially lessen competition between the Parties by removing a previous competitor from the market and whether there would remain sufficient competitive constraints to offset the effects of the Merger.

29. The Merger eliminates one of the main PSRB suppliers and creates the largest player in the market with a very significant share of the supply of PSRBs in E&W.
30. The next largest competitors are ATI and Landmark and, after the Merger, the Merged Entity is materially larger in terms of market shares than these two largest competitors. This is in a market in which we have evidence that economies of scale are important.
31. The market is highly concentrated. The three largest competitors post-Merger, ie the Merged Entity, ATI, and Landmark together account for over 80% if D&D Indirect franchisees are included and over 70% of the market if D&D Indirect franchisees are excluded from the Merged Entity.
32. There are a number of smaller suppliers in the market, but they all have much lower market shares. None of the smaller suppliers has a share above 5% and together they account for less than 30% of the market. These smaller competitors have lost market share since 2018.
33. The evidence that we have seen shows consistently that the Parties are close competitors. Both Parties have a significant presence in the supply of both residential and commercial PSRBs. While there are some differences in their competitive strengths (with TMG stronger than D&D in the supply of PSRBs to the Top 100 law firms, which represents a relatively small part of the overall market), both Parties supply PSRBs to conveyancers ranging from small to large law firms, and to intermediaries (such as Panel Managers). Both Parties also provide ancillary services that are closely linked to the supply of PSRBs and which are an aspect of competition in this market.
34. The Parties' internal documents show that each Party sees the other as a key competitor and that the Parties monitor each other. Moreover, a material proportion of D&D's customers see TMG as an important alternative to D&D (although we recognise that it is more difficult to determine from our survey evidence whether TMG's customers see D&D as an important alternative). This is also consistent with the evidence provided by competitors, which consider that D&D and TMG are among each other's closest competitors, and the available evidence on customer switching (which also suggests that TMG may be a stronger competitive constraint on D&D than the other way around – albeit that we interpret the customer switching evidence with caution).
35. We consider that the two large national providers (ATI and Landmark) each would provide a credible competitive constraint post-Merger, with ATI having been particularly effective in recent years. ATI and Landmark are mentioned as close competitors in the Parties' internal documents, and the evidence

from customers and competitors corroborates this view. The evidence from the survey and the available evidence on switching, both of which we interpret with caution, shows ATI to be a strong constraint with Landmark attracting some customers but fewer than ATI. Like the Merged Entity, these providers are able to take advantage of economies of scale in order both to invest in integrated software systems and the provision of other ancillary services to customers, and to compete with the Parties in terms of marketing.

36. On the other hand, the competitive constraint that the smaller suppliers exert on the Merged Entity, individually and in aggregate, is limited and likely to diminish in the future. We consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. Whilst the customer survey and switching evidence shows that some customers see smaller suppliers as alternatives to the Parties, we treat this evidence with caution and do not consider it sufficient to support a conclusion that they are effective competitors in light of the other evidence. As noted above, all the smaller suppliers have very low shares of supply, and they consider themselves restricted in their ability to compete with the large suppliers. The Parties' internal documents contain very few references to these smaller suppliers. In some of the references that are included, the Parties indicate that these smaller competitors are not seen as a competitive threat by them. We therefore do not consider that the presence of the smaller suppliers, either taken separately or together, is sufficient to offset the loss of competition arising from the Merger.
37. Any competitive constraint that the D&D franchisees that are owned by third parties (ie the D&D Indirect franchisees) may exert on the Merged Entity is also limited. We consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. This limits their ability to differentiate themselves, innovate and compete with the Merged Entity. Moreover, the D&D Indirect franchisees are themselves small regional competitors, who lack the ability to compete for some customer groups or to constrain the Merged Entity to a significant degree.
38. Finally, we consider that while certain intermediaries may be currently able to negotiate better terms than other customers, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.
39. On this basis, our current view is that the Merger eliminates a major national PSRB supplier from the market; that in addition to the Merged Entity only two large national PSRB suppliers would remain; and that the competitive

constraint on the Merged Entity from the two large suppliers, franchisees and smaller suppliers would not be sufficient to offset the effects of the Merger.

Countervailing factors

40. We considered the likelihood of entry and expansion of suppliers in the market. We consider that neither entry nor expansion would be timely, likely, and sufficient to mitigate any potential adverse effects of the Merger and prevent the SLC we have found from arising. We have not received any submissions on efficiencies.
41. We therefore consider that countervailing factors would not be likely to prevent the SLC we have found from arising.

Conclusions

42. For the reasons above, we conclude that the Merger has resulted, or may be expected to result, in an SLC in the supply of PSRBs in E&W.

What have we done to remedy the SLC we have found?

43. We considered different options for D&D to sell all or part of TMG, and whether they would be effective at restoring the competition lost by the Merger. We also considered possible requirements for a suitable purchaser for the business to be sold, and the process that should be followed to sell the business.
44. We have decided that only the divestiture of the whole of TMG to a suitable purchaser would be an effective remedy to address the SLC and the harm it would cause to competition. We considered whether an alternative partial divestiture remedy package proposed by D&D (the **Partial Divestiture**) would be an effective remedy. D&D submitted that the proposed Partial Divestiture would comprise all of TMG's operations in E&W, but would exclude the PSS business which operates outside of E&W. We note that D&D put forward a number of iterations of its Partial Divestiture proposal and the proposal has still not been specified in detail.
45. In its final proposal, D&D stated that the retained parts of PSS would be as follows:
 - (a) certain PSS customer data which would be transferred onto a D&D platform;
 - (b) the PSS brand;

- (c) all existing PSS staff; and
 - (d) any software to the extent that these are only currently being utilised by TMG to service the needs of PSS customers.
46. We identified a number of risks relating to the specification and design of the Partial Divestiture remedy (such as the composition of the remedy and the transfer or disclosure of TMG proprietary information and know-how), as well as risks relating to the financial impact on TMG, the diversion of TMG's management and staff resources in implementing the remedy, and other implementation risks. These risks arise in large part from the current degree of integration between PSS and the rest of TMG. Although some of these risks might be mitigated by further specification of the remedy, others would be very difficult to address. Taking all the risks together in the round, we consider that the Partial Divestiture would not represent an effective remedy to the SLC we have found.
47. In examining the effectiveness of the full divestiture remedy, we considered the effect of supply agreements between TMG and the Shareholders (the **Supply Agreements**) and in particular the effects of a condition that the Shareholders would replace certain of the reports offered to their panel firms with those supplied by D&D (the **Input Switching Clauses**). The Supply Agreements were negotiated and agreed alongside the Merger and are related to the Merger.
48. We have concluded that a future purchaser should be free to decide for itself whether to implement the Supply Agreements or renegotiate them with the Shareholders. In order to ensure a purchaser is free to make its own assessment, we consider that the Input Switching Clauses should remain suspended until completion of the divestiture, and that D&D should not make the sale of TMG either legally or de facto conditional on the purchaser retaining the Supply Agreements or on the purchaser concluding any other arrangements for the supply of inputs with D&D. The CMA will put in place arrangements to ensure that D&D complies with these requirements during the divestiture process.
49. In particular, we intend to require a high degree of oversight in the divestiture process. This includes oversight around selection of potential purchasers, the information provided to them, discussions with them, the negotiation process, and the identification of potentially suitable purchasers for the CMA to assess. We will also ensure that potential purchasers are made aware of the aspects of the remedy in relation to the Supply Agreements and are able to contact the Monitoring Trustee (**MT**) directly if they consider D&D has not complied with its obligations.

What happens next?

50. The CMA will now take steps to implement the remedies described above, and will consult publicly on the approach to be taken.
51. In line with guidance, the CMA will implement its remedy decision within 12 weeks of publication of the final report. The CMA may extend this time period once by up to six weeks.

Findings

1. The reference

- 1.1 On 23 December 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred 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**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). D&D and TMG are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) whether a relevant merger situation (**RMS**) has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 Having decided to extend the statutory timetable by eight weeks, the Inquiry Group is required to publish its final report by 16 August 2022.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's findings published and notified to D&D and TMG in line with the CMA's rules of procedure.¹ Further information can be found on our webpage.²

2. The Parties, the transaction, the rationale and our investigation

Introduction

- 2.1 This chapter describes the Parties and sets out the background to the completed acquisition by D&D of TMG. This chapter is set out as follows:

¹ CMA rules of procedure for merger, market and special reference groups (CMA17), paragraphs 11.1–11.7.

² See case page here: [Dye & Durham \(UK\) Limited/TM Group \(UK\) Limited merger inquiry](#), accessed by the CMA on 5 July 2022.

- (a) the Parties and their principal operations;
- (b) the transaction;
- (c) the rationale for the Merger; and
- (d) the investigation.

The Parties and their principal operations

2.2 The Parties are both suppliers of property search report bundles (in which a number of property search reports are provided together as part of single 'search packs') (**PSRBs**). Their activities are more fully described below.

D&D

2.3 D&D provides cloud-based software and technology solutions for legal and business professionals in the UK, Canada, Australia, and Ireland. D&D is headquartered in Canada and listed on the Toronto Stock Exchange.

2.4 D&D entered the UK property search sector with the acquisition of 51% of Easy Convey in 2016.³ Since then, D&D purchased the remaining 49% interest in Easy Convey in 2019, as well as acquiring other businesses active at different levels of the property search supply industry in England and Wales (**E&W**), and one supplier of PSRBs in Northern Ireland (see Table 2.1). D&D's UK products include technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Northern Ireland. D&D currently has no activities in Scotland and has told us that it has no plans to expand its activities into Scotland.⁴ D&D had £[~~8~~] million of UK turnover in the financial year ending 30 June 2021.⁵

³ Response to the Enquiry Letter, paragraphs 11.5 and 11.5.4.

⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 23.1.

⁵ D&D UK/TMG Consolidated response to CMA's s.109 Notice issued on 25 August 2021, Annex 14.01 (D&D UK Ltd Consolidated Management Accounts 1 July 2020–30 June 2021).

Table 2.1: D&D's acquisitions in the property search industry, UK

Business acquired	Year	LA & DW searches	Environmental reports	Supply of:			PSRBs
				other property search reports*	conveyancing risk management reports		
Easy Convey†	2016/17						[✓]
Index PI	2019	✓					✓
PIE	2020	✓					✓
PSG	2020	✓					✓
Terrafirma	2021			✓			
FCI‡	2021		✓	✓			
Lawyer Checker	2021				✓		
GlobalX UK§	2021	[✓]					[✓]
TM Group	2021	✓					✓

Source: D&D (Response to the Enquiry Letter, paragraphs 8.2–8.3, 11.5 and 11.5.4. See also Response to the Enquiry Letter Annex 20.03 (pages 3, 17–18), Annex 21.04 (page 4), Annex 21.05 (page 4). See also, [press release – D&D's acquisition of Easy Convey Ltd](#); [press release – D&D's acquisition of Finlay Associates](#); [press release – D&D's acquisition of Index PI](#); [press release – D&D's acquisition of SDG](#); [press release – D&D's acquisition of PIE and PSG](#); [press release – D&D's acquisition of Terrafirma](#); [press release – D&D's acquisition of FCI and assets of CLS](#); [Lawyer Checker filing history](#); [press release – D&D's acquisition of GlobalX](#), [LawLink NI filing history](#) and [D&D's acquisition of TMG](#). See also Response to the Enquiry Letter, paragraphs 11.5.1–11.5.8, paragraphs 11.7.1–11.7.4, tables 1 and 2, table at paragraph 11.8).

* eg ground and mining, chancel, etc.

† Easy Convey is principally a provider of case management software.

‡ including certain assets of CLS.

§ [§], GlobalX is [§] focused on business law.

Notes:

1. D&D acquired Finlay Associates in 2018. This company was dissolved in 2020.

2. D&D acquired Lawlink NI in 2021. This business only operates in Ireland.

2.5 A description of D&D's UK businesses is set out here:⁶

(a) **Property Information Exchange (PIE)**. PIE is a supplier of PSRBs in E&W through its brand 'poweredbypie'. D&D acquired PIE in September 2020. PIE also offers a white-labelled version of its property search platform technology to third party suppliers of property searches. Those businesses are able to use their own brand and use the PIE platform to supply PSRBs they have compiled or purchased. PIE also maintains a property search franchise business called PSG Connect (**PSG**). D&D acts as a franchisor but also operates and owns some of PSG's franchisees directly (**PSG Direct**), whereas other franchisees are owned by third parties (**PSG Indirect**). In addition to property searches, D&D provides a range of ancillary services to customers both through PIE but also through its separate brand, 'Brighter Law'. These include a conveyancing quotation tool (that conveyancers can offer their clients to obtain a conveyancing fee estimate) and a document sharing tool (that allows conveyancers to share transaction documents in one place).

(b) **Index Property Information (Index)**. Index is a compiler and supplier of PSRBs in E&W. It is a franchise business. D&D acts as a franchisor but also operates and owns some of Index's franchisees directly (**Index**

⁶ Response to the Enquiry Letter, paragraph 11.4.

Direct), whereas other franchisees are owned by third parties (**Index Indirect**).

- (c) GlobalX UK (**GlobalX**) is a compiler and supplier of PSRBs in E&W. D&D acquired GlobalX UK as part of its acquisition of GlobalX's Australian business in 2021. The Parties stated in their Response to the Enquiry Letter that GlobalX is a retailer of residential and commercial property searches.⁷ [X], the Parties submitted that GlobalX is [X] focused on business law and provides certain related services, including company searches, company formation and a workflow solution.⁸
- (d) Easy Convey Limited (**Easy Convey**) provides an online conveyancing case management platform (**CASA**) to conveyancers in E&W. It is also involved in compiling and supplying property searches (through CASA) together with various ancillary services, including client ID and anti-money laundering checks, mapping tools, and post completion submission forms (SDLT & AP1).⁹ D&D acquired a 51% stake in Easy Convey in April 2016 and acquired the remaining 49% in March 2019.
- (e) Future Climate Info (**FCI**). FCI compiles and supplies the following types of search reports mainly supplied to PSRB suppliers and sold on to conveyancers and other customers in E&W: (i) environmental risk reports; (ii) chancel repair liability reports (through its product 'ChancelCheck'); (iii) title investigation reports (through its product 'TitleChecker'); and (iv) ground and mining risk reports. D&D acquired FCI in May 2021.
- (f) Terrafirma (**Terrafirma**) compiles a range of ground and mining risk reports for the property market in E&W. D&D acquired Terrafirma in May 2021. These reports include ground risk reports and CON29M (mining) reports and are mainly supplied to PSRB suppliers and sold on to conveyancers and other customers.
- (g) LawLink NI (**Lawlink NI**) works with solicitors, financial institutions, and other professional bodies in Northern Ireland primarily retailing commercial and residential property searches. D&D acquired LawLink NI as part of its acquisition of the Irish business, Rochford Brady Group in April 2021. LawLink NI is solely active in Northern Ireland.

⁷ Response to the Enquiry Letter, paragraph 11.5.3.

⁸ D&D derogation request, 16 February 2022; Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.6, and Appendix 1, paragraph 2.4.3.

⁹ There is a requirement to inform HMRC about most England and Northern Ireland land and property transactions, and a Stamp Duty Land Tax (**SDLT**) return is sent to HMRC within 14 days of the 'effective date' of a transaction, even if there is no tax liability. Every transaction requires an AP1 application together with the necessary documents, eg TR1 (transfer of property document) which is sent to HM Land Registry for processing.

- (h) Lawyer Checker (**Lawyer Checker**). D&D also supplies a separate transaction risk management solution called Lawyer Checker (having acquired Lawyer Checker in June 2021). Its main product is a conveyancing risk management tool known as Account & Entity Screen (**AES**), which verifies the legitimacy of the law firm on the other side of a property transaction.

TMG

2.6 TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries, including property search reports for use in property transactions in E&W and Scotland. TMG does not have any activities in Northern Ireland. TMG was established in 1999, is headquartered in England and had UK turnover of £57.1 million in 2020.¹⁰

2.7 TMG has four main businesses:¹¹

- (a) tmConvey (**tmConvey**). tmConvey is a supplier of PSRBs in E&W. The technology infrastructure behind tmConvey [X] local authorities in E&W together with other [X] public authorities that produce search reports ([X]). tmConvey uses a workflow application called ATOMIC to produce search reports which are ordered via the tmConvey platform. tmConvey also provides ancillary services to customers, including client ID checks and anti-money laundering checks, HM Land Registry extract tools, post-completion submission forms (SDLT & AP1), risk management tools and certain insurance related solutions. Alongside tmConvey, TMG has an integrated software solution (**tmConnect**). tmConnect supports law firms and conveyancers with transaction distribution, engagement, and workflow into the case management systems.
- (b) Conveyancing Data Services (**CDS**). CDS is a compiler and supplier of PSRBs in E&W. CDS also offers a range of ancillary services, including ID checks, anti-money laundering checks, company searches and conveyancing insurance products.
- (c) Property Searches Scotland (**PSS**). PSS is a compiler and a supplier of a full range of property searches in Scotland.
- (d) TMG also has its own proprietary sales progression platform for estate agents in E&W called Mio (**Mio**) to improve management and

¹⁰ D&D UK/TMG Consolidated response to CMA's s.109 Notice issued on 25 August 2021, paragraph 9.1, submitted on 17 September 2021.

¹¹ Response to the Enquiry Letter, paragraph 11.6.

communication of residential property transactions. Mio is primarily designed for estate agents to help them keep track of the status of each property transaction on which they are currently instructed. The platform is also integrated with a consumer application for home-movers.

- 2.8 Pre-Merger, TMG's majority shareholders were three UK-based estate agents, namely Countrywide Group Holdings Limited (**Countrywide**), Connells Limited (**Connells**),¹² and LSL Property Services plc (**LSL**) (Countrywide, Connells and LSL are jointly referred to as the **Shareholders**).¹³

The transaction

- 2.9 D&D's wholly owned UK subsidiary, D&D UK, acquired the entire allotted and issued share capital of TMG for approximately £91.5 million¹⁴ pursuant to a share purchase agreement (**SPA**) dated and effective on [REDACTED].¹⁵
- 2.10 In addition to the SPA, TMG entered into agreements with each of LSL and Connells for the exclusive supply of PSRBs, including property search reports supplied by other D&D businesses, for at least [REDACTED] years (collectively, the **Supply Agreements**).¹⁶ Both Supply Agreements became effective on [REDACTED].¹⁷
- 2.11 We consider the evidence shows that the Supply Agreements were part of the rationale for entering into the Merger.¹⁸ This is also supported by the wording of the SPA which requires the Shareholders to 'deliver or procure to be delivered' the Supply Agreements.¹⁹ D&D's internal documents discussing the Merger also indicate that the Supply Agreements were being negotiated as part of the Merger.²⁰

¹² Connells acquired Countrywide on 8 March 2021.

¹³ Joseph Pepper (TMG's Chief Executive Officer) and Paul Albane (TMG's Chief Operating Officer) were also shareholders of TMG pre-Merger. See Response to the Enquiry Letter, Annex 03.01, Schedule 1.

¹⁴ Response to the Enquiry Letter, Annex 06.01.

¹⁵ Response to the Enquiry Letter, Annex 03.01.

¹⁶ Response to the Enquiry Letter, Annex 03.02 (clauses 2.1, 2.6–2.7, 12 and Schedule 1) and Annex 03.03 (clauses 2.1, 2.6–2.7, 12 and Schedule 1).

¹⁷ Response to the Enquiry Letter, Annex 03.02 (clause 12) and Annex 03.03 (clause 12).

¹⁸ See page 2 of D&D response to the CMA's s.109 Notice (RFI5) issued on 14 March 2022: '(F) D&D's rationale for acquiring TMG was, in part, to realise opportunities to cross-sell D&D products to TMG's customers and former shareholders (LSL and Connells), including products from FCI, TerraFirma and Lawyer Checker which D&D had recently acquired. (G) Accordingly, effective from 8 July 2021 (the date of its acquisition by D&D), TMG entered into Service Agreements with its former shareholders, LSL and Connells. [...]'

¹⁹ Clause 1.8 of schedule 5 to the SPA requires LSL to [REDACTED]. Clause 1.10 of schedule 5 to the SPA [REDACTED].

²⁰ See Response to the Enquiry Letter, Annex 21.04 (pages 13 and 16), Annex 21.05 (page 5), which state: 'Current shareholders (LSL and Connells) are major estate agencies delivering referral/leads that drive volume, with ongoing supply agreement being negotiated as part of the transaction'. See also Response to the Enquiry Letter, Annex 21.01, which states that '[t]he Purchase Price is subject to the Shareholders entering into a supply agreement with the Company providing for an ongoing business relationship and commercial commitments'.

2.12 TMG also signed [X] with [X] in relation to the provision of [X] to TMG's Mio product for a period of [X].²¹

Merger rationale

D&D's rationale

2.13 Since 2017 D&D has acquired over 20 businesses in three geographic markets: Canada, UK and Australia. Revenues have grown from CAD 43.8 million in the year ended 30 June 2019 to CAD 209 million in the year ended 30 June 2021. The acquisition of TMG is part of D&D's strategy [X] in the UK via acquisition.²²

2.14 D&D submitted that the Merger would enhance its offering in the UK property search industry, specifically its supply of PSRBs to conveyancers and intermediaries. According to D&D, the Merger would allow it to expand into Scotland and in areas that were not previously a focus, including commercial properties, social housing, and estate agents.²³ Specifically D&D stated that the Merger:

- (a) enhances D&D's position in commercial real estate transactions to larger conveyancers;
- (b) allows D&D to scale its business in the UK and puts it in a position to be able to provide an integrated end-to-end service to customers using its technology platform; and
- (c) enhances customers' ordering and tracking experience by providing more services under one platform, creating efficiencies through a faster integrated process.²⁴

2.15 The Merger was also expected to provide significant synergies.²⁵ Revenue synergies estimated at around £[X] million are shown to arise from a price increase of [X]% to be applied to the [X]% of the revenue that was not

²¹ Response to the Enquiry Letter, Annex 03.04. See also Response submitted by D&D on 18 October 2021 to the s.109 Notice issued by the CMA on 11 October 2021, paragraph 9.1.

²² Response to the Enquiry Letter, Annex 20.03 (budget presentation, page 16). See also, Annex 21.08 FY2021 Quarterly Board Meeting presentation (slides 25, 27–28), Annex 21.11 and see also BMO Capital markets Broker report on D&D 30 September 2020 (pages 4–5).

²³ Response submitted by D&D on 18 August 2021 to the RFI issued by the CMA's merger intelligence committee on 10 August 2021, paragraph 2.2.

²⁴ D&D slide deck for meeting with the CMA on 27 October 2021, page 3.

²⁵ See D&D 'Project Titan Acquisition Approval' presentation 30 June 2021, Response to the Enquiry Letter, Annex 21.05 (pages 2, 5 and 9).

generated from TMG's ex-Shareholders through the Supply Agreements.²⁶ D&D submitted that its acquisition of TMG was not predicated on a price increase.²⁷ D&D submitted that the price increase assumption was based on [X]. This was based on D&D's experience of the UK market. D&D also stated that TMG had last increased prices in April 2020.²⁸ D&D further stated that TMG usually increased prices in April but had delayed as a result of the stamp duty holiday in place at that time. It stated that TMG felt it was not the appropriate time to increase prices as it was an extremely busy period, and an increase would be poorly received by its customers. TMG's prices were increased in October 2021 after the stamp duty holiday had ended.

- 2.16 Some of D&D's internal documents discuss D&D's plans to increase prices following the Merger.²⁹ We also note that D&D increased the price of several products offered by D&D's brands following its acquisitions, with the increases ranging between [X]% and [X]%.³⁰ The Parties submit that while there were increases in headline prices, the average PSRB price charged by PIE has not increased.³¹ Similarly, the Parties submitted that the internal documents considering price increases related to a financial forecast exercise and not to any plan to increase prices.³² The Parties also submitted that, while D&D did contemplate the possibility of a 'standard industry price increase', this was relatively insignificant compared with the revenue gains from synergies and cross-selling opportunities created by the Merger.³³
- 2.17 While direct evidence of price increases may be considered as evidence that a merger is likely to give rise to an SLC,³⁴ we have not – in light of the other evidence available to us – sought to rely on evidence of past and future

²⁶ Response to the Enquiry Letter, Annex 21.03 (pages 3–4); Annex 21.04 (pages 18, 20); Annex 21.05 (pages 9 and 16).

²⁷ Response to the Phase 1 Issues Paper, paragraphs 6.1 to 6.9 and associated footnotes.

²⁸ Response submitted by D&D stated 'the last time that case fees were increased was April 2020'. See Response submitted by D&D on 18 October 2021 to the s.109 Notice issued by the CMA on 11 October 2021, (Annex 12.01(a)).

²⁹ D&D response to the CMA's s.109 Notice issued on 11 October 2021, Annex 12.02 and Annex 12.03; See also Response to the Enquiry Letter, Annex 21.03; Annex 21.04 and Annex 21.05. We also note that D&D's intention to increase TMG's prices post-Merger appears confirmed by at least two of TMG's internal documents – see Annex TMG-0001765 of TMG's response to the CMA's s.109 Notice dated 25 January 2022; and TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex TM1887.

³⁰ D&D's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Table 2.

³¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.12. The Parties further submitted that this is a result of: (i) D&D engaging with customers to assist them with switching to purchasing regulated searches rather than official ones; (ii) customers dissatisfied with price rises switching some or all of their volumes to competitors; and (iii) customers negotiating away price rises (Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.13).

³² Response to the Phase 1 Issues Paper, paragraph 6.2. The Parties further submitted that the price increase assumption was based on D&D's general view of the likely annual rate of price increases on a 'business as usual' basis, based on D&D's experience of the UK market (Response to the Phase 1 Issues Paper, paragraph 6.5).

³³ Parties' response to the Issues Statement, paragraph 2.3.6. The Parties reiterated these views in response to our working papers (Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 7.1–7.6).

³⁴ Merger Assessment Guidelines (CMA129) (MAGs), 18 March 2021, paragraph 2.22.

planned price increases as part of our assessment in this case. D&D's internal documents relating to price increases post-Merger are therefore not considered further in this report.

2.18 Merger synergies also included significant cost synergies through combining platforms and which were estimated at £[REDACTED] million (run rate).

2.19 D&D further expected to generate through the Merger [REDACTED] to some of D&D's [REDACTED] businesses which are used by TMG in supplying PSRBs.³⁵ [REDACTED].

However, only the figures from [REDACTED] are included in the synergy model, as these are under the direct control of D&D.³⁶ We note that [REDACTED] is the supplier of the reports detailed in the Input Switching Clauses (the **Input Switching Clauses**) of the Shareholder Agreements.

TMG's and the Shareholders' rationale

2.20 TMG submitted that the Merger represented an exit opportunity for the Shareholders who have made efforts to sell TMG [REDACTED].³⁷

2.21 Connells submitted that it had acquired its shareholding in TMG as being 'the largest seller of residential property' it made sense to co-operate with 'our competitors to create a scaled and efficient search provider with enough capacity to be always able to fulfil our customers' needs. This then also secured the platform to develop Mio, a chain progression tool for the home buying customer and all parties to the transaction'.³⁸ Connells further submitted that 'over our period of ownership, searches became more commoditised and as the scale and profitability of TMG grew, so did the financial opportunity to dispose of our shareholding for significant value'.³⁹

2.22 In 2016 the Shareholders had looked to sell TMG 'to optimise a cash exit value (particularly driven by Countrywide [REDACTED])'.⁴⁰ However, while there were a number of offers received the process was terminated. Connells stated that the timing of the sale was unfortunate, as it coincided with the UK's vote to leave the EU which had an adverse impact on the UK housing market, and the appetite for such deals generally at a time of potential economic and political uncertainty. In 2020/2021, it felt that 'the offer from D&D and our

³⁵ D&D response to the s.109 Notice of 11 October 2021, Annex 12.02.

³⁶ Lawyer Checker's main product is AES, which provides real-time reporting on the legitimacy of conveyancers acting on a real estate transaction and their back accounts. Response to the Enquiry Letter, paragraph 11.5.8. See also [Lawyer Checker](#).

³⁷ Response to the CMA's s.109 Notice issued on 27 September 2021, paragraph 5.2.

³⁸ Connells' response to Request for Information (RFI) of 10 February 2022.

³⁹ Connells' response to Request for Information (RFI) of 10 February 2022.

⁴⁰ Connells' response to Request for Information (RFI) of 10 February 2022.

assessment that they were highly likely to complete made the offer compelling'.⁴¹

- 2.23 LSL submitted that TMG had always been non-core, having been acquired as part of its acquisition of Halifax Estate Agencies Limited in 2009. It stated that it was willing to sell in 2016 when the business was put up for auction provided a suitable offer was made. At that time, it was looking for an offer in the region of [X] (around £[X] million).⁴² In 2020/2021, the Shareholders decided to sell, as D&D made an approach regarding the possibility of acquiring TMG which was acceptable to LSL and the other Shareholders.⁴³

Our investigation

- 2.24 In assessing this Merger, we have reviewed a wide range of evidence in the round to reach our findings.
- 2.25 We received submissions and responses to information requests from the Parties and held a virtual site visit and in-person hearings with each of them. We also conducted a thorough examination of the Parties internal documents, which show (among other things) how they run their businesses and how they view their competitors.
- 2.26 We gathered evidence from competitors via written questions and discussions to understand better the competitive landscape and get their views on the impact of the Merger. This includes evidence from the Parties' third party owned franchisees, from their major competitors (Landmark Information Group (**Landmark**)⁴⁴ and Australian Technology Innovators (**ATI**)), from smaller competitors, and from IPSA.
- 2.27 As regards customer engagement, we commissioned the market research agency DJS Research (**DJS**) to undertake a telephone survey of customers of the Parties to better understand how they purchase and use PSRBs. The 170 respondents to the survey were made up of conveyancers who varied by size and their degree of residential or commercial focus. The survey was carried out in February and March 2022. More details about the survey are set out in Appendix E. The DJS customer survey report, including the full questionnaire and the methodology of the survey, is published on the [inquiry webpage](#) alongside this document.

⁴¹ Connells response to Request for Information (RFI) of 10 February 2022.

⁴² LSL response to Request for Information (RFI) of 10 February 2022.

⁴³ LSL response to Request for Information (RFI) of 10 February 2022.

⁴⁴ We note that references to submissions from Landmark refer to submissions from SearchFlow.

- 2.28 We also spoke to several law firms including some ‘Top 100’ law firms⁴⁵ which specialise in large transactions and are among TMG’s largest customers ([REDACTED]), some law firms which are large or medium-sized customers of D&D for residential and commercial services ([REDACTED]), and several Panel Managers that are either customers of D&D ([REDACTED]), or of TMG ([REDACTED]), or both ([REDACTED]).
- 2.29 Moreover, we spoke to a number of companies which the Parties informed us were potential new entrants in the market ([REDACTED]).
- 2.30 Finally, we have considered submissions and other evidence obtained at phase 1.
- 2.31 In response to our Provisional Findings, the Parties submitted that the survey was focused on, and representative of, the relevant group of customers that would be affected were an SLC to arise.⁴⁶ The Parties further submitted that the survey should be regarded as the ‘best available source of “truth”’ and it should be given more weight than calls with a limited number of customers.⁴⁷ We note that our guidelines are clear that in attaching weight to different pieces of evidence, there is no set hierarchy between quantitative evidence, such as consumer surveys or statistical or econometric analysis, and qualitative evidence, such as internal documents or the statements or conduct of market participants, and the CMA may attach greater weight to one or the other as appropriate in the circumstances, depending on the relative quality of such evidence.⁴⁸ We also note that, as explained in Appendix E, for some survey questions the number of responses was lower than (or much lower than) the 100 minimum that our good practice suggests we may consider to be robust. It is also relevant to note that evidence from calls with customers is different in nature in that these calls allow for greater discussion of certain points as compared to a survey, which is designed to be a short conversation with often multiple-choice questions. We have not placed more weight on customer calls than on the survey but have accorded each source of evidence appropriate weight depending on the question concerned. Consistent with our guidelines, we have therefore considered the survey results in the round with the rest of the evidence in our analysis.

⁴⁵ Top 100 law firms identified through a publicly available ranking by [The Lawyer](#).

⁴⁶ [Parties' response to the Provisional Findings](#), paragraph 2.4.

⁴⁷ [Parties' response to the Provisional Findings](#), paragraph 2.5.

⁴⁸ [MAGs](#), paragraph 2.25.

3. Industry background

Introduction

- 3.1 This chapter provides background information on the industry in which the Parties operate in E&W.
- 3.2 In particular, this chapter covers:
- (a) the supply of PSRBs; and
 - (b) industry participants.

The supply of PSRBs

- 3.3 PSRBs are sets of property search reports that assist in assessing the value, risk, and general context of the property and its surroundings. PSRBs are ordered by conveyancers (eg law firms and licensed conveyancers) and intermediaries⁴⁹ during the due diligence process in property transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties.

Types of property search reports

Composition of PSRBs

- 3.4 There are several different types of property search reports that may be included in a PSRB. These are compiled and supplied by different upstream suppliers⁵⁰ and include in E&W:
- (a) Local Authority (**LA**) Search (**LAS**) reports, which provide information held by the local government authority in whose area the property is located (eg building status, conservation areas, outstanding charges on property, planning information, local infrastructure etc);
 - (b) Drainage and Water Search (**DWS**) reports, which identify a property's water supply, drainage and sewer access, water quality, etc supplied by LAs;

⁴⁹ Intermediaries typically include estate agents, lenders, mortgage brokers, and Panel Managers.

⁵⁰ For example, official information holders (eg LAs and water companies) and commercial suppliers.

- (c) environmental and flood reports, which inform a property's risk of flooding and other environmental concerns; and
 - (d) other property search reports, which may contain information on a variety of other risks and features of specific properties, including ground quality, mining-related information, chancel liability, etc.
- 3.5 A typical PSRB in E&W contains (at a minimum) a LAS report, a DWS report, and (in most cases) an environmental report.⁵¹

Official and regulated reports

- 3.6 LAS reports are and have historically been compiled by LAs, and in this case are known as 'official' LAS reports (**OLAS**). However, LAS reports are increasingly compiled by commercial suppliers, which often offer faster turn-around times and lower prices to gather information. In this case, LAS reports are known as 'regulated' LAS reports (**RLAS**). Similarly, DWS reports can be compiled by either official information holders,⁵² and in this case are known as 'official' DWS reports (**ODWS**), or by commercial suppliers, and in this case are known as 'regulated' DWS reports (**RDWS**).
- 3.7 The Parties submitted that customers can choose between official and regulated search reports, and that the choice can be influenced by timeframes or costs.⁵³ D&D further submitted that its experience was that larger law firms, which predominantly deal with commercial property, prefer official reports, while small and medium sized conveyancers tend to prefer regulated reports on the basis that these can be cheaper and have a consistent layout and so tend to be considered more user friendly.⁵⁴ However, the Parties considered that regulated and official LAS and DWS reports are closely substitutable. We were also told that lenders may require an official, rather than regulated, report.⁵⁵

Residential and commercial searches

- 3.8 The Parties and their competitors distinguish between residential and commercial searches. The Parties told us that customers decide whether they would like to order a residential or commercial search report.⁵⁶ ATI told us a

⁵¹ Response to the Enquiry Letter, paragraph 11.3.3. See also Chapter 6.

⁵² See [DWSN](#) (Drainage and Water Searches Network) website, accessed by the CMA on 5 July 2022.

⁵³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 3.1; TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 3.1.

⁵⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraph 3.2.

⁵⁵ See [IPSA's response to the provisional findings and notice of possible remedies](#), dated 27 June 2022, page 4.

⁵⁶ D&D response to the CMA's s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1. TMG response to the CMA's s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1

search would typically be defined as commercial when it involves either: (a) a large building complex (ranging from one parcel to several hundred parcels of land), or (b) upwards of 50 residential properties grouped together (eg a holding company divesting multiple properties in one transaction).⁵⁷ ATI clarified that it considers that ‘if the transaction relates, for example, to a single shop premise, it would be treated the same as residential. Small individual commercial premises would tend to be done by smaller firms, while large commercial transactions will tend to be done by the larger firms, who are likely to apply a similar categorisation. As there is no official definition each Search Provider may differ here. For all intents and purposes a one off basic commercial property, it would not typically be seen as “Commercial Searching” as specialist Commercial lawyers wouldn’t be used’.⁵⁸ ATI further submitted that there are sometimes inconsistencies between data sources, as the local authorities classify properties as residential or commercial, but, for example, customers and/or search suppliers may consider the sale of a portfolio of residential properties as a commercial transaction.⁵⁹

- 3.9 In practice, individual suppliers’ and customers’ working definitions of what counts as a ‘commercial’ or ‘residential’ transaction may differ, and there does not seem to be a standard definition that is used consistently across the industry.
- 3.10 In this report, we use customers’ and suppliers’ own definitions of commercial and residential PSRBs. The Parties’ data regarding commercial and residential PSRBs relies on whether their customer ordered a commercial or residential PSRB.⁶⁰ Based on 2021 data for the four largest suppliers, [90-100%] by volume of PSRBs are residential.⁶¹ The percentage would be slightly lower by value as the price of residential PSRBs is generally lower than for commercial PSRBs.
- 3.11 The information provided in an LAS report is the same for commercial as residential searches, but the enquiries for a DWS are more extensive for commercial searches as they make provision for questions regarding, *inter alia*, wayleave agreements and easements. However, even in relation to LAS searches D&D told us there will typically be more work involved to produce the reports for commercial properties, as a local authority will typically have more detailed information about a commercial property as compared to a residential property. Providers of regulated searches, and some LAs,

⁵⁷ ATI call note, 16 February 2022, paragraph 10.

⁵⁸ ATI email of 16 May 2022.

⁵⁹ ATI email of 17 June 2022.

⁶⁰ D&D response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1. TMG response to the CMA’s s.109 Notice (RFI4) issued on 7 March 2022, paragraph 14.1.

⁶¹ See Appendix B, Tables 3 and 5.

therefore generally charge more for commercial reports. Similarly, D&D told us there is a difference in content for environmental searches, with a commercial environmental search including more detailed analysis and opinion on contaminated/polluted land, and all commercial reports ordered are reviewed by a consultant environmental specialist.⁶²

- 3.12 For both residential and commercial property searches, demand and supply is generally channelled through the same customers and the same suppliers. However, the proportion of residential and commercial searches an individual customer purchases is likely to vary by the nature of that customer's business, for example large law firms will tend to work on transactions involving large commercial properties, while a smaller conveyancer will likely deal with a higher proportion of residential properties.⁶³
- 3.13 A final distinction between commercial and residential searches relates to insurance. Customers require providers of PSRBs to be covered by professional indemnity insurance against the possibility of losses due to errors in search reports. The required level of such insurance tends to be higher for commercial property searches, and this contributes to commercial PSRBs being more expensive than residential PSRBs.

Online platforms

- 3.14 The Parties and their main competitors supply PSRBs through an online ordering platform and include features that facilitate the supply of search reports, for example mapping tools. We regard these features as integral to the supply of PSRBs and, as discussed further in Chapter 6, factors on which PSRB suppliers compete include the quality and features of the ordering platform and the standards of the support service provided.

Case management software and ancillary services

- 3.15 We found there are two other sets of services related to the supply of PSRBs: first, the provision of case management software; and second, the provision of additional products provided by PSRB suppliers as part of a one-stop-shop for conveyancers, which customers may, or may not, choose to purchase (referred to as ancillary services).

⁶² D&D response to CMA follow-up questions of 4 May 2022.

⁶³ Response to the Enquiry Letter, paragraph 11.9.

Case management software

- 3.16 Case management software enables conveyancers to manage all aspects of conveyancing digitally. Most conveyancers now operate using such software. IPSA told us that almost all conveyancers use case management systems.⁶⁴ D&D said it estimated that at least five out of six of its customers use case management software, though smaller conveyancers were less likely to use case management software than larger ones, and it is possible to operate (including ordering PSRBs) without it.⁶⁵ At the point that they request a PSRB, conveyancers would have already logged on using their case management software (if they use it), and it may be therefore advantageous for PSRB platforms to be integrated into case management software. The Parties disagreed with this last statement, and submitted that ‘there are no material differences with ordering PSRB via CMS as compared to ordering direct via a supplier’s online platform’.⁶⁶ However, feedback from competitors and D&D Indirect franchisees on the importance of being integrated with case management software suggests the opposite (see paragraphs 6.120 to 6.121).
- 3.17 PSRB platforms may be capable of being integrated with a number of different case management software platforms. For example, D&D told us that PIE and Index were integrated with at least [REDACTED] case management software platforms,⁶⁷ TMG said that CDS was integrated with at least [REDACTED],⁶⁸ and ATI said that InfoTrack was integrated with at least [REDACTED].⁶⁹ PSRB suppliers may pay a referral fee if a case management software supplier refers a customer to them.⁷⁰

Ancillary services offered by PSRB suppliers

- 3.18 Suppliers of PSRBs may offer various other ancillary services, alongside the PSRBs themselves, with these services being integrated into the PSRB platform and accessible through it. We distinguish ancillary services from the core features of the PSRB platform, because ancillary services represent products that are not specifically related to property search but assist conveyancers with other aspects of the property purchase and sale.⁷¹

⁶⁴ IPSA call note, 16 June 2022, paragraph 10.

⁶⁵ D&D’s response to CMA’s questions of 13 April 2022, footnote 12.

⁶⁶ [Parties’ response to the Provisional Findings](#), paragraph 5.2.3.

⁶⁷ D&D’s response to Request for Information (RFI7) dated 26 April 2022, paragraph 4.3.

⁶⁸ TMG’s response to Request for Information (RFI7) dated 26 April 2022, paragraph 3.2.

⁶⁹ ATI response to CMA’s Request for Information (RFI) of 21 April 2022, question 1.

⁷⁰ D&D’s response to CMA’s Request for Information (RFI7) dated 26 April 2022, paragraph 4.4, [REDACTED] response to CMA’s Request for Information (RFI) of [REDACTED], question 2.

⁷¹ Response to the Enquiry Letter, paragraph 11.17.

- 3.19 Ancillary services include document sharing tools (which allow conveyancers and intermediaries to share transaction documents in one place), conveyancing quotation tools (which provide conveyancing fee estimates), anti-money laundering services, HM Land Registry completion tools, post-completion submission forms (SDLT & AP1), risk management reports (eg D&D's Lawyer Checker which verifies the legitimacy of the law firm on the other side of a property transaction), and conveyancing insurance products.
- 3.20 The Parties submitted that TMG's tmconvey and CDS platforms provide various ancillary services, including client ID checks, anti-money laundering checks, and conveyancing insurance products. Similarly, D&D's brands PIE, Brighter Law and Easy Convey provide various ancillary services including a conveyancing quotation tool, a document sharing tool, client ID and anti-money laundering checks, and post-completion forms.⁷²
- 3.21 Both of the Parties' large national competitors, ATI and Landmark, also offer ancillary services as part of their PSRB platforms. If a conveyancer works with ATI's InfoTrack PSRB platform, they have access to InfoTrack's 'Conveyancing Quote Calculator'.⁷³ This can be set up with a firm's branding including logo, address, and service fees. There are also several due diligence checks provided by InfoTrack including verification of identity and funds, anti-money laundering searches and verification of a vendor's solicitor.⁷⁴
- 3.22 Landmark's SearchFlow PSRB platform includes a 'Quoting Tool' to help conveyancers provide quotes for conveyancing fee estimates to potential clients. Additionally, SearchFlow provides fraud and ID checks and post-completion services amongst other services.⁷⁵
- 3.23 IPSA submitted that smaller search suppliers need to offer ancillary services to compete with the national suppliers. However, IPSA further submitted that some of these services (eg Search Acumen's map search tool and the address search tool) can be too costly for a small search supplier to replicate, and larger firms have developed technology exclusive to themselves.⁷⁶
- 3.24 IPSA also told us that smaller search suppliers may be able to offer some ancillary services as white label solutions and that IPSA has been helping

⁷² Response to the Enquiry Letter paragraphs 11.5.4, 11.7.1 and 11.7.2.

⁷³ Infotrack's Conveyancing Quote Calculator is available on their website [here](#), accessed by the CMA on 11 May 2022.

⁷⁴ See InfoTrack website [here](#), accessed by the CMA on 11 May 2022.

⁷⁵ See the following pages of the SearchFlow website [here](#), residential searches [here](#) and commercial searches [here](#), all accessed by the CMA on 5 July 2022.

⁷⁶ See [IPSA's response to the provisional findings and notice of possible remedies](#), dated 27 June 2022, page 10.

IPSA Members to adopt such solutions. However, IPSA also told us that offering white label services is not sufficient because customers need to leave the IPSA members' website and have a separate login to access such services, and this makes winning certain customers hard for the smaller suppliers.⁷⁷

- 3.25 Suppliers of case management software may also offer such ancillary services integrated into their case management platforms.⁷⁸ In addition, conveyancers might purchase some of these services directly from HM Land Registry or HMRC.⁷⁹

Estimated market size of case management software and ancillary services

- 3.26 D&D told us it estimated the value of case management software services supplied in the UK in 2021 to be £27 million.

- 3.27 D&D considered the most important ancillary services, together with rough estimates of market size where these services are provided in the context of a property transaction, were:

(a) anti-money laundering (estimated value £49 million);

(b) insurance (estimated value £24 million);

(c) land registry fees (estimated value £9 million);⁸⁰ and

(d) stamp duty, automatic registration (estimated value £5 million).⁸¹

- 3.28 D&D's rough estimates imply a total market size for case management and the largest four ancillary services where these services are provided as part of a property transaction, of around £113 million. This would compare to a total PSRB market size in 2021 of about £300 million.⁸²

⁷⁷ IPSA call note, 16 June 2022, paragraph 10.

⁷⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 3.10.

⁷⁹ D&D response to CMA follow-up questions of 4 May.

⁸⁰ D&D's figures for land registry fees relate only to OC1 forms and disregard other Land registry fees, for example in relation to AP1 forms, D&D provisional findings put back comments 12 May 2022. The Parties argue that if additional fees are included, they estimate the market value to be in excess of £100m - £200m and could be even greater.

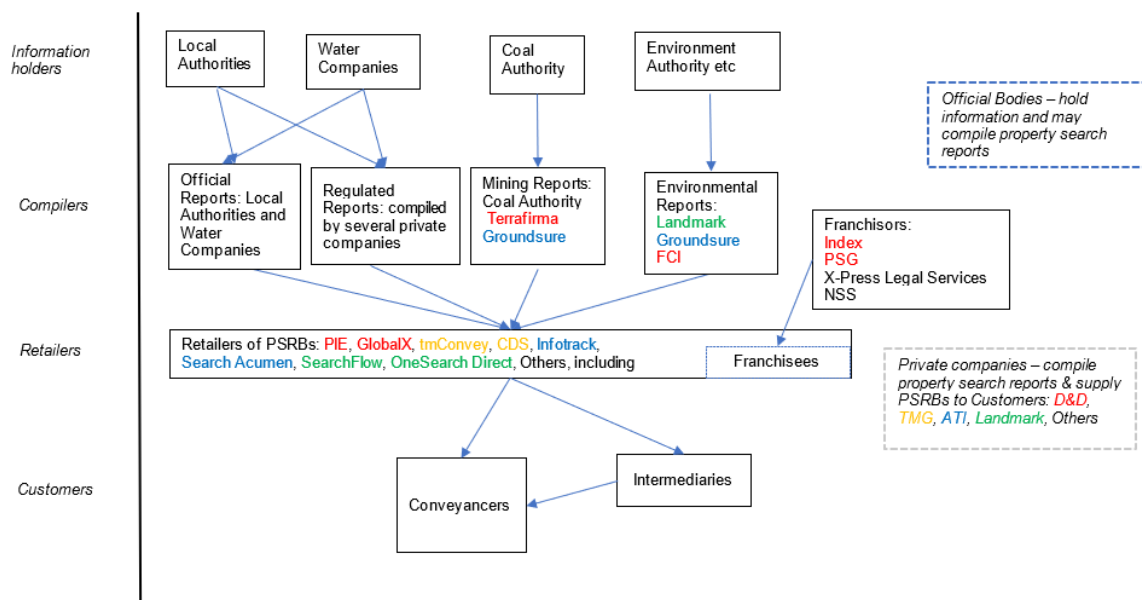
⁸¹ D&D's response to CMA's questions of 13 April 2022, paragraph 2.9. Estimated market sizes were based on multiplying the approximate price per unit by the number of units per transaction and by the total number of transactions in 2021.

⁸² This is based on our estimated volume (see Appendix B, Table 1) and D&D's estimated average revenue per PSRB for its PIE and owned Index businesses of £207.79, see D&D's response to CMA's questions of 13 April 2022, paragraph 2.6.

Industry participants

3.29 Figure 3.1 shows the main participants active at each level of the supply chain for PSRBs, the distinction between official bodies and private providers and the role of franchise groups and intermediaries.

Figure 3.1: Illustration of the supply chain for PSRBs



Source: CMA.

Note: This is an illustration of the supply chain and does not seek to include every detail.

3.30 We discuss each type of industry participant below. We then describe the Parties' activities, the activities of their largest competitors ATI and Landmark and of their smaller competitors.

Customers

3.31 Customers include:

- Conveyancers, which are law firms and licensed conveyancers that buy PSRBs on behalf of people or companies engaged in property transactions (buying a property, refinancing a mortgage or reviewing the value of their portfolio of properties).
- Intermediaries, typically including estate agents, lenders, mortgage brokers, and Panel Managers (which manage and provide access to panels of conveyancers on behalf of businesses introducing conveyancers to property buyers).

3.32 Most conveyancers deal with both residential and commercial property, and therefore order both residential and commercial PSRBs. The relative

importance of residential and commercial property differs between conveyancers. In particular, some large law firms focus on large commercial property transactions but have limited residential business. The Parties distinguished between the following categories of conveyancer:

- (a) 'large law firms' are conveyancers appearing in the Top 100 UK law firms identified through a publicly available ranking by *The Lawyer*;
- (b) 'medium conveyancers' are conveyancers carrying out more than 240 property transactions annually, and not large law firms as defined above; and
- (c) 'small conveyancers' are conveyancers carrying out fewer than 240 transactions annually and not large law firms as defined above.⁸³

3.33 Intermediaries typically include estate agents, lenders, mortgage brokers, and Panel Managers. They intermediate between retail PSRB suppliers and conveyancers, primarily for residential property. For example, an estate agent may 'introduce' a property buyer to a conveyancer through a Panel Manager. The Panel Manager would generally have an arrangement with a preferred PSRB supplier. The Panel Manager normally earns a form of referral fee from the PSRB supplier for introducing the business. This fee is normally added to the cost of the PSRB and charged to the conveyancer, who in turn charges the cost as a disbursement to the property buyer. Similarly, the Panel Manager normally charges a referral fee to the conveyancer.⁸⁴

3.34 Evidence submitted by the Parties suggests that average revenues per PSRB may be lower for intermediary customers than for direct sales to conveyancers.

Retail PSRB suppliers

3.35 Retail PSRB suppliers, which we describe elsewhere in this report as PSRB suppliers, sell PSRBs to customers.

3.36 Retail PSRB suppliers may either compile property search reports in-house or source them from third-party compilers.⁸⁵

⁸³ D&D's response to the CMA's s.109 Notice (RFI2a) dated 25 January 2022, Table 1 and paragraph 2.2. See also, TMG's response to the CMA's s.109 Notice dated 25 January 2022, Table 1 and paragraph 2.2. Other customers are primarily intermediaries but also include in-house counsel for commercial clients and law firms that carry out property transactions occasionally.

⁸⁴ Parties' response to the CMA's Phase 1 Issues Paper, paragraph 2.4.

⁸⁵ The Property Codes Compliance Board maintains a register of private companies active as retailers and/or compilers: see [PCCB - The Property Codes Compliance Board - Standards for Property Searches](#), accessed by the CMA on 5 July 2022.

- 3.37 As noted above (see paragraph 3.18), retail PSRB suppliers may also supply ancillary services along with PSRBs. Such services may also be sold by others, ie retailers that are not selling PSRBs.

Compilers

- 3.38 Compilers collect the relevant unrefined property information and produce property search reports.
- 3.39 Compilers include:
- (a) LAs, which compile OLAS reports from their own property information;
 - (b) water companies, which compile ODWS reports from their own property information;
 - (c) the Coal Authority, which compiles Coal Mining and other reports; and
 - (d) private companies, which compile RLAS and RDWS reports, environmental reports, etc and often act as retailers too. Traditionally private search companies would visit the LA or water company to view its records, but in some cases the information is now available online and during the Coronavirus (**COVID-19**) pandemic restrictions compilers were able to obtain the information by email.

Information holders

- 3.40 Information holders collect and hold the unrefined property information necessary to compile property search reports. These include LAs, water companies, HM Land Registry, the Environment Agency and the Coal Authority.

The Parties' activities

- 3.41 The Parties are active as retail suppliers of PSRBs and ancillary services and as compilers of property search reports. D&D is also active as a provider of case management software.

D&D

- 3.42 Table 3.1 below summarises D&D's activities in relation to the supply of PSRBs and related products in E&W.

Table 3.1: D&D's activities in relation to the supply of PSRBs and related products, E&W

D&D brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
PIE*	✓		✓	✓	✓	
GlobalX†	✓			[✓]	✓	
Index‡	✓			✓	✓	
PSG‡	✓			✓	✓	
FCI		✓				
Terrafirma		✓				
Easy Convey§				[✓]		✓
Lawyer Checker¶			✓			

Source: CMA based on information provided by D&D (Response to the Enquiry Letter, paragraph 11.5, tables 1 and 2 and the table at paragraph 11.8).

* poweredbypie, PSG and Brighter Law are all part of the PIE business, see paragraph 2.5. Brighter Law provides a number of ancillary services (see paragraph 3.20).

† [X], GlobalX is [X] focused on business law.

‡ Index and PSG are franchise businesses.

§ Easy Convey is principally a provider of case management software.

¶ Lawyer Checker provides risk management reports.

3.43 In relation to D&D's franchise businesses (Index and PSG), D&D acts as franchisor and also operates and owns some of Index's and PSG's franchisees (Index Direct and PSG Direct), while other franchisees are owned and operated by third parties (Index Indirect and PSG Indirect, together referred to as D&D Indirect).⁸⁶

3.44 As franchisor, D&D, through Index and PSG, provides Index Indirect franchisees and PSG Indirect franchisees with the brand, bespoke ordering platform and case management software packages, [X]⁸⁷ in order to enable them to supply PSRBs to customers in specific territories across E&W.⁸⁸ In return, Index Indirect franchisees and PSG Indirect franchisees pay Index and PSG, respectively, monthly royalties as a proportion of their revenue.⁸⁹ In addition, D&D supplies certain upstream property search reports to the Index Indirect franchisees and the PSG Indirect franchisees.⁹⁰

3.45 D&D's upstream property search businesses (FCI and Terrafirma) supply their search reports to third party PSRB suppliers as well as to D&D's own

⁸⁶ Index Indirect franchisees account for about 80% of total Index volume, with Index Direct franchisees accounting for 20%. No equivalent data for PSG was available, as D&D provided sales volume data for PIE and PSG Direct combined.

⁸⁷ Franchise agreement between Index and Index Indirect franchisees (clauses 4.1, 5.1–5.2, 6.1, 10.9, 11.1–11.2, 12.4(B), 16.5) and franchise agreement between PSG and PSG Indirect franchisees (clauses 4.1, 5.1–5.2, 6.1, 10.9, 11.1, 12.4(B), 16.5). See Response to the Issues Paper, Annex 03.01 and Annex 03.02. See also, Response submitted by D&D on 19 November 2021 to the request for information (RFI) issued by the CMA on 17 November 2021, paragraph 5.2.

⁸⁸ Pursuant to the franchise agreements between Index and Index Indirect franchisees, Index Indirect franchisees are not permitted to make active sales into the reserved territory of other Index franchisees. The same provision is found in the franchise agreements between PSG and PSG Indirect franchisees. Response to the Issues Paper, Annex 03.01 (clause 2.2) and Annex 03.02 (clause 2.2).

⁸⁹ Response to the Issues Paper, Annex 03.01 (clauses 9.1–9.2) and Annex 03.02 (clauses 9.1–9.2).

⁹⁰ Response to the Issues Paper, paragraphs 3.6, 3.10–3.11, Table 3.

downstream PSRB suppliers. Similarly, Lawyer Checker supplies its risk management reports to third party retailers as well as to D&D's own downstream PSRB suppliers.

TMG

3.46 Table 3.2 below summarises TMG's activities in relation to the supply of PSRBs in E&W.

Table 3.2: TMG's activities in relation to the supply of PSRBs and related products, E&W

TMG brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
tmConvey	✓			✓	✓	
CDS	✓			✓	✓	

Source: CMA based on information provided by TMG (Response to the Enquiry Letter, paragraph 11.5, tables 1 and 2, table at paragraph 11.8.).

Note: Alongside tmConvey, TMG has an integrated software solution, tmConnect, that also allows customers to order PSRBs from tmConvey.

Other PSRB retail suppliers

ATI and Landmark

3.47 Besides the Parties, there are two other large retail suppliers of PSRBs, ATI and Landmark.

3.48 ATI supplies PSRBs through its retail brands InfoTrack and Search Acumen. ATI also owns Groundsure, a compiler of environmental reports and other reports, which it acquired in 2021. ATI is an Australian company that introduced its brand, InfoTrack, to the UK in 2015 and has gained significant market share over the past few years (see Table 7.1). ATI attributes InfoTrack's rapid growth to its innovative offering, based on an open-source technological solution, which allows conveyancers to access the whole suite of property searches from the same interface, where previously conveyancers did manual website searches and used multiple platforms.⁹¹ ATI acquired a second retail brand, Search Acumen, in 2021. Search Acumen focuses on commercial property transactions.

3.49 Table 3.3 below summarises ATI's activities in relation to the supply of PSRBs in E&W.

⁹¹ ATI call note, 16 February 2022, paragraphs 2–4.

Table 3.3: ATI's activities in relation to the supply of PSRBs and related products, E&W

ATI brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
InfoTrack	✓			✓	✓	
Search Acumen	✓			✓	✓	
Groundsure*		✓		✓		
Leap						✓

Source: CMA based on information provided by ATI.

* We have added a tick under retailer for Groundsure [REDACTED].⁹²

3.50 Landmark is part of Daily Mail and General Trust (DMGT) plc.⁹³ It supplies PSRBs through its retail brands SearchFlow and OneSearch Direct and is also a compiler of environmental reports and other reports through its Landmark brand. SearchFlow is a well-established retail supplier, although it has lost market share to some extent in recent years (see Table 7.1). Landmark told us [REDACTED] and is enhancing infrastructure and capability, to reduce internal costs and make it more attractive and easier to use for customers. [REDACTED].⁹⁴

3.51 Table 3.4 below summarises Landmark's activities in relation to the supply of PSRBs in E&W.

Table 3.4: Landmark's activities in relation to the supply of PSRBs and related products, E&W

Landmark brands	Compiler or Provider			Retailer		Case Management Software
	RLAS & RDWS	Environmental, mining etc reports	Ancillary Services	PSRBs	Ancillary Services	
SearchFlow	✓			✓	✓	
OneSearch Direct	✓			✓	✓	
Landmark*		✓	✓			
Argyll*			✓			
Ochresoft						✓

Source: CMA based on information provided by Landmark.

* Landmark and Argyll provide risk management reports.

Smaller PSRB suppliers

3.52 In addition to ATI and Landmark, there are many smaller suppliers of PSRBs. We identified 84 companies that may be smaller suppliers of PSRBs to which we sent questionnaires and received 40 responses. We estimated each of

⁹² ATI email of 16 May 2022.

⁹³ DMGT plc's portfolio of companies operate across business to business and consumer markets in the property information sector, including in the supply of property information through Landmark and Trepp. (Trepp is a provider of data, analytics, and software technology).

⁹⁴ Landmark call note, 14 February 2022, paragraph 17.

these suppliers had a share of less than [0–5%] of PSRB sales in 2021 (see Appendix B, Table 1).

- 3.53 Some of the smaller PSRB suppliers told us they operate nationally, while others operate on a purely regional basis.
- 3.54 X-Press Legal is the largest of these smaller suppliers. It was founded in 1998 and operates a franchise model, selling through 27 franchisees.

Horizontal consolidation

- 3.55 The supply of PSRBs in E&W has undergone significant horizontal consolidation in the last few years. This was largely the result of several acquisitions undertaken by the Parties and their main competitors, including:
- (a) D&D entered E&W with the acquisition of a majority interest in Easy Convey in 2016. Since then, D&D has acquired the remaining shares of Easy Convey in 2017; Finley Associates in 2018; Index in 2019; SDG, PIE/PSG in 2020; FCI, Terraforma, Lawyer Checker, GlobalX and TMG in 2021.
 - (b) TMG, which was already active in E&W through tmConvey, acquired CDS in April 2018.
 - (c) ATI, which entered E&W with its acquisition of STL in 2014 and the launch of InfoTrack, acquired Search Acumen and Groundsure in 2021.
 - (d) Landmark acquired SearchFlow in 2013 and OneSearch Direct in 2019.
- 3.56 TMG described recent horizontal (and vertical) consolidation in the market as follows:⁹⁵

‘... the market changed considerably during the period from September 2020 to July 2021, primarily through acquisition and consolidation. Prior to September 2020, there were several large national providers, with a largely independent supply chain. The large national providers included TM Group, Search Acumen, Searchflow, InfoTrack, PSG/PIE and the Index franchisees, along with the large regional providers, such as Geodesys and Safe Move, and the myriad of smaller providers. There was significant intercompany trading, and the supply chain was, with the

⁹⁵ Transcript of the opening statement for the response hearing with TMG, 14 June 2022, paragraphs 4 and 5.

exception of parts of the Landmark Group, independent of the search provider.

Between September 2020 and July 2021, InfoTrack's parent company ATI Global acquired Search Acumen and Groundsure and Dye & Durham added PIE/PSG, FCI and Terrafirma to the earlier acquisition of Stanley Davis Group along with a few smaller businesses. Searchflow's parent company Landmark Group had also acquired OneSearchDirect a few months beforehand'.

Industry bodies

3.57 The Council of Property Search Organisations (**CoPSO**)⁹⁶ is a trade association for the property search industry whose members include over 150 suppliers in E&W.⁹⁷ CoPSO's website states that it was set up in 2003 to provide a voice for property search reports producers and to drive forward quality standards within the sector.⁹⁸

3.58 The IPSA website describes IPSA as 'a non-profit-making representative body and support group for search companies across the UK'.⁹⁹ IPSA represents sole practitioners and small organisations that provide personal local authority searches to solicitors and conveyancers. IPSA has approximately 65–70 members.¹⁰⁰

4. Relevant merger situation

4.1 A completed merger must meet the following two criteria, set out in sections 23 and 26 of the Act, to constitute a relevant merger situation (**RMS**):

(a) two or more enterprises have ceased to be distinct enterprises; and

(b) one of the following conditions is satisfied:

(i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test);

(ii) the result of those enterprises ceasing to be distinct creates or enhances a share of supply of 25% or more in respect of goods or

⁹⁶ See CoPSO website [here](#), accessed by the CMA on 5 July 2022.

⁹⁷ Response to the Enquiry Letter, paragraph 30.28. Response to the Issues Paper, paragraph 3.2.

⁹⁸ See CoPSO website [here](#), accessed by the CMA on 5 July 2022.

⁹⁹ See IPSA website [here](#), accessed by the CMA on 5 July 2022.

¹⁰⁰ IPSA call note, 9 September 2021, paragraph 4. The [IPSA website](#) states that it has '70+ current members', IPSA website accessed by the CMA on 5 July 2022.

services of any description which are supplied in the UK, or a substantial part of the UK (the share of supply test).

- 4.2 This second element establishes sufficient connection with the UK on a turnover or share of supply basis to give us jurisdiction to investigate.

Enterprises ceasing to be distinct

Enterprises

- 4.3 The first element of the jurisdictional test considers whether two or more enterprises will cease to be distinct as a result of the Merger.
- 4.4 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.¹⁰¹
- 4.5 The activities of the Parties overlap in the supply of PSRBs in E&W. Both Parties generate turnover in the UK (see paragraphs 2.4 and 2.6 above).
- 4.6 We are therefore satisfied that D&D and TMG is each a ‘business’ and that, accordingly, each constitutes an ‘enterprise’ for the purposes of the Act.

Ceasing to be distinct

- 4.7 Section 26 of the Act explains the concept of ‘ceasing to be distinct’. Two enterprises cease to be distinct once they are brought under common ownership or common control.¹⁰²
- 4.8 Through the Merger, D&D UK has acquired the entire issued allotted share capital of TMG and therefore D&D (as holder of 100% of the shares of D&D UK) has acquired legal control over TMG.¹⁰³ As a consequence, we are satisfied that both businesses have ‘ceased to be distinct’ prior to the date on which the reference was made.
- 4.9 We therefore consider that the first limb of the jurisdiction test is met.

¹⁰¹ Section 129(1) and (3) of the Act.

¹⁰² Section 26(1) of the Act.

¹⁰³ D&D UK/TMG Consolidated response to CMA’s s.109 Notice of 25 August 2021, Annex 3.01 (Agreement relating to the sale and purchase of TM Group (UK) Ltd submitted on 17 September 2021).

The turnover or share of supply test – nexus with the UK

- 4.10 The second element of the jurisdictional test seeks to establish sufficient connection with the UK on a turnover or share of supply basis to give the CMA jurisdiction to investigate.

Turnover

- 4.11 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. TMG did not generate more than £70 million of turnover in the UK in its most recent financial year and therefore the turnover threshold set out in section 23(1)(b) of the Act is not satisfied.

Share of supply

- 4.12 Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire at least 25% or more of those goods or services in the UK as a whole, or in a substantial part of it. There must be an increment in the share of supply as a result of the merger.
- 4.13 The CMA has a broad discretion to identify a specific category of goods or services supplied or acquired by the merger parties for the purposes of applying the share of supply test.¹⁰⁴ The group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market, and can aggregate, for example, intra-group and third party sales even if these might be treated differently in the substantive assessment.¹⁰⁵
- 4.14 As noted at paragraph 4.5 above, the Parties overlap in the supply of PSRBs in E&W. The CMA considers this to be a reasonable description of a set of goods and services to determine whether the share of supply test is met. The CMA considers E&W to be a substantial part of the UK for the purpose of the share of supply test.

¹⁰⁴ Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2 Revised, December 2020) (**CMA2**), paragraph 4.63. The December 2020 version of CMA2 applies in this case as the Merger was referred for a phase 2 investigation before the date of entry into force of the latest revised version of CMA2 (see [Mergers – the CMA's jurisdiction and procedure: CMA2](#)).

¹⁰⁵ **CMA2** (December 2020), paragraph 4.63(a).

The 25% threshold

- 4.15 In this case, the CMA considers the number of PSRBs supplied in E&W to be the appropriate criterion for determining whether the 25% threshold is met.¹⁰⁶
- 4.16 Chapter 7 provides details of how the CMA has reached its estimates of the shares of supply of the Parties.
- 4.17 In addition to direct supplies of PSRBs through D&D's subsidiaries and franchisees which it owns and operates, D&D also makes indirect sales through D&D Indirect franchisees. We have calculated the share of supply of the Parties both including and excluding the shares of the D&D Indirect franchisees.
- 4.18 On the basis of our estimates (see Table 7.1), the Parties had a combined share of supply of [40–50%] in the supply of PSRBs supplied in E&W in 2021,¹⁰⁷ with an increment of [10–20%] brought about by the Merger.¹⁰⁸ Even if sales through D&D Indirect franchisees are excluded (see Table 7.2), the Parties had a combined share of supply of [30–40%] in the supply of PSRBs in E&W in 2021, with an increment of [10–20%]. Therefore, the share of supply test is met on either basis.
- 4.19 Whilst the share estimates in Table 7.1 and Table 7.2 in Chapter 7 and Table 1 and Table 2 of Appendix B do not include all of the smaller suppliers of PSRBs active in E&W, they comprise a total of 36 competitors. We consider that this is a sufficiently robust basis for the purposes of the share of supply test, and we consider that inclusion of the remaining smaller suppliers would not materially alter the analysis for the reasons set out in paragraph 7.20.
- 4.20 The CMA therefore considers that the share of supply test in section 23(2)(b) of the Act is met, both on the basis of including and excluding sales of D&D Indirect franchisees.

Conclusion

- 4.21 In view of the above assessment, we are satisfied that, as a consequence of the Merger:

¹⁰⁶ Section 23(5) of the Act states that for the purposes of deciding whether the 25% threshold is met, the CMA shall apply the criterion, or combination of criteria, that the CMA considers appropriate.

¹⁰⁷ CMA estimates based on sales volume data for 2021.

¹⁰⁸ During phase 1, the Parties submitted that D&D and TMG had a combined share of [20–30%] in the supply of PSRBs in E&W in 2020, with D&D representing an [10–20%] increment (Response to the Issues Paper, Table 5). Therefore, even on the Parties' estimates, the share of supply test is met.

- (a) the enterprises of D&D and TMG have ceased to be distinct; and
- (b) the share of supply test is met.

4.22 For these reasons we conclude that the Merger has resulted in the creation of an RMS.

5. Counterfactual

Introduction

- 5.1 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.¹⁰⁹ It does this by providing the basis for a comparison of the competitive situation on the market with the merger against the likely future competitive situation on the market absent the merger.¹¹⁰ The latter is called the counterfactual.¹¹¹
- 5.2 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.¹¹² The CMA's assessment of those conditions is considered in Chapter 7. The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.¹¹³
- 5.3 The counterfactual may consist of the prevailing, or pre-merger, conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹¹⁴
- 5.4 The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time. For example, an assessment based on the prevailing conditions of competition might reflect that, absent the merger under review, a merger firm would have continued making investments in improvements, innovations, or new products.¹¹⁵
- 5.5 At phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.¹¹⁶ In its assessment of the counterfactual, the CMA may need to consider multiple possible scenarios,

¹⁰⁹ MAGs, paragraph 3.1.

¹¹⁰ MAGs, paragraph 3.1.

¹¹¹ MAGs, paragraph 3.1.

¹¹² MAGs, paragraph 3.7.

¹¹³ MAGs, paragraph 3.11.

¹¹⁴ MAGs, paragraph 3.2.

¹¹⁵ MAGs, paragraph 3.3.

¹¹⁶ MAGs, paragraph 3.13.

before identifying the relevant counterfactual. As part of this assessment, the CMA will take into account whether any of the possible scenarios make a significant difference to the conditions of competition, and if they do, the CMA will ultimately select the most likely conditions of competition absent the merger as the relevant counterfactual.

- 5.6 The CMA recognises that evidence relating to future developments absent the merger may be difficult to obtain.¹¹⁷ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merging parties to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available. However, if two or more possible counterfactual scenarios lead to broadly the same conditions of competition the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.¹¹⁸
- 5.7 Further, the time horizon considered by the CMA in its assessment of the counterfactual will depend on the context and will be consistent with the time horizon used in the competitive assessment.¹¹⁹
- 5.8 Owing to the inherent uncertainty of predicting future events, the CMA benefits from a margin of appreciation in relation to its conclusion. This assessment must meet the requirements of a rationality test – in other words, the CMA must have a sufficient basis in light of the totality of the evidence available to it for making the assessment and reaching its decision.¹²⁰

Counterfactual analysis

The Parties' position on the counterfactual

- 5.9 The Parties submitted that, absent the Merger, the Shareholders would have sold TMG to a company [X]. It would be most likely that the alternative buyer would be [X].¹²¹
- 5.10 The Parties further submitted that they did not believe a sale to a non-trade buyer was plausible. They considered a trade sale at a price that would meet

¹¹⁷ MAGs, paragraph 3.14.

¹¹⁸ MAGs, paragraph 3.9.

¹¹⁹ MAGs, paragraph 3.15.

¹²⁰ See *BAA Ltd v Competition Commission* (2012) CAT 3 at paragraph 20. See also, *Stagecoach Group Plc v Competition Commission* [2010] CAT 14 at paragraph 45.

¹²¹ Response to the Enquiry Letter, paragraph 18.4. See also, Response to Request for Information (RFI) issued on 27 September 2021, paragraph 5.1. See also, Parties' response to CMA's request for documents issued on 29 October 2021' dated 4 November 2021, question 3.

the Shareholders' aspirations to be the only realistic disposal counterfactual.¹²²

- 5.11 If a sale had not happened, the Parties submitted that the Shareholders would have gradually [X] ([X]) and that this would have led to a decrease in the competitive position of TMG over time.¹²³
- 5.12 The Parties stated that TMG was originally set up in 1999 to allow its Shareholders to obtain searches at a reasonable cost. The Parties stated that over the last 20 years or so, official and regulated searches have become substitutable, and the number of compilers and retailers has increased, meaning the Shareholders no longer needed to rely on TMG for a secure source of PSRBs at reasonable cost.¹²⁴ As such, the Shareholders had no reason to invest in TMG and 'keep it alive'.¹²⁵
- 5.13 The Parties further submitted that the reluctance of the Shareholders to invest in TMG was shown by the discussions the Shareholders had with 20CI, to use its competing sales progression platform in place of Mio.¹²⁶ The Parties argued that as the Shareholders were not prepared to invest even £[X] million in a key aspect of TMG's future strategy (ie [X]), TMG management had no reason to believe that the Shareholders would have been prepared to make another material investment in TMG to maintain it as a viable competitor in the medium to long term. A further example of this was the Shareholders' refusal to participate in the 2020/2021 auction for Groundsure (ultimately won by ATI Global) or to bid for Terraforma in 2021 (in the latter case, against the recommendation of management to participate).¹²⁷

Our approach to assessment of the counterfactual

- 5.14 In assessing the appropriate counterfactual, we first consider the sale process and the potential for alternative buyers (paragraphs 5.15 to 5.24). Second, we consider what would likely have happened in the event of a no sale (paragraphs 5.25 to 5.30). Finally, we conclude on what we currently consider to be the appropriate counterfactual for the purposes of our analysis under the framework set out in paragraphs 5.1 to 5.8.

¹²² Response to the Issues Paper, paragraph 7.2.

¹²³ Response to the Issues Paper, paragraph 7.2.

¹²⁴ Response to the Issues Paper, paragraph 7.8.

¹²⁵ Response to the Issues Paper, paragraph 7.8.

¹²⁶ Response to the Issues Paper, paragraph 7.9.

¹²⁷ Response to the Issues Paper, paragraph 7.10.

Potential alternative purchasers

The Shareholders' decision to sell and the sale process

- 5.15 TMG's Shareholders (ie Countrywide, Connells and LSL) took the decision to sell TMG [REDACTED]. [REDACTED] TMG had [REDACTED] been approached by D&D. An arrangement with D&D to give it exclusive bidder status was entered into in January 2021.¹²⁸ The Shareholders did not actively look for alternative offers and no auction was held.¹²⁹ Although TMG was also approached by ATI during the exclusivity period, no offer was made by ATI.¹³⁰ D&D and TMG entered into the SPA on 8 July 2021.
- 5.16 As set out in paragraphs 2.9 to 2.12, [REDACTED], TMG and each of the Shareholders entered into the Supply Agreements for the supply of PSRBs, including property search reports supplied by other D&D businesses. The Supply Agreements provide for the exclusive supply of PSRBs by TMG to the Shareholders for a period of [REDACTED] years (the **Exclusive Purchasing Obligations**). The Supply Agreements also include a condition (the **Input Switching Clauses**) that LSL and Connells would, within [REDACTED] of the date of the Supply Agreements, replace certain of the reports offered to their panel firms with those supplied by D&D group companies. In practice, these products would be provided by TMG to LSL and Connells.¹³¹

Alternative purchasers

- 5.17 Our guidelines state that 'the CMA (in phase 1 or phase 2) will not have as its counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth phase 2 investigation, given the uncertainty over whether such an acquisition would, ultimately, be cleared or subject to subsequent remedial action'.¹³² In our view, a sale to ATI or Landmark would have raised *prima facie* competition concerns. As a result, we consider that ATI and Landmark could not be alternative acquirers under the counterfactual.¹³³

¹²⁸ Response to the Enquiry Letter, paragraph 18.3.

¹²⁹ Connells response to Request for Information (RFI) of 10 February 2022, question 3(a)(ii). Connells stated that 'the Shareholders felt that the offer from D&D and our assessment that they were highly likely to complete made the offer compelling and therefore did not pursue alternative options of other potential buyers'.

LSL response to Request for Information (RFI) of 10 February 2022, question 3(a)(i).

¹³⁰ Response to the Enquiry Letter, paragraph 18.3. See also, Parties' response to Request for Information (RFI) issued on 27 September 2021, paragraph 5.4.

¹³¹ [REDACTED].

¹³² MAGs, paragraph 3.11.

¹³³ [REDACTED] told us that [REDACTED]. [REDACTED] also believed that if [REDACTED] had acquired TMG, there would be competition issues to resolve. ([REDACTED] call note, [REDACTED], paragraph 27; and [REDACTED] call note, [REDACTED], paragraph 19).

- 5.18 As there was no formal sale process, TMG's Shareholders did not actively look for alternative trade buyers. As such, we have no evidence, except for ATI, of the level of interest from trade buyers in acquiring TMG.
- 5.19 When TMG had been put up for sale in 2016,¹³⁴ it attracted interest from private equity firms and a number of offers were received, including from [REDACTED].¹³⁵ We also note that in the intervening period between 2016 and 2020, TMG received a number of enquiries from private equity firms and other financial investors, which the Parties stated were speculative.¹³⁶ TMG also had a number of conversations with private equity firms in the period between 2016 and 2020 to assess their interest in an acquisition. In addition, TMG told us that interest from private equity firms could not have been ruled out in 2020 but expressed [REDACTED].¹³⁷
- 5.20 Private equity has had a history of involvement in the property search sector. Prior to D&D's purchase, PIE was majority owned by MML Capital Partners, and prior to Landmark's purchase, SearchFlow was owned by Decision Insight Information Group, a portfolio company of the US private equity firm TPG Capital.

Our view on potential alternative purchasers

- 5.21 While we received no evidence that trade buyers (ie companies operating in the same sector) other than ATI expressed an interest in acquiring TMG in 2020, we cannot rule out the possibility that a trade buyer would have been interested in acquiring TMG, particularly if a formal sales process had been conducted at that time.
- 5.22 In addition, the interest shown in the 2016 auction, and the various levels of interest shown by private equity firms in the intervening period to 2020, suggest that a sale to a private equity firm would have been a plausible alternative in 2020 absent the sale to D&D. In this regard we also note private equity's historical involvement in the property search sector.
- 5.23 Therefore, we do not consider that the Parties' view that a trade sale was the only realistic disposal counterfactual is correct. We consider that absent the Merger, one scenario is that there would have been interest from potential

¹³⁴ Connells response to Request for Information (RFI) of 10 February 2022, question 2(c). That auction did not result in a sale as it coincided with the UK EU Exit vote which the Shareholders told us 'had an adverse impact on the UK housing market and the appetite for such deals generally at a time of potential economic and political uncertainty'.

¹³⁵ LSL response to Request for Information (RFI) of 10 February 2022, question 2(c).

¹³⁶ Response to s.109 Notice issued on 27 September 2021, paragraph 5.2. Response to request for documents of 29 October 2021 question 3. Parties' response to the Issues Paper, paragraphs 7.3–7.4.

¹³⁷ Transcript of the main party hearing with TMG, 12 April 2022, page 14.

alternative purchasers for TMG and that TMG would have been sold and continue to compete with D&D.

- 5.24 We have seen no evidence to suggest that TMG would have been a materially different competitive presence under alternative ownership. We consider it likely that some kind of formal or informal supply relationship (most likely along the lines of the existing relationship) between TMG and the Shareholders would have continued under the new ownership. However, on the basis of the evidence available to us, it is not sufficiently certain that TMG (under alternative ownership) would have entered into these specific Supply Agreements associated with the Merger for those arrangements to be included in the counterfactual.

What would have happened to TMG in the event of no sale?

The Parties' view

- 5.25 The Parties argue that in a no sale scenario investment for internal development and expansion by the Shareholders would have effectively ceased and TMG's competitive position would have deteriorated over time. The Parties cited the Shareholders' reluctance to bid for Groundsure or Terraforma as evidence of their reluctance to invest.

Our assessment

- 5.26 While the Shareholders viewed TMG as a non-core operation, there is evidence that they were only willing to sell the business provided a suitable offer was made. In 2016, [X], this would have had to be an offer of around £[X]million ([X]).¹³⁸ This valuation is consistent with TMG being a profitable business¹³⁹ which has provided and would be expected to provide in the future a regular and consistent cash flow to its Shareholders.
- 5.27 The Shareholders told us they were reluctant to invest any new capital in TMG.¹⁴⁰ This is consistent with their previous actions. Prior to TMG's acquisition of the business and assets of CDS in June 2018, TMG explored the possibility of obtaining further funding from existing Shareholders.¹⁴¹

¹³⁸ [X] stated that it would have been a seller at an enterprise value of £[X] million or over ([X] response to Request for Information (RFI) of 10 February 2022, question 2(b)). [X] was looking for an offer in the region of [X] ([X] response to Request for Information (RFI) of 10 February 2022, question 2(b)).

¹³⁹ TMG statutory accounts showed revenues of between £55 million and £59 million for the financial years 2016 to 2020. In addition, EBITDA after adding back payments to Shareholders was between £[X] million and £[X] million during the period.

¹⁴⁰ LSL response to Request for Information (RFI) of 10 February 2022, question 3(b)(i).

¹⁴¹ [X].

[REDACTED].¹⁴² In terms of future investment through this route, Connells stated [REDACTED].¹⁴³ LSL believed that TMG [REDACTED].¹⁴⁴

- 5.28 In terms of ongoing investment in the business, the main development area for TMG was [REDACTED]. Connells and LSL told us that they thought [REDACTED]. However, [REDACTED].
- 5.29 The evidence above shows that the Shareholders were increasingly unwilling to invest further in Mio. However, we note that Mio was designed as a tool to help the Shareholders' businesses to manage the property sales chain, rather than help TMG compete in the property search sector. Therefore, we consider this unwillingness to invest in Mio to have limited relevance to our assessment of the Shareholders' ability and incentive to support TMG in future.

Our view of what would have happened to TMG in the event of no sale

- 5.30 The evidence above shows that the Shareholders saw value in TMG through its cash flow to the Shareholders and their valuation of the business. It also shows that they were willing to invest in certain parts of the business using retained profits, although there was a reluctance to invest new capital. The evidence in the round therefore does not indicate that there would have been any change in the Shareholders' overall position towards TMG.
- 5.31 As such, there is no basis to conclude that TMG would have been a materially weaker competitive presence. The likely scenario is that TMG would have continued to compete as it had pre-Merger. Again, we consider it likely that some kind of formal or informal supply relationship between TMG and the Shareholders would have continued had TMG not been sold. However, on the basis of the evidence available to us at present, it is not sufficiently certain that TMG (in the event of no sale) would have entered into these specific Supply Agreements associated with the Merger for those arrangements to be included in the counterfactual.

Conclusion on the counterfactual

- 5.32 On the basis of the evidence set out above, our conclusion is that TMG would have continued to compete as it did pre-Merger as an independent entity, either having been sold to an alternative purchaser or being retained by the former Shareholders. We are not required to consider which of these scenarios is more likely because the outcome would be the same (ie TMG

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ [REDACTED].

would continue to exert broadly the same constraint as it did pre-Merger) under either scenario.

- 5.33 On this basis, we conclude that the appropriate counterfactual in this case would be the conditions of competition prevailing at the time of the Merger.
- 5.34 We note that this counterfactual includes broad changes in the market as a result of dynamic competition and market evolution. The discussion on the market trends and the future of the market is set out in Chapter 3 and Chapter 6.

6. Market definition and market dynamics

Introduction

- 6.1 This chapter first sets out our assessment of the appropriate product and geographic market. It reflects the submissions we have received from the Parties during phase 1 and phase 2, the responses to competitors' questionnaires, as well as other evidence we have received to date. It then considers market dynamics (including the factors on which suppliers compete and how competition works), including the role of multi-sourcing and switching, the significance of economies of scale, and recent and future market trends.

Market definition

Framework of assessment

- 6.2 The assessment of the relevant market is an analytical tool that forms part of the analysis of competitive effects of the merger.¹⁴⁵ It involves identifying the most significant competitive alternatives available to the Parties and includes the sources of competition to the Parties that are the immediate determinants of the effects of the merger.¹⁴⁶ However, the CMA's assessment of competitive effects of the merger does not need to be based on a highly specific description of any particular market.¹⁴⁷ In this context, we have identified the appropriate product and geographic market for our assessment of the competitive effects of the Merger.

¹⁴⁵ MAGs, paragraph 9.1.

¹⁴⁶ MAGs, paragraph 9.2.

¹⁴⁷ MAGs, paragraph 9.5.

Product market

- 6.3 The CMA considered the impact of the Merger in relation to the supply of PSRBs, taking into account in its assessment the different competitive strengths of each PSRB supplier and considering possible sub-segmentations, where relevant.
- 6.4 At phase 1, the Parties submitted that the market could potentially be segmented by different types of property search reports.¹⁴⁸ However, third party evidence received by the CMA, the Parties' submissions, and the Office of Fair Trading (**OFT**) findings in Landmark/DIIG¹⁴⁹ showed that only a limited number of discrete property search reports are purchased directly from compilers.¹⁵⁰
- 6.5 Moreover, while the Parties had submitted that the market could be potentially segmented between reports for residential versus commercial properties,¹⁵¹ third party evidence received by the CMA and the Parties' submissions indicated that demand and supply for PSRBs for residential and commercial properties typically occur through the same customers and suppliers.¹⁵² Further, the CMA found that there is a continuum of customers for residential and commercial PSRBs and suppliers compete for the supply of both.¹⁵³
- 6.6 The Parties did not make any submissions at phase 2 on the appropriate product market.¹⁵⁴
- 6.7 We have considered whether the market for the supply of PSRBs should be further divided as the conditions of competition may vary (i) between residential and commercial reports and (ii) across different customer groups.

Residential and commercial property search reports

- 6.8 As discussed in Chapter 3 in more detail, searches relating to residential and commercial properties can be different,¹⁵⁵ and commercial properties may require more extensive searches than searches for residential properties.¹⁵⁶ Moreover, we show below in our assessment of factors on which suppliers

¹⁴⁸ Response to the Enquiry Letter, paragraph 10.2.

¹⁴⁹ OFT, ME/6272/13 – Completed acquisition by Landmark Information Group of Decision Insight Information Group (Europe), decision on reference under section 22(1) [of the Act] given on 24 January 2014, [Full text of decision](#), paragraph 11.

¹⁵⁰ [Phase 1 Decision](#), paragraphs 57 and 59–60.

¹⁵¹ Response to the Enquiry Letter, paragraph 87.

¹⁵² Response to the Enquiry Letter, paragraph 11.9; [Phase 1 Decision](#), paragraphs 58 and 62.

¹⁵³ [Phase 1 Decision](#), paragraphs 63–64.

¹⁵⁴ We discuss the Parties' submissions on segmentation within the product market in Chapter 7.

¹⁵⁵ The customer Eversheds Sutherland, for example, noted that commercial property searches require a higher level of professional indemnity cover (Eversheds Sutherland call note, 23 February 2022, paragraph 16).

¹⁵⁶ Mincoffs Solicitors call note, 22 February 2022, paragraph 9.

compete in the PSRB market (see paragraph 6.47) that the price of commercial property search reports is generally higher than the price of equivalent residential property search reports.¹⁵⁷

- 6.9 However, while commercial properties may require more extensive searches, these involve the same general process and have a similar breakdown of costs,¹⁵⁸ and all providers of residential property search reports also provide commercial property search reports. In particular, all of the Parties' brands supply both residential and commercial property search reports,¹⁵⁹ and we show in Appendix B that all four large national suppliers have substantial shares in both the residential and commercial segments (although D&D has a relatively lower share in the commercial segment). IPSA told us that it considers that there is a single market for property search reports, and that there should be no difference in price between residential and commercial searches as the work required for the searches is the same.¹⁶⁰
- 6.10 Most of the Parties' customers buy residential property search reports, and out of those customers a substantial proportion also buy commercial property search reports. We estimate that around [90–100%] of D&D's and TMG's customers buy residential PSRBs; and around [50–60%] of D&D's customers and around [60–70%] of TMG's customers who buy residential PSRBs also buy commercial PSRBs.¹⁶¹ Focusing on each Party's main brand, we estimate that: (i) around [90–100%] of PIE/PSG customers and around [90–100%] of tmConvey/tmConnect customers buy residential PSRBs; and (ii) around [60–70%] of PIE/PSG customers and around [70–80%] of tmConvey/tmConnect customers who buy residential PSRBs also buy commercial PSRBs.¹⁶²

¹⁵⁷ See also PIE's and TMG's standard retail price lists: See the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01; See also the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04. See also: Eversheds Sutherland call note, 23 February 2022, paragraph 10; Mincoffs Solicitors call note, 22 February 2022, paragraph 9.

¹⁵⁸ This means that a similar proportion of the cost would go to the compiler, to the authority providing the search, and form the internal costs of the PSRB supplier ([X] call note, paragraph 11).

¹⁵⁹ D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD001. See also, TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM001.

¹⁶⁰ IPSA call note, 16 June 2022, paragraph 12.

¹⁶¹ Based on organisations listed in D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD002. See also TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM002 with positive residential and positive commercial volume in 2020.

¹⁶² Based on organisations listed in D&D's response to the CMA's s.109 Notice dated 23 December 2021, Annex DD002. See also TMG's response to the CMA's s.109 Notice dated 23 December 2021, Annex TM002 with positive residential and positive commercial volume in 2020.

Customer groups

- 6.11 Third party evidence indicates that different suppliers may focus on different customer groups.¹⁶³ The conditions of competition for the various customer groups may vary as intermediaries may be able to negotiate lower prices for their PSRBs compared to conveyancers, and therefore average revenues per PSRB may be lower in the case of sales to intermediaries as opposed to conveyancers. Moreover, less than 40% of the Parties' competitors that responded to our questionnaire at phase 2 stated that they serve large law firms.¹⁶⁴ A number of the competitors that do not serve large law firms explained that they are unable to compete for this customer group, as they do not have the capacity to service their requirements (including the ability to provide an integrated service or build an ordering platform) or to offer the prices that larger search providers offer.
- 6.12 However, all of the Parties' brands serve small conveyancers, medium/large conveyancers, large law firms and other customers (including intermediaries) to some degree,¹⁶⁵ and the Parties' list prices do not vary across these customer groups.¹⁶⁶
- 6.13 In our phase 2 competitor questionnaire over 90% of the competing suppliers that responded stated that they serve both small and medium/large conveyancers. Over 60% of competing suppliers that responded also serve customers other than conveyancers, including Panel Managers and other intermediaries.¹⁶⁷ We also show in Appendix B that, based on revenues by customer group, all four large national suppliers serve all four customer groups to some extent, and none of the large national suppliers' main brands focuses exclusively on one customer group.

¹⁶³ For example, two Index Indirect franchisees noted that they do not serve intermediaries or Panel Managers, and that they serve predominantly residential conveyancers (Index Indirect franchisees call note, 3 February 2022, paragraph 2).

¹⁶⁴ Competitors' responses to our phase 2 questionnaires.

¹⁶⁵ D&D's response to the CMA's s.109 Notice (RFI2a) dated 25 January 2022, Table 1. See also, TMG's response to the CMA's s.109 Notice dated 25 January 2022, Table 1. Other customers are primarily intermediaries but also include in-house counsel for commercial clients and law firms that carry out property transactions occasionally.

¹⁶⁶ See, for example, PIE's and TMG's standard retail price lists: Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01. See also, the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04.

¹⁶⁷ Competitors' responses to our phase 2 questionnaires ([§]). Specifically, 40 out of 43 respondents serve small conveyancers; 39 out of 43 respondents serve medium-to-large conveyancers; 26 out of 43 respondents serve intermediary/other customers. For context, (i) CoPSO lists 88 members (excluding the Parties), and (ii) out of the 83 CoPSO members that D&D identified to be competitors, 39 firms responded to Q6 in our phase 2 questionnaire (D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, response to question 21, Annex DD2303; we excluded the Parties' business units that D&D identified as competitors).

Conclusion on product market

- 6.14 For the above reasons, we have considered the impact of the Merger in relation to the supply of PSRBs,¹⁶⁸ and that this product market should not be further divided. We consider any differences between residential and commercial reports and between customer groups in Chapter 7, to the extent appropriate.
- 6.15 As discussed in Chapter 3, the large PSRB suppliers integrate their offerings with case management software and include ancillary services on their platforms. We consider competitive effects associated with these services (ie case management software and ancillary services), where appropriate, below in our discussion of market dynamics (see paragraphs 6.23 to 6.139) and in our assessment of the theory of harm.

Geographic market

- 6.16 The Parties' activities only overlap in E&W.¹⁶⁹ As such, the CMA considered the impact of the Merger in E&W, taking into account in its assessment the different competitive strengths of suppliers of PSRBs across E&W.
- 6.17 At phase 1, the Parties' submissions and third party evidence received by the CMA indicated that several suppliers (including the Parties and the other large PSRB suppliers) can and do supply PSRBs across multiple regions or the entire area of E&W, and that several customers of the Parties require national coverage.¹⁷⁰
- 6.18 The Parties did not make any additional submissions at phase 2 on the appropriate geographic market. However, the Parties submitted that:¹⁷¹
- (a) National coverage is a significant consideration for the largest law firms, conveyancers and intermediaries, but for residential conveyancing regional suppliers often have a distinct advantage over the national providers;
 - (b) Smaller suppliers can replicate national coverage through IPSA,¹⁷² the development of franchise networks, or relationships with independent

¹⁶⁸ For the avoidance of doubt, this includes both 'standard' bundles and 'custom' bundles for which customers choose the reports included when placing an order.

¹⁶⁹ D&D also supplies PSRBs in Northern Ireland, but TMG does not. TMG supplies PSRBs in Scotland, but D&D does not. Response to the Enquiry Letter, paragraph 17.1.

¹⁷⁰ See Response to the Enquiry Letter, paragraph 17.3.

¹⁷¹ [Parties' response to the Issues Statement](#), paragraphs 3.2–3.7.

¹⁷² The competitor [X] also noted that it can provide searches nationally if required by using IPSA of which it is a member ([X] response to phase 2 questionnaire of 21 January 2022, question 6).

search agents, and technology facilitates competition from all suppliers irrespective of their specific geographic footprint; and

- (c) Within each region in E&W, the Parties face competition from several suppliers, including both national and regional competitors.¹⁷³

6.19 We have considered additional evidence at phase 2, which substantiates the view that the relevant geographic market is the whole of E&W, including:

- (a) Feedback from the Parties' customers obtained through interviews. TMG's customer [X], for example, indicated that national coverage of PSRBs is valued by large intermediaries which operate conveyancing panels with national coverage.¹⁷⁴ Simply Conveyancing said that [X], it will compare providers, *inter alia*, on national coverage.¹⁷⁵ Another customer ([X]) indicated that they serve customers across E&W and prefer to obtain searches from a single provider.¹⁷⁶
- (b) Evidence from competitors' responses to our questionnaire, which found that more than 70% of suppliers that serve large law firms (those engaged in large transactions of either a residential or commercial nature) indicated that they compete nationally for them.¹⁷⁷ Landmark also submitted that the bigger law firms require national coverage.¹⁷⁸
- (c) Evidence from the Parties' internal documents, which do not suggest that they differentiate between individual regions within E&W in competing for business, apart from one Index South West business plan.¹⁷⁹
- (d) The Parties' standard retail list prices, which are set nationally and do not vary across different regions of E&W (with the exception of OLAS and ODWS reports, where the prices are set by each LA or Water Company and may differ between them).¹⁸⁰

6.20 We note, however, that feedback from our customer survey suggests that neither a supplier's regional or local expertise nor its national coverage are

¹⁷³ We also note that a significant number of the regional competitors that the Parties listed in their [response to the Issues Statement](#) are active in multiple regions.

¹⁷⁴ [X] call note, [X], paragraphs 11–12.

¹⁷⁵ Simply Conveyancing call note, 11 March 2022, paragraph 8.

¹⁷⁶ [X] call note, [X], paragraphs 6–7.

¹⁷⁷ Competitors' responses to our phase 2 questionnaires.

¹⁷⁸ Landmark call note, 14 February 2022, paragraph 15.

¹⁷⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, Annex DD-1482.

¹⁸⁰ See, for example, PIE's and TMG's standard retail price lists in response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01; See also the Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.04.

given significant weight when choosing a PSRB supplier (paragraphs 7.177 to 7.180).

- 6.21 For the reasons set out above, we have considered the impact of the Merger in E&W, at a national level, taking into account in our assessment the different competitive strength of suppliers of PSRBs across E&W, if appropriate. This in-depth analysis is presented in Chapter 7.

Conclusion on market definition

- 6.22 For the reasons set out above with regards to the appropriate product and geographic market, we have considered the impact of the Merger in the supply of PSRBs in E&W.

Market dynamics

- 6.23 In this section, we consider evidence on the following aspects of competition, in order to understand how competition in the PSRB market works:
- (a) the factors on which suppliers compete;
 - (b) multi-sourcing and switching, and what they tell us about the competitive dynamics of this market;
 - (c) economies of scale, and how they impact on smaller suppliers' ability to compete; and
 - (d) recent market trends, and their potential implications for future market evolution.

Factors on which suppliers compete

- 6.24 As set out the CMA's guidance, the CMA will, in its merger assessments, develop a general understanding of the competitive process, including of the competitive parameters that are most important to the process of competition in the relevant industry.¹⁸¹
- 6.25 To this end, we have sought to consider the extent to which PSRB suppliers compete on quality of service and price, such that if the Merger were to give rise to an SLC it could lead to a reduction in quality or an increase in prices in this market.

¹⁸¹ MAGs, paragraph 2.3.

- 6.26 It is important to note that the CMA's approach (as endorsed by the Competition Appeal Tribunal) is to rely on an overall assessment of how a merger might affect merging parties' incentives to deteriorate parameters on which they compete such as price, quality, range, and service (**PQRS**). The CMA is not required to conduct a parameter-by-parameter assessment of competition and does not need to show that the SLC will lead to adverse effects for consumers on a specific parameter.¹⁸²
- 6.27 In this section, we consider how suppliers compete in the relevant market in order to assess whether there are parameters (quality of service and price in this case) on which the Parties compete. Our assessment of whether the Merger results in a loss of competition is provided in Chapter 7.

Quality

- 6.28 In their response to the Annotated Issues Statement and Working Papers, the Parties considered that timeliness and accuracy were the aspects of quality that were of key importance to customers.¹⁸³ While they acknowledged that customers also valued other aspects of service, they considered such factors were not core drivers of competition.¹⁸⁴
- 6.29 To understand the role of quality in this market, we considered evidence from our customer survey (where we assessed the evidential weight of the results to be sufficiently robust¹⁸⁵), from third parties, from the Parties in response to our Annotated Issues Statement and Working Papers, and from the Parties' internal documents.
- 6.30 As an initial point, we note that PSRBs are an 'experience' product,¹⁸⁶ in the sense that the various quality attributes of the different PSRB suppliers tend not to be directly observable and hence are known by customers only after they have experienced the service. For example, TMG told us that a supplier can only prove to a customer it is better than its competitors once it has started supplying the customer.¹⁸⁷ Consequently, customers may not be well informed about the quality attributes of all potential suppliers.

¹⁸² *JD Sports Fashion plc v Competition and Markets Authority [2020] CAT 24*, paragraph 99.

¹⁸³ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraphs 6.2 and 6.4.

¹⁸⁴ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraphs 6.5 and 6.6.

¹⁸⁵ As set out in Appendix E, paragraph 4.

¹⁸⁶ An experience good is one whose qualities cannot be determined before purchase and can be distinguished from a search good whose qualities can be determined by the consumer before purchase. The distinction was introduced in *Information and Consumer Behavior*, Nelson, Phillip, *Journal of Political Economy*, Vol. 78, pp. 311–329, 1970.

¹⁸⁷ Transcript of the main party hearing with TMG, 12 April 2022, page 28.

Customer survey

- 6.31 When asked which factors were important when choosing a supplier of PSRBs, the evidence from our customer survey suggests customers regard quality and timeliness of service as particularly important. Under 'quality and timeliness of service' we have combined mentions of quality of product (which included an example of 'accuracy of data'), speed of supply, and reliability of supply. Other aspects of service quality were also mentioned to be important, as was price (see Table 6.1).

Table 6.1: Number of respondents saying each factor was most important and/or important when choosing a supplier of PSRBs

	<i>Most Important</i>	<i>Important</i>
Quality and timeliness of service	64	111
Pricing	30	102
Functionality and quality of software platform	29	58
Customer Service	28	73
Range of services	4	25
Brand strength	2	6
Any other mentions	9	33
Can't say	4	4

Source: CMA customer survey (170 respondents).

Notes: Figures represent total for all factors within each category shown. For example, 30 respondents said a pricing factor was most important, which comprised 19 respondents who said competitive fees was the most important factor and 11 who said the pricing model was the most important factor. Figures are net totals for each category, so if a respondent mentions more than one factor within a category, it is only counted once.

- 6.32 The customer survey evidence¹⁸⁸ also suggests that customer service¹⁸⁹ and functionality and quality of the software platform are important drivers of customer choice, in addition to the quality and timeliness of the service. Each of these two broad factors was considered most important by a similar number of respondents as considered pricing factors most important.

Evidence from third parties

- 6.33 Our engagement with third parties found that a range of aspects of quality, including accuracy and timeliness, standards of customer service and functionality and quality of the software platform, are important to customers.
- 6.34 Feedback from third parties indicated that accuracy and timeliness of the service were important:

¹⁸⁸ We assess the evidential weight of the results in Table 6.1 to be robust, because they are based on the full sample of 170 respondents. See Appendix E, paragraph 11.

¹⁸⁹ The broad customer service category includes good customer service/technical support, ease of contact and knowledgeable staff.

- (a) LMS, a Panel Manager which works on behalf of banks and building societies as an intermediary to law firms, identified service metrics for choosing a search provider, including ‘turnaround timescales’.¹⁹⁰
- (b) United Legal Services (**ULS**), a Panel Manager and intermediary which connects consumer and legal professionals via housing market comparison services, mentioned accuracy and speed, amongst other things, as being very important to conveyancers because they are working at pace.¹⁹¹
- (c) Simplify,¹⁹² a Panel Manager, said it had had issues with all providers in terms of speed of service particularly during the COVID-19 restrictions.¹⁹³
- (d) Ward Gethin Archer, a Top 100 law firm which provides conveyancing services, told us that it considers search reports to be effectively the same from any provider, and it referred to speed of search as a factor that affected the conveyancer’s choice of provider (as noted below it also mentioned presentation of reports).¹⁹⁴
- (e) Landmark, a competitor, told us that ‘The quality, timeliness and level of service is vital, and this becomes increasingly important with bigger law firms with high volume searches’.¹⁹⁵

6.35 In relation to customer service, feedback from some customers indicated it was important to them:

- (a) [X], a Top 100 law firm which provides real estate services on behalf of housing associations and charities (and a small amount of standard residential conveyancing), told us that customer service was a consideration in choosing a search provider.¹⁹⁶
- (b) [X], a Top 100 law firm focussed on commercial work, said the reason for switching from [X] was because of the poor service being offered by [X].¹⁹⁷ Prices between the two suppliers were roughly comparable, but [X] service delivery was too slow at the time. There was delay from [X] in answering questions and [X] needed a quick turn-around. [X] said

¹⁹⁰ LMS call note, 3 March 2022, paragraph 17.

¹⁹¹ ULS call note, 11 February 2022, paragraph 11. ULS also mentioned innovation and resilience as important.

¹⁹² Simplify is an independent conveyancing and property services group. This group includes the following brands: APL, Cook Taylor Woodhouse, DC Law, Gordon Brown Law, JS Law, Move With Us, Moving Made Easy, My Home Move and Premier Property Lawyers.

¹⁹³ Simplify call note, 24 February 2022, paragraph 26.

¹⁹⁴ Ward Gethin Archer call note, 11 March 2022, paragraph 3.

¹⁹⁵ Landmark call note, 14 February 2022, paragraph 7.

¹⁹⁶ [X] call note, [X], paragraph 4.

¹⁹⁷ [X] call note, [X], paragraph 11.

that '[X] got complacent' and that 'we do expect our provider to try and answer as many questions as they can before they come back to my lawyers and ask them for more detail.' Also, when working on big projects, [X] requires search providers like [X] to provide Portfolio Management (tracking of the searches provided, searches lagging etc), which [X], was not providing to an acceptable standard.

(c) Mincoffs Solicitors, a Top 100 law firm which handles commercial and residential transactions, mentioned a decline in customer service (as well as software problems) as a reason for switching away from [X] for six months.¹⁹⁸

(d) ULS, a Panel Manager, referred to support framework for problems, among other things, as being very important to conveyancers.¹⁹⁹

6.36 In relation to functionality and quality of the software platform, feedback indicated these were important as well:

(a) [X], a Top 100 law firm, also told us that it chose Search Acumen (acquired by ATI in 2021) as an additional supplier because of features including a map search tool and an address search tool which can outline flood zones, planning histories, etc. [X] ([X]) often attempted to win custom from [X] but was not considered credible, due to its inability to provide such additional services.²⁰⁰ User-friendly interfaces was also a consideration in [X] choosing a search provider.²⁰¹

(b) As noted above, Mincoffs Solicitors, a Top 100 law firm, told us that it had switched away from [X] for six months. This decision was driven by problems with the software, as well as a decline in customer service.²⁰²

(c) LMS, a Panel Manager, identified service metrics for choosing a search provider, including 'ease of access to search ordering platform, being able to order via a digital methodology (API), instruction tracking and reporting, access to a range of speciality searches...'.²⁰³

(d) ULS, a Panel Manager, said that quality of service can vary considerably between PSRB providers even though they are all essentially carrying out

¹⁹⁸ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

¹⁹⁹ ULS call note, 11 February 2022, paragraph 11.

²⁰⁰ [X] call note, [X], paragraph 6.

²⁰¹ [X] call note, [X], paragraph 4.

²⁰² Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

²⁰³ LMS call note, 3 March 2022, paragraph 17.

the same function.²⁰⁴ It referred to the presentation of data, among other things, as being very important to conveyancers.²⁰⁵

- (e) As already mentioned, Ward Gethin Archer, a Top 100 law firm, told us that it considers search reports to be effectively the same from any PSRB supplier, but that (as well as speed of search) the conveyancer's choice of supplier is affected by the presentation (eg inclusion of photos, graphs and bar charts).²⁰⁶
- (f) ATI, a competitor, told us that integration with case management software had been important to its growth in the UK. ATI said that InfoTrack was the first to offer customers the ability for their search reports to be integrated into their case management software platforms, and while InfoTrack continues to innovate, others have also followed this development and today ATI believes that all of its main competitors (ie Landmark (SearchFlow), D&D, and TMG) are able to offer an integrated solution.²⁰⁷

Parties' internal documents and submissions

6.37 D&D's documents also identified that all aspects of quality were relevant:

- (a) A June 2021 D&D strategy slide pack refers to a D&D competitive strategy of '[redacted]'. This document also discusses D&D's strategy, including '[redacted]'.²⁰⁸ D&D's discussion of specific customers in its internal documents indicates that customers, including smaller customers, are influenced by both quality of service and price. For example, among D&D documents:
 - (i) A September 2021 spreadsheet²⁰⁹ listing at-risk and lost customers notes of one at-risk customer: '[redacted]'. The notes on another at-risk customer in this document refer to: '[redacted]'.
 - (ii) Among lost customers in the same spreadsheet, while some switched due to [redacted], other switches were attributed to [redacted].²¹⁰

²⁰⁴ ULS call note, 11 February 2022, paragraph 7.

²⁰⁵ ULS call note, 11 February 2022, paragraph 11.

²⁰⁶ Ward Gethin Archer call note, 11 March 2022, paragraph 3.

²⁰⁷ ATI response to CMA's RFI of 21 April 2022, question 4.

²⁰⁸ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, document dated 19 July 2021, Annex DD-0002119, additional questions, [redacted].

²⁰⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

²¹⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

(iii) Another 'at-risk and lost' spreadsheet from November 2020²¹¹ attributes £[REDACTED] of lost business to [REDACTED], compared to just below £[REDACTED] to [REDACTED].²¹²

(b) A 2019 Index customer survey²¹³ asked customers to rate the importance of aspects of service from Index from 1 (least important) to 10 (most important). [REDACTED]. These results suggest that customer service and intuitive order platform were important as well as accuracy and timing.

6.38 Similarly, the importance of quality is also clear from TMG documents:

(a) A TMG Spreadsheet records that in 2020 and 2021 TMG lost [REDACTED] customers due to [REDACTED].²¹⁴

(b) A CDS customer spreadsheet indicates that a prospective customer of CDS ([REDACTED]) was unwilling to switch from [REDACTED] due to [REDACTED].²¹⁵

(c) The importance of service quality is also evident in further TMG internal documents which we consider below in our assessment of closeness of competition (see paragraph 7.28).

6.39 A submission from TMG supports the view that quality is an important parameter of competition. TMG said that [REDACTED].²¹⁶

6.40 D&D's documents also show that PSRB suppliers benchmark their offerings, [REDACTED], against their competitors, which suggests that [REDACTED] is an aspect of quality on which suppliers compete:

(a) The June 2021 D&D strategy slide pack compares D&D's product offering, [REDACTED], with ATI (InfoTrack), Landmark (SearchFlow) and TMG. The document states that, [REDACTED].²¹⁷

²¹¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11, document dated 14 October 2021, Annex DD-0002419.

²¹² In total £[REDACTED] million was identified as 'lost' in 2019 and 2020. The largest category was '[REDACTED]' (around £[REDACTED]), but a range of other reasons were listed, not necessarily related [REDACTED]. A further £[REDACTED] was labelled 'at-risk' from [REDACTED].

²¹³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, internal email dated 30 April 2019, Annex DD-0000820.

²¹⁴ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See internal document 'CDS Monthly Volume by Product analysis' dated 7th June 2021, Annex TMG-0002415.

²¹⁵ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 11 and question 21, Annex TMG0001613.

²¹⁶ TMG response to the CMA's s.109 Notice (RFI6) issued on 24 March 2022, paragraph 2.1.

²¹⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, additional questions, [REDACTED]. We note that this slide is titled 'For Brighter Law, what is our value prop compared to others'. Brighter Law is the part of PIE providing ancillary services, and in our view the link with PSRBs is clear from the comparison with D&D's main search competitors.

(b) In D&D (PIE) market research in 2021, D&D assesses the offering of competitors with regard to [✂], and compares it to its own offering.²¹⁸

Conclusions on quality

- 6.41 In their response to our working paper, the Parties submitted that the most important aspects of quality were timeliness and accuracy, which form the baseline of what customers expect from a supplier. On the other hand, the Parties argued that other aspects of quality are parameters of competition, but they are subsidiary to price, accuracy and timeliness.²¹⁹
- 6.42 We agree that timeliness and accuracy are very important, and that poor experiences may lead customers to switch supplier. But we believe that the range of evidence set out above shows that other aspects of quality, including the standards of customer service, the functionality and quality of the PSRB platform, the degree of integration with case management software, and the ancillary services offered, are also important to customers, and can be a basis on which suppliers differentiate their offers to customers and benchmark against each other.
- 6.43 Maintaining or improving on a given level of quality necessarily imposes a cost on PSRB suppliers, for example through the need to invest in technology, hire sufficient staff (with sufficient expertise and supervision) relative to the volume of business, and spend on staff training. In our view, this applies to all aspects of quality and not just to accuracy and timeliness. The greater the competitive constraint faced by a PSRB supplier, the stronger will be its incentive to invest in maintaining a higher level of service quality. As a result, if the Merger were to give rise to an SLC, this could lead to the Merged Entity being able to worsen its quality of service and other non-price factors of competition, or to reduce efforts to innovate relative to the position absent the Merger.

Price

- 6.44 In relation to pricing, we considered evidence on how the Parties set their prices, the role of negotiated discounts, how prices differ by customer group, the importance customers attach to prices, and the Parties' submissions on price sensitivity.

²¹⁸ D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slide 2.

²¹⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 6.9.

How the Parties set their prices

Price lists

- 6.45 The Parties maintain standard retail price lists.²²⁰ These price lists include [REDACTED].²²¹ The structure of prices may differ between suppliers in that some (such as tmConvey)²²² charge a case or handling fee while others rely only on individual search prices. The total list price for a bundle will depend on the level of individual search prices as well as whether a case or handling fee is included.
- 6.46 The price of official searches is generally higher than the price of regulated searches – for example, [REDACTED].²²³
- 6.47 As noted in paragraph 3.13, the price of commercial property searches is generally higher than the price of equivalent residential property searches – for example, [REDACTED].²²⁴ TMG's case fee is also higher for commercial customers. As of September 2021, tmConvey's case fee was £[REDACTED] for a standard residential bundle and £[REDACTED] for a standard commercial bundle [REDACTED], if the customer opted for a premium service).²²⁵
- 6.48 The Parties' [REDACTED].
- 6.49 We note that PSRB suppliers tend to increase their list prices every year.²²⁶ D&D increased prices on some PIE products in October 2021 and November 2020, while TMG increased prices to its tmConvey residential and commercial customers, and its CDS customers, in October 2021.²²⁷
- 6.50 The cost of PSRBs is passed on by conveyancers to the property purchaser who is the ultimate consumer.²²⁸ However, conveyancers are required to publish details of the price of their conveyancing services including details of disbursements which should be separately itemised. The Parties said this

²²⁰ Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.3, 25.9 and Annexes 25.1 – 25.3.

²²¹ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01. Official searches are compiled by official information holders (eg LAs or water companies), while regulated searches (also known as 'personal') are compiled by commercial suppliers, see Chapter 3.

²²² Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.10; TMG's Site Visit presentation, slides 28–30. [REDACTED].

²²³ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01.

²²⁴ Parties' response to the CMA's s.109 Notice dated 25 August 2021, Annex 25.01.

²²⁵ Parties' response to the CMA's s.109 Notice dated 25 August 2021, paragraph 25.10; TMG's Site Visit presentation, slides 28–30. The case fee price for a residential fee was increased to £20 in October 2021. [REDACTED].

²²⁶ Transcript of the main party hearing with TMG, 12 April 2022, pages 30–31.

²²⁷ Parties' response to the CMA's s109 Notice issued on 17 November 2021, paragraph 7.

²²⁸ As shown in Table 6.2 below, the average price of a PSRB supplied by D&D may range between £[REDACTED] and £[REDACTED].

allows property purchasers to easily compare the prices of different conveyancers.²²⁹

Discounts and negotiations

- 6.51 Suppliers may depart from their list prices in order to acquire or retain customers. Negotiations may take place principally around either a discount from list prices, or an agreed 'pack-price' for a standard bundle of search reports. As part of negotiations, suppliers may offer to include ancillary services in the PSRB price. For intermediaries, negotiations would also cover the referral fee paid by the supplier to the intermediary.²³⁰
- 6.52 We note that discounts may be given or increased if particular customers threaten to leave following an across-the-board increase in list prices:
- (a) D&D provided a list including [REDACTED] customers who threatened to switch in response to the November 2020²³¹ price increase mentioned in paragraph 6.49 above, and [REDACTED] from the October 2021 price increase, but which it was able to retain.²³² It did so in a range of ways, including by [REDACTED].²³³
 - (b) TMG announced the October 2021 price increase to tmConvey customers in September (and communicated to CDS customers through account managers). This increase represented [REDACTED]% to [REDACTED]% of the PSRB price, and TMG identified [REDACTED] existing customers who threatened to switch until TMG agreed not to increase their prices.²³⁴

Prices by customer group

- 6.53 The Parties submitted analyses of average 2020 revenue per PSRB, and per residential PSRB for certain customer groups ([REDACTED]).²³⁵ These were provided separately for PIE/PSG, Index, tmConvey and CDS.²³⁶ The data do not take

²²⁹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1, paragraph 4.5.

²³⁰ D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 4; TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 4

²³¹ The November 2020 price increase was by a weighted average of 4% on PSRB prices across all customers, D&D updated response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Table 2, paragraph 9.4, and Annex DD862.

²³² For comparison, D&D has provided data showing PIE had about [REDACTED] customers in 2020, of which about [REDACTED] purchased more than [REDACTED] PSRBs, D&D's response to CMA s.109 Notice dated 23 December 2021, paragraph 2.

²³³ D&D updated response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, paragraphs 9.4-9.5, and Annex DD862.

²³⁴ For comparison, TMG has provided data showing it had about [REDACTED] customers in 2020, of which about [REDACTED] purchased more than [REDACTED] PSRBs; TMG's response to CMA s.109 Notice dated 23 December 2021, paragraph 2.

²³⁵ [REDACTED].

²³⁶ D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraphs 6.6-6.9; TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraphs 6.6-6.8; and Parties' response to the Annotated Issues Statement and Working Papers, Appendix 2, paragraph 1.3.

account of any differences in the types of PSRB ordered by each customer group, and so are not a like-for-like comparison of the prices charged to different types of customer. However, they do provide an indication of how prices might vary by customer group.

6.54 The Parties submitted that the data suggested that [REDACTED].²³⁷ They stated that this was supported by other evidence:

(a) D&D submitted that [REDACTED].²³⁸

(b) TMG submitted (for tmConvey) an analysis of the average discount on list price per search pack for each customer group in 2020.²³⁹ The results of this analysis suggest that [REDACTED].

6.55 Overall, we agree that this evidence suggests that, on average, [REDACTED].

Importance of price to customers

6.56 Our customer survey (see Table 6.1) found that 30 out of 170 respondents said that price was the most important factor in choosing a supplier; behind quality and timeliness of service (64) and slightly ahead of customer service (28) and functionality and quality of software platform (29). A total of 102 respondents mentioned price as an important factor (slightly behind quality and timeliness of service (111) and ahead of customer service (73) and functionality and quality of software platform (58)). We note that 68 respondents (40%) did not mention price as an important factor.²⁴⁰

6.57 Our engagement with larger customers generally indicated that, while they are aware of price, price tended not to be the most important factor in their decision making:

(a) Eversheds Sutherland, a Top 100 law firm focussing on commercial transactions, said that the only time it focused on pricing was when InfoTrack provided a cheaper quote for the same searches which TMG had provided, and Eversheds Sutherland decided to pilot using InfoTrack as its supplier. It noted that the search providers' fee is relatively modest

²³⁷ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 2 paragraph 1.3.

²³⁸ D&D's response to CMA s.109 Notice dated 24 March 2022, paragraph 1.2.

²³⁹ TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.9–6.12. TMG explained that the analysis is not feasible for CDS as CDS does not keep data on list prices in the same databases as their sale prices, and a lengthy, manual exercise would be required to match the different datasets (see TMG's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.10). D&D provided an equivalent explanation in relation to its brands (see D&D's response to the CMA's s.109 Notice dated 25 January 2022, paragraph 6.6).

²⁴⁰ Of these, 64 mentioned other factors but not price, and 4 could not say which was the most important factor.

as compared to the cost of searches from a local authority or a utility provider.²⁴¹

- (b) Hugh James, a Top 100 law firm which provides conveyancing services mostly for large scale commercial transactions, told us that price of searches is important, in that 'the price of everything impacts on how competitive Hugh James is'.²⁴² However, Hugh James said that most search providers are comparable in price. Provided a price is not more than marginally higher than average, price does not cause concern.
- (c) [X], a Top 100 law firm which provides real estate services on behalf of housing associations and charities (and a small amount of standard residential conveyancing), said that it is able to negotiate prices for some products by requesting price matching between [X] and [X] when one is offering a cheaper service than the other.²⁴³ The fees for searches are passed on to the clients, and while [X] will endeavour to secure the best price for the client, price is not the only deciding factor in choice of search provider.
- (d) Mincoffs Solicitors, a Top 100 law firm which handles commercial and residential transactions, told us that it has an obligation to achieve value for customers, particularly for residential transactions, but this needs to be balanced against ensuring a good quality service for each search.²⁴⁴ In Mincoffs Solicitors' view 'reliability of service and not price was crucial when selecting their search report provider'.²⁴⁵

6.58 Panel Managers we spoke to tended to be more concerned with price, though they also did not necessarily regard price as the most important factor:

- (a) LMS noted that it would not challenge price increases if they are broadly in line with inflation or RPI or CPI, but only if it saw exceptional increases in their suppliers' annual review of costs.²⁴⁶ However, LMS [X] 'test the market periodically to make sure [they] are buying well on behalf of [their] customers'.²⁴⁷
- (b) Simplify told us that it considers whether suppliers are competitive on price and had gradually removed suppliers in the past when they could

²⁴¹ Eversheds Sutherland call note, 23 February 2022, paragraph 17.

²⁴² Hugh James call note, 3 March 2022, paragraph 7.

²⁴³ [X] call note, [X], paragraph 9.

²⁴⁴ Mincoffs Solicitors call note, 22 February 2022, paragraph 4.

²⁴⁵ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

²⁴⁶ LMS call note, 3 March 2022, paragraph 14.

²⁴⁷ LMS call note, 3 March 2022, paragraph 15.

not compete on price.²⁴⁸ However, Simplify was also focused on reliability of service, including ensuring the continuity of supply and using a provider with a track record that can support high volumes of transactions.²⁴⁹

- (c) ULS told us that, while price was important as it is a key part of their revenue stream, it considered quality (accuracy, speed, and support framework for problems), innovation, and resilience to be critical.²⁵⁰
- (d) [REDACTED], a Panel Manager which works with a panel of solicitors and offers these firms conveyancing work, focused on the commission they get rather than the price but said that the relationship was key rather than achieving the highest possible commission.²⁵¹

6.59 IPSA submitted that not all customers are highly price sensitive. For example, IPSA submitted that in the past IPSA member firms have been able to win customers where price was not discussed until after the deal had been concluded.²⁵²

6.60 The Parties' submissions and internal documents also reflect that price is not always the main relevant factor for customers:

- (a) A D&D internal document (2019 Index slide pack) notes that [REDACTED].²⁵³
- (b) TMG told us that the price it needed to offer to win a new customer depended on the circumstances (eg how content the customer is with their current supplier), but [REDACTED].²⁵⁴ This related to the point that customers need to experience a supplier's customer service to know its quality (see paragraph 6.30).

The Parties' submissions on price sensitivity

6.61 The Parties submitted that all of the main customer groupings are highly price sensitive (although sometimes for different reasons) and are motivated to actively negotiate on price.²⁵⁵ In respect of these customer groupings, the Parties submitted:

²⁴⁸ Simplify call note, 24 February 2022 paragraph 17.

²⁴⁹ Simplify call note, 24 February 2022 paragraph 19.

²⁵⁰ ULS call note, 11 February 2022, paragraph 11.

²⁵¹ [REDACTED] call note, [REDACTED], paragraph 15.

²⁵² See [IPSA's response to the provisional findings and notice of possible remedies](#), dated 27 June 2022, page 8.

²⁵³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁵⁴ Transcript of the main party hearing with TMG, 12 April 2022, page 28.

²⁵⁵ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.2.

- (a) Large law firms order higher volumes of search packs and are therefore able to (and do) leverage those volumes to negotiate with retailers to keep prices down;²⁵⁶
- (b) Small and medium-sized conveyancers are price sensitive, as they have to publish details of disbursements, including PSRB costs, to their residential customers and seek to reduce PSRB costs to remain competitive on total costs (including disbursements);²⁵⁷ and
- (c) Intermediaries frequently manage large volumes of transactions which are attractive to PSRB suppliers and enable intermediaries to negotiate favourable prices.²⁵⁸

6.62 The Parties also referred to their prices and/or average revenue not having increased over time. They then reached a ‘conclusion on price sensitivity’ that all customers groups are highly price sensitive and that, given the ease by which customers can switch, aided by prevalent multi-sourcing, the Merged Entity will have no ability, nor any incentive, to raise prices post-Merger.²⁵⁹

6.63 We consider multi-sourcing and ease of switching in the next section below, but, given the evidence set out above (see paragraphs 6.56 to 6.60), we do not believe that all customers are highly price sensitive. There are differences in price sensitivity both between customer groups and between customers within each group. Thus, even if some customers are price sensitive, that does not mean they are all price sensitive; and even if customers are price sensitive, that does not necessarily imply they are highly price sensitive. Furthermore, the existence of some price sensitive customers would not protect price insensitive customers from price increases, given that price sensitive customers negotiate discounts individually with suppliers, and this is not information that other customers would have access to or benefit from.

6.64 Additionally, we do not believe that it is possible to assume that pre-Merger market dynamics would continue post-Merger. For example, the fact that some customers are able to negotiate prices that they consider to be at a competitive level pre-Merger does not exclude the risk that, by reducing the number of suppliers that customers can play off against each other, a Merger

²⁵⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.3.

²⁵⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.5.

²⁵⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.6.

²⁵⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 4.19.

could reduce competition and lead to higher prices. We consider our theory of harm about the effect of the Merger in Chapter 7.

- 6.65 We do, however, agree with the Parties that prices are important to all groups of customers and that intermediaries can be considered more price sensitive than other groups.

Conclusion on pricing

- 6.66 Overall, the evidence shows that many customers consider price to be an important, but not necessarily the most important, factor in choosing a PSRB supplier. The importance of price varies both between customer groups and within customer groups, with intermediaries generally being more concerned with price (after referral fees) and benefitting from lower net prices (see paragraph 6.55 above).

Multi-sourcing and switching

- 6.67 Multi-sourcing refers to the practice of customers using multiple PSRB suppliers at the same time. The frequency and extent of multi-sourcing and the ease of switching between suppliers may contribute to the intensity of competition in the market. In this section, we consider evidence on multi-sourcing and switching across the PSRB market. Any implications for the effects of the Merger are covered in Chapter 7.
- 6.68 The Parties submitted that a large proportion of their customers multi-source and, as such, already have an alternative supplier to which they can switch in the event of a price increase or degradation of service quality post-Merger.²⁶⁰ The Parties estimated that 55% of their customers multi-sourced. When weighted by HM Land Registry score (number of HM Land Registry transactions), the proportion rose to 80%, suggesting that large customers are more likely to multi-source. The Parties assume a customer is multi-sourcing when ‘they deal with more completed transactions than the number of search packs that they order from one of the Parties’. In response to our Provisional Findings, the Parties submitted that our customer survey shows that multi-sourcing is widespread.²⁶¹ They also submitted that switching is widespread, at least among some customer groups, and that multi-sourcing is used as a

²⁶⁰ [Parties' response to the Issues Statement](#), paragraphs 5.19–5.20, D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Table 6.

²⁶¹ [Parties' response to the Provisional Findings](#), paragraph 2.3.1.

means both to increase the ease of switching, but also as a vehicle to make credible threats to switch.²⁶²

Single and multi-sourcing

- 6.69 Both the Parties and competitors suggested that multi-sourcing is common. ATI commented that many law firms have more than one provider. Landmark told us that law firms may use a backup provider in case one search provider platform goes down, but generally firms will favour training conveyancers on one system/platform for their conveyancing needs.
- 6.70 Our customer survey found that 110 out of 170 respondents (65%) had used two or more providers for PSRBs since January 2020, with the remaining 60 (35%) having used a single provider.²⁶³ The average number of suppliers used by respondents (including those single sourcing) since January 2020 was 2.2 to 2.4.²⁶⁴
- 6.71 In regard to reasons for multi-sourcing, as shown in Figure 6.1, a net total of 72 respondents agreed that they used two or more suppliers because 'shopping around encourages suppliers to remain competitive'.²⁶⁵ Other common reasons for using two or more suppliers were managing the risk of having only one supplier, that different suppliers were stronger for particular transaction types, and because of the different preferences of individual colleagues.²⁶⁶ A subset of respondents also considered regional specialism and the requirements of Panel Managers to be important reasons for multi-sourcing.²⁶⁷

²⁶² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 3.11.

²⁶³ [DJS customer survey report](#), March 2022, page 12. Respondents were asked which suppliers they had used since January 2020 (a two year period).

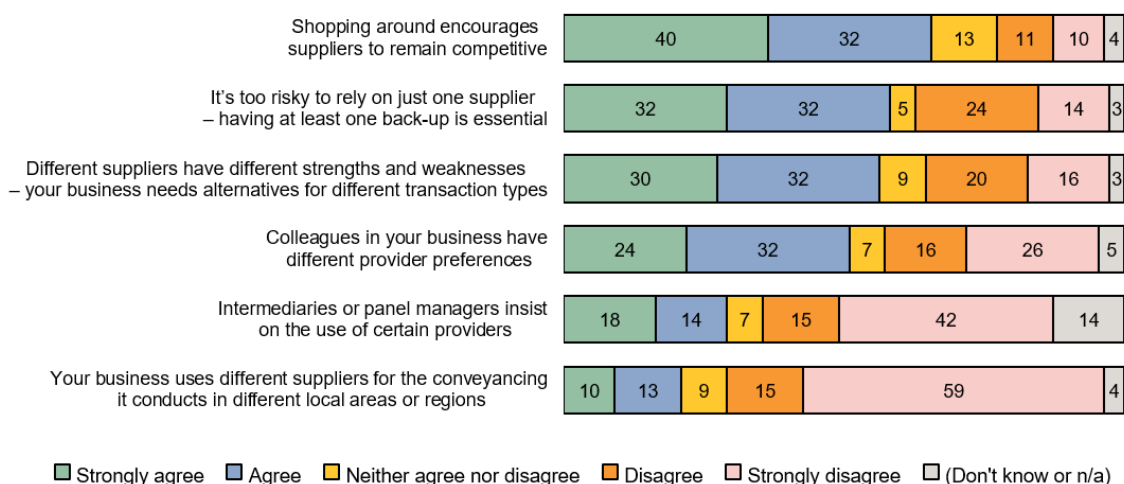
²⁶⁴ The average number of suppliers used was 2.2 if all D&D brands (including Index and PSG) are counted as a single supplier. This increases to 2.4 if all Index and PSG volume is considered to be D&D Indirect (rather than sales by Index Direct and PSG Direct) and all Index and PSG franchisees are counted as Index Indirect and PSG Indirect franchisees. We note that these averages reflect not only the degree of customer multi-sourcing, but also the degree of customer switching. For example, a single-sourcing customer who switched its supplier after January 2020 would be counted as having used two suppliers.

²⁶⁵ [DJS customer survey report](#), March 2022, page 13, Figure 5.

²⁶⁶ [DJS customer survey report](#), March 2022, page 13, Figure 5.

²⁶⁷ [DJS customer survey report](#), March 2022, page 13, Figure 5.

Figure 6.1: Counts of respondents - disagreement / agreement to reasons for multi-sourcing



Source: [DJS customer survey report](#), March 2022, page 13, figure 5.

Notes:

1. Based on 110 respondents that had used more than one supplier since Jan 2020 in response to the question 'To what extent do you agree or disagree that each of the following is a factor in why you [multi-source]?'
2. In the chart legend, Tend to agree has been labelled as Agree, and Tend to disagree as Disagree, to save space.

6.72 The main reasons for using a single provider were that this was sufficient for the amount of conveyancing business the firm did, it was too complex to use more than one, and because all providers were 'pretty much the same'.²⁶⁸

6.73 Our engagement with large customers similarly revealed a range of different approaches and different motivations regarding PSRB sourcing:

- (a) Some large customers to varying degrees indicated that they multi-sourced to maintain competitive tension and/or as a back-up in case of issues with a particular supplier;²⁶⁹
- (b) Some customers multi-sourced but used different providers for different purposes, or because individual conveyancers in the firm had a preference for a specific provider;²⁷⁰ while
- (c) Other customers saw a benefit in primarily or exclusively using a single provider.²⁷¹

²⁶⁸ [DJS customer survey report](#), March 2022, page 12, Figure 4.

²⁶⁹ See [redacted] call note, [redacted], [redacted] call note, [redacted], [redacted] call note, [redacted] and [redacted] call note, [redacted].

²⁷⁰ See [redacted] call note, [redacted], [redacted] call note, [redacted] and [redacted] call note, [redacted].

²⁷¹ See [redacted] call note, [redacted], and [redacted] call note, [redacted].

Conclusions on multi-sourcing

- 6.74 Overall, we found that multi-sourcing is common in this market, and, as argued by the Parties, we recognise that the fact that a customer is multi-sourcing is likely to make it easier for it to switch demand between suppliers.
- 6.75 However, this increased ability to switch only applies to suppliers with which a customer is multi-sourcing (on average 2.2 to 2.4 suppliers over a two year period, see paragraph 6.70) and not to all suppliers in the market. Moreover, customers who are multi-sourcing may do so for a variety of reasons and not just to create competitive tension between suppliers. Where a customer uses different suppliers for different types of transaction, or where different individuals within a customer firm use different suppliers, the implications for ease of switching and therefore competitive pressure are less clear.

Ease of switching

- 6.76 The Parties submitted that switching is ‘extraordinarily easy’, assisted by the relative absence of contractual volume commitments, the similarity of user-interfaces, and the fact that the reports comprising the bundle are ‘essentially commodity products’. They also submitted that the quantitative evidence corroborates this and shows that there is a substantial level of switching, particularly from D&D's customers.²⁷² In response to our Provisional Findings, the Parties submitted that the survey evidence shows that switching is common and is facilitated by widespread multi-sourcing, and that this is further supported by the CMA's findings at phase 1.²⁷³

Evidence from third parties

- 6.77 Our engagement with large law firms and Panel Managers suggested that some had found switching PSRB supplier to be a difficult and/or lengthy process due to the need to integrate with other software, for example case management software.²⁷⁴ However, one large law firm said it had found the experience of switching providers to be straightforward,²⁷⁵ and a Panel Manager said its most recent switch had taken only three days.²⁷⁶
- 6.78 In relation to the impact of case management software on switching between PSRB suppliers, the Parties submitted that evidence from our customer

²⁷² Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 3.1.

²⁷³ [Parties' response to the Provisional Findings](#), paragraph 5.4.3.

²⁷⁴ See [X] call note, [X], [X] call note, [X], [X] call note, [X] and [X] call note, [X] (though [X] also said that it can [X]).

²⁷⁵ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

²⁷⁶ [X] call note, [X], paragraphs 11-12. [X] also said that an earlier switch had taken nine months.

survey suggested that customers do not consider compatibility of their PSRB ordering platforms with case management platforms to be important.²⁷⁷ Nevertheless, during our customer calls some larger customers did cite integration with other software as a factor making switching more difficult or a longer process (see previous paragraph), and compatibility / ease of integration with other business software was mentioned as important by some survey respondents (see paragraph 6.119). We have also seen evidence that integration of PSRBs with case management software is becoming more important (see paragraph 3.16). We recognise, as far as the impact of such integration on switching is concerned, it may make customers reluctant to switch away from an existing PSRB supplier that is integrated with their case management software, but it may also encourage customers to switch if another PSRB supplier can better integrate with their case management software.²⁷⁸

- 6.79 In our engagement with larger customers, some also expressed a reluctance to switch due to long-standing business relationships with particular companies or individuals.²⁷⁹
- 6.80 Among competitors, Landmark commented that the lack of incentive to switch providers created ‘a sticky market’. Landmark said that law firms rarely change PSRB suppliers once a business relationship is established, so it is difficult to win customers (unless there are problems with the technology of the chosen provider).²⁸⁰ ATI commented that its rapid growth since entering the market was due to its innovative offering, particularly as lawyers can be apathetic to change and require a compelling offering to switch providers.²⁸¹

Internal documents

- 6.81 An internal document from D&D in relation to [REDACTED] ‘complexities in switching real estate DD Software’. It states that [REDACTED]. The reasons customers found switching difficult appear to relate to their willingness to switch, and the perceived risk of doing so, rather than practical barriers. Reasons for customer inertia included ‘change creates risk that the replacement supplier

²⁷⁷ 16 survey respondents mentioned compatibility/ease of integration with other business software as important, and seven survey respondents said it was the most important factor for their business.

²⁷⁸ For example, ATI attributed InfoTrack’s rapid growth to its integration with a number of case management systems, see paragraph 3.16).

²⁷⁹ [REDACTED] noted that it had little incentive to switch provider and has found that poweredbypie has been very responsive to any issues raised, [REDACTED] call note, [REDACTED], paragraph 14. Mincoffs Solicitors told us that its reason for continuing to use D&D was a long-standing business relationship with a key D&D representative, Mincoffs Solicitors call note, 22 February 2022, paragraph 4.

²⁸⁰ Landmark call note, 14 February 2022, paragraph 7.

²⁸¹ ATI call note, paragraph 4.

doesn't operate the same standards', 'searches are different between suppliers', 'reliance on a supplier's integrity and accuracy [REDACTED]'.^{282, 283}

6.82 Other D&D (or D&D Indirect) internal documents also suggest that customers may be [REDACTED] loyal to their existing supplier or suppliers:

(a) A June 2021 D&D strategy slide pack²⁸⁴ [REDACTED]. The Parties submitted that [REDACTED].²⁸⁵ However, in our view, the slide is referring to a D&D [REDACTED].

(b) Similarly a May 2020 document from a D&D Indirect franchisee '[REDACTED]' notes '[REDACTED]'.²⁸⁶ The same document also notes: '[REDACTED]'.

Switching rates

6.83 We considered data on switching rates from the customer survey, internal documents and the Parties' data on customer losses.

6.84 In our customer survey we asked respondents if they had switched suppliers since January 2020. We defined switching as any instance of a customer moving all or the majority of searches from one provider to another. We found that 49 out of the 170 respondents (29%) had switched since January 2020, ie over a period of about two years. This suggests an annual switching rate of about 15%. Switching appeared higher among D&D customers (33 out of 89, implied annual rate of 19%) and lower for TMG customers (18 out of 87, implied annual rate of 10%), though these results are only indicative due to small sample sizes.²⁸⁷

6.85 The overall switching rate estimate from the customer survey is similar to the market switching rate implied by a D&D internal document (see

²⁸² D&D's response to the Phase 2 Opening Letter, Annex DD116, Slide 29.

²⁸³ The Parties submitted that [REDACTED] and that the assertion that [REDACTED] was wrong. (Parties' response to the Annotated Issues Statement and Working Papers, paragraph 2.12 and Appendix 1 paragraph 3.8.) In our view, whilst the slide refers to software, it is clear from references to 'searches', 'property search companies', the source of the data being CoPSO on the slide, that the document relates to the acquisition of PIE (which does not provide case management software), and that the previous slide shows the competitive landscape for PSRB suppliers, that the slide relates principally to PSRBs. We note that the slide also identifies lack of integration with customers' case management software and connectivity with due diligence providers as factors that may induce switching to a better integrated/connected PSRB supplier. It is unclear why integration with case management software would be mentioned in this context, if the slide relates solely to case management software, as the Parties submit.

²⁸⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, additional questions, [REDACTED].

²⁸⁵ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.8.

²⁸⁶ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0001298.

²⁸⁷ See Appendix E, paragraph 12. In the survey, 24 respondents were customers of both D&D and TMG and 18 respondents stated that they were customers of neither.

paragraph 6.81 above), which states that property search companies have an average client relationship of [X] years.²⁸⁸

- 6.86 We also considered the Parties' data on customer losses. Our detailed consideration of this data is in Chapter 7, where we assess the implications for closeness of competition. We note that there are some difficulties in using the data to calculate switching rates, including the variation between years in the levels of switching; incompleteness; and duplication. But this data suggests that the switching rate may be below 15%, especially if weighted by customer revenue.²⁸⁹
- 6.87 We considered that the evidence on switching rates suggested that customers did not change their PSRB suppliers very often and was consistent with the evidence from third parties and from internal documents that customers tended not to be very proactive in seeking out new suppliers and to show a degree of loyalty to their existing suppliers. However, we have also seen evidence that customers can and do switch when they are prompted to, either a result of a poor experience with an existing supplier or for other reasons.

Conclusions on the factors on which suppliers compete

- 6.88 The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
- 6.89 As the Parties have pointed out, there are few technical or contractual barriers to switching, and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing across this market may help to facilitate switching between existing suppliers. However, given that customers multi-source for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
- 6.90 As discussed above, suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers unless they have an existing relationship

²⁸⁸ D&D's response to the Phase 2 Opening Letter, Annex DD116, Slide 29. In steady state, an average client relationship of [X] years implies a switching rate of [X] [10-20%].

²⁸⁹ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022. See 'lost customers' spreadsheet, Annex DD2867 and TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, paragraphs 9.1–9.5.

with the supplier concerned. Associated with this, relationships between customers and suppliers are often long-lasting, and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.

- 6.91 In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms (as illustrated by ATI's growth and evidence from internal documents that suppliers monitor each other's ancillary services).
- 6.92 Suppliers also compete on price, often by offering discounts as part of negotiations to win new customers or retain existing customers.

Economies of scale

- 6.93 Economies of scale arise when costs per unit of volume (in this case, PSRB) decline as volume increases. We have considered the degree to which the supply of PSRBs is characterised by economies of scale, while recognising that scale economies are not the only factor that can differentiate the constraint imposed by a larger supplier from that imposed by a smaller supplier (see paragraph 7.173). We have considered evidence from competitors, from the Parties' internal documents, and submissions from the Parties.

Evidence from competitors

- 6.94 Some smaller suppliers considered they were at a competitive disadvantage against larger providers because they were unable to achieve economies of scale, for example in marketing spend and in fixed costs, enabling larger providers to be more aggressive in their pricing or in developing technology and product features.
- 6.95 In relation to marketing costs, fixed costs, and pricing, a number of competitors told us (see Appendix C, paragraph 7) that it is difficult to compete with large national competitors:
- (a) 'the scale of larger organisations allows much greater scope for aggressive marketing activity and also aggressive pricing policies'.
([REDACTED])²⁹⁰

²⁹⁰ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

- (b) 'Low product margins and local presence of bigger firms makes it hard to compete'. ([REDACTED])²⁹¹
- (c) 'The scale of sales and marketing activity that the top 3/4 resellers have at their disposal, combined with the vertically integrated producer/retailer proposition and the horizontal IT/Service proposition eg Case Management Systems makes it extremely difficult to grow sales and in fact retaining existing level of sales is difficult enough. This is in spite of us having a higher quality core product and providing excellent and personalised customer service to clients'. ([REDACTED])²⁹²
- (d) 'Small suppliers will be unable to meet price incentives, price discounting, constant marketing pressure and entertainment incentives'. ([REDACTED])²⁹³

6.96 IPSA submitted that it is 'impossible [...] for a smaller firm to compete on the prices [large national competitors] charge to ... high-volume clients. ... I do not have their economies of scale', and that 'smaller firms either must find time to do their own "amateur" or self-taught marketing, or outsource to a marketing firm at considerable cost'.²⁹⁴

6.97 Smaller suppliers also identified difficulties in developing technology and product features to compete against larger firms, see Appendix C, paragraph 8. For example:

- (a) 'It is quite difficult to expand in this market as the larger firms have the technology and systems which solicitors and conveyancers are looking for. Small firms do not have the financial clout to compete with this technology, so are left to compete on a quality over quantity front' ([REDACTED]).²⁹⁵
- (b) 'Our client base of solicitors is declining due to them going to large firms with technologically advanced software systems. We have tried to use already developed online ordering systems, however as we only have a small amount of solicitor clients, it was not economical' ([REDACTED]).²⁹⁶

²⁹¹ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 6(a).

²⁹² [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁹³ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁹⁴ [IPSA's response to the provisional findings and notice of possible remedies](#), dated 27 June 2022, pages 10 and 12.

²⁹⁵ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

²⁹⁶ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 5(a).

Internal documents

6.98 A number of D&D internal documents refer to economies of scale:

- (a) Slides from an Index conference note economies from '[REDACTED]'.²⁹⁷
- (b) A D&D slide pack mentions economies of scale from '[REDACTED]'.²⁹⁸
- (c) Another identifies '[REDACTED]'.²⁹⁹
- (d) Another states that D&D's mission is to enable its growth strategy through '[REDACTED]'.³⁰⁰

6.99 Similarly, [REDACTED].³⁰¹ This may suggest that a lack of scale means smaller competitors struggle to compete on price. In this context, we note that [REDACTED] was subsequently acquired by [REDACTED]. The Parties submitted that this document was prepared for TMG's sales team meetings, was 'deliberately subjective' and was created to motivate TMG's sales team, and therefore it is 'erroneous to draw any inferences' from this document.³⁰² However, in our view, the fact that the document was prepared for TMG's sales meeting does not mean that no inference can be made from it about TMG's view of the importance of scale in the market.

6.100 D&D's acquisition documents showed cost synergies from combining platforms and back-office services (see paragraph 2.18), which also suggests economies of scale in relation to these services. We note that D&D anticipated these cost synergies even though the Parties are both already large relative to most firms in the industry.

Parties' submissions

6.101 D&D said that it achieved economies of scale from getting [REDACTED],³⁰³ [REDACTED] over greater volume, and from being able to produce RLAS more efficiently (a larger firm 'can go there and do two properties far quicker than going there, doing one property and coming back').³⁰⁴ However, D&D subsequently told us that RLAS scale economies were limited at the scale it operates. If D&D were

²⁹⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁹⁸ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

²⁹⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

³⁰⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [REDACTED].

³⁰¹ TMG response to CMA's s.109 Notice dated 23 December 2021, internal document entitled 'Sales Meeting' dated 7 November 2019, slide 5. Annex TM022.

³⁰² [Parties' Response to Provisional Findings](#) dated 8 June 2022, paragraph 2.13

³⁰³ D&D subsequently clarified that it had [REDACTED], but it did not [REDACTED], D&D's response to CMA's questions of 13 April 2022, paragraph 1.2.

³⁰⁴ Transcript of the main party hearing with D&D, 12 April 2022, pages 29–30.

to produce, for example, 50% fewer RLAS, it expects that its in-house staff costs would reduce by [REDACTED]%.³⁰⁵

6.102 When asked about economies of scale, TMG said volume did not have the expected effect because each transaction had to be handled separately, ie the cost of OLAS and ODWS was the same irrespective of volume purchased. In relation to overheads, TMG said it may achieve economies from spreading overheads over a larger volume ('the more we sell, the more gross margin we have to cover our overheads'). In regard to purchases of environmental reports, TMG said it [REDACTED] but indicated it did not know if it achieved lower prices from its relatively large purchases.³⁰⁶

6.103 D&D also provided a break-down of the cost of a typical residential PSRB supplied by D&D in terms of the cost of third party searches, the cost of searches carried out by D&D, other costs (eg insurance), D&D's allocation of central costs, and D&D's profit. D&D presented two illustrative examples of PSRBs based on PIE's costs: one containing property search reports compiled by D&D and one containing property search reports compiled by third party suppliers, see Table 6.2.

³⁰⁵ D&D's response to CMA's questions of 13 April 2022, paragraph 1.3.

³⁰⁶ Transcript of the main party hearing with TMG, 12 April 2022, pages 21-23.

Table 6.2: Breakdown of PIE costs for illustrative PSRBs comprising D&D reports and third party reports

				(£)
Report type	Cost type	Cost to D&D		
		D&D reports	Third party reports	
LA report				
Official	Payment to third party		[X]	
Regulated	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
DW report				
Official			[X]	
Regulated	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
Environmental report				
Landmark			[X]	
FCI	Staff costs (in-house)	[X]		
	Data & insurance costs	[X]		
Central costs and profit				
Allocation of central costs		[X]	[X]	
Profit		[X]	[X]	
Total (price paid by customer)		[X]	[X]	

Source: D&D's response to CMA's questions of 13 April 2022, paragraphs 1.1 to 1.3.

Note: D&D average prices are based on component and PSRB volumes and prices from PIE 2022 sales accounts; total overhead costs are based on March 2020 PIE P&L; and the price of each illustrative PSRB is the sum of the average prices of each of the products included in the illustrative PSRB. Central costs are allocated equally to each PSRB.

6.104 D&D's illustrative calculations show that for property search reports compiled by D&D, central costs (ie overheads) accounted for [30–40%] of total costs (excluding profit margin).³⁰⁷ For the illustrative example containing property search reports compiled by third party suppliers, central costs (ie overheads) accounted for [10–20%] of total costs (excluding profit margin). The central costs percentage was [£] for the example based on third party reports due to the price being [£] (£[£]) compared to £[£]), though we note that D&D tends to compile most of its own reports.³⁰⁸ The central costs percentage was also lower because the overheads in this example were allocated on a per-PSRB basis.

6.105 While D&D acknowledged the existence of economies of scale, at least in relation to central costs, it said that the existence of smaller search providers suggested that any economies of scale in relation to overhead costs do not result in barriers to entry and expansion.³⁰⁹ While we consider barriers to

³⁰⁷ Additionally, FCI staff costs for environmental reports amounted to [5-10%] of total costs RLAS and RDWS staff costs amounted to [30-40%] of total costs.

³⁰⁸ 79% of PIE's LA reports are RLAS rather than OLAS, and thus likely to be produced by D&D, D&D's response to CMA s.109 Notice dated 17 February 2022, paragraph 11.1.

³⁰⁹ D&D's response to CMA's questions of 13 April 2022, paragraph 1.2.

entry and expansion in more detail in Chapter 7 and Chapter 8, the existence of smaller suppliers in the market does not, by itself, provide evidence that any economies of scale are not a barrier to entry and expansion. We note that those smaller suppliers have generally not grown significantly over time (in fact the aggregate market share of smaller suppliers has decreased in recent years, as we set out in Chapter 7) and several of those suppliers consider that their small scale makes it difficult to compete effectively and win market share.

Conclusion on economies of scale

6.106 We have evidence from competitors and from the Parties that suggests economies of scale exist in this market. We conclude that larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volumes and number of customers supplied. This is likely to increase their capacity to make investments to raise the quality of their service, as well as to raise their profile with potential customers through marketing.

Recent market trends

6.107 The supply of PSRBs has changed in a number of ways in recent years, including increased digitisation and technological change more broadly, integration with case management software and ancillary services, the emergence of property technology (**PropTech**) companies,³¹⁰ and vertical integration.

Increased digitisation and technological change

6.108 We consider there to be at least two relevant trends with respect to digitisation and technological change within this market. Firstly, there is the digitisation of the underlying product, the PSRB itself, and secondly there are broader changes in the IT infrastructure PSRB suppliers use to operate, including the use of cloud computing and the sophistication of the PSRB platform.

6.109 The supply of PSRBs has been digitising for years. To date, the development of online search ordering platforms, which enable customers to order all searches online, has been important. These have brought a streamlined

³¹⁰ Companies providing property technology, the usage of technology, platforms, and software to assist in real estate markets.

process to the ordering of all searches and have made new build ordering and commercial mapping easier.³¹¹

6.110 So far as the compilation of search reports is concerned, D&D told us that there is a HM Land Registry project to digitise the LAs' local land charges. D&D said this project has been ongoing for five or six years and so far has been completed for about 40 out of 360 LAs.³¹²

6.111 Broader technological change and innovation is another trend in the market. ATI, which launched InfoTrack UK in 2015, attributes its rapid growth to its innovative offering, based on an open-source technological solution, which allows conveyancers to access the whole suite of property searches from the same interface, where previously conveyancers did manual website searches and used multiple platforms.³¹³

6.112 Landmark told us [REDACTED] and is enhancing infrastructure and capability, to reduce internal costs and make it more attractive and easier to use for customers ([REDACTED]). [REDACTED].³¹⁴

6.113 The Parties' documents show a focus on automation and improving and extending their systems. For example:

(a) A D&D strategic planning document of June 2021 stated a key lesson of 2021 for the UK and Ireland was that [REDACTED].³¹⁵ The same document listed three key projects for 2022 of which the first two were: [REDACTED].³¹⁶

(b) Another D&D strategy document of June 2021 referred to [REDACTED].³¹⁷

(c) A TMG shareholder briefing document of December 2020 stated that TMG saw 'the next three years as involving [REDACTED] in the property search market from one of [REDACTED] to a [REDACTED]'. Mentioned in this context were higher levels of [REDACTED] and [REDACTED] coming to the fore and getting utilised in the [REDACTED] as well as [REDACTED].³¹⁸

³¹¹ D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slide 2.

³¹² Transcript of the main party hearing with D&D, 12 April 2022, page 80.

³¹³ ATI call note, 16 February 2022, paragraphs 2-4.

³¹⁴ Landmark call note, 14 February 2022, paragraph 17.

³¹⁵ Global Strategic Planning Country & Shared Service Strategy, Slide 39

³¹⁶ Global Strategic Planning Country & Shared Service Strategy, Slide 55. The third project concerned [REDACTED].

³¹⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, additional questions, [REDACTED]. D&D submitted that references in these documents relate to the whole of D&D's UK and Ireland business and should not be inferred by the CMA as relating solely or predominantly to PSRBs in E&W. The Parties argue that, for example, [REDACTED] are relevant to Ireland, Business Law and Insights and Data. There should be no implication that these strategic initiatives are necessary to compete in relation to the supply of PSRBs in E&W. D&D Response to provisional findings putback request of 13 May 2022.

³¹⁸ Briefing ahead of shareholder meeting with D&D on 4 December 2020, page 4.

6.114 Overall, the evidence suggests that digitisation of the PSRB market, and broader technological innovation, is continuing through automation of search production, improvements to the platform, and introduction of new cloud services. The future implications of this for the structure of the market are uncertain but could be profound, particularly for the compilers of PSRBs.

Integration with case management software and ancillary services

6.115 Recent developments in the market have gone beyond the introduction of online ordering to involve integration with case management software and the supply (cross-selling) of ancillary services to PSRB customers.

6.116 The Parties told us that customers do not consider compatibility with case management or ancillary service platforms to be important, citing our customer survey results. They said that such services are often unrelated to PSRBs, and any additional features that such services offer are not necessarily purchased by the same user of PSRBs. In regard to ancillary services, they stated that to the extent they are important to customers, they are often purchased as an integrated offering alongside case management systems or the offering of other PropTech providers.³¹⁹

6.117 The Parties also submitted that our Provisional Findings overstated the importance of integration with case management systems and ancillary services, that the evidence shows that case management systems and ancillary services are not significant factors for competition in the market, and that suppliers that are not integrated with these services are not at a competitive disadvantage.³²⁰

6.118 However, at the start of our investigation the Parties had told us that, with the developments in technology and software, ancillary services are increasingly provided alongside property search report services and are designed to reduce transaction costs and improve the efficiency and quality of service for consumers.³²¹

6.119 Our customer survey showed that 7 (out of 170) respondents mentioned compatibility / ease of integration with other business software as the most important factor in choosing a PSRB supplier, and 9 other respondents mentioned it as important (but not most important), with 15 respondents mentioning range of additional / value-added services offered as important (but not most important). Therefore our survey provides no evidence that

³¹⁹ Parties' response to the Annotated Issues Statement and Working Papers, Appendix 1 paragraph 3.10.

³²⁰ [Parties' response to the Provisional Findings](#), paragraphs 5.1–5.3.

³²¹ Response to the Enquiry Letter, paragraph 11.17.

compatibility / ease of integration with other business software, and range of additional / value-added services are generally among the most important factors considered by the Parties' customers in choosing a PSRB supplier.

6.120 However, feedback from competitors supports the importance of integration with case management software and provision of ancillary services. In particular:

- (a) ATI submitted that InfoTrack's ability to integrate with over [REDACTED] existing third party case management software platforms used by conveyancing firms was very important for InfoTrack's growth in the UK.³²²
- (b) X-Press Legal told us that offering clients a bundle of searches and ancillary services has become increasingly important, and customers generally expect these services to be provided. X-Press Legal also told us [REDACTED]. X-Press Legal also raised concerns in relation to the provision of free case management software as a cross-selling strategy and long term contracts with case management system providers.³²³
- (c) IPSA told us that ancillary services are becoming increasingly important. IPSA added that they are particularly critical for the larger conveyancing firms. IPSA considers that, while ancillary services are important also for smaller conveyancers, they are not as critical. IPSA further told us that IPSA Members need to be able to offer ancillary services to try and compete for the larger law firms. In relation to case management systems, IPSA told us that almost all conveyancers use them. IPSA also told us that some case management systems do not allow conveyancers to choose their search supplier, and that this is a danger for competition as well as service levels.³²⁴
- (d) Feedback from a number of smaller competitors also supports the importance of integration with case management software and ancillary services (see Appendix C). For example, one smaller supplier submitted that 'Conveyancers are now in the digital age and require case management systems to execute the conveyance procedure and link with [HM Land Registry]. This has created a new Industry of Prop-Tech companies which seek to corner the marketplace from IT conveyancing provision to automated ordering of searches and reports to the final registering with HM Land Registry and HMRC'. ([REDACTED]).³²⁵

³²² ATI response to follow-up questions submitted to the CMA on 21 April 2022.

³²³ Xpress Legal call note, 27 June 2022, paragraphs 10 and 12.

³²⁴ IPSA call note, 16 June 2022, paragraph 9.

³²⁵ [REDACTED] response to phase 2 questionnaire of 21 January 2022, question 15.

6.121 Feedback from D&D Indirect franchisees is also overall supportive of the importance of integration with case management software and provision of ancillary services:

- (a) PSG [X] told us that ancillary services have ‘inevitably become a part [of competition]’. PSG [X] went on to say, ‘searches were just searches, now new clients want additional services such as anti-money laundering (AML) checks, due diligence and *know your customer* checks’ and that ‘ancillary services will become a significant differentiator in the market. In relation to case management systems, PSG [X] told us that sometimes large clients want to use PSG, but through their case management software; however, the case management software could be owned by a competitor, and they may restrict access to PSG.’³²⁶
- (b) PSG [X] told us that increasingly the provision of case management software is driving how much market share you can get as a provider of searches.³²⁷
- (c) When asked whether it is important to be integrated into case management systems, PSG [X] answered ‘yes and no’. PSG [X] explained that some clients are forced to use a search provider linked to a certain case management software, even if they may not want to use that search provider.³²⁸
- (d) The Index Franchise Association³²⁹ told us that ancillary services are very important, adding that this has become the case especially in the last two years, that the COVID-19 pandemic ‘brought digital onboarding to the fore’, and that ‘now you really do have to have a broader offering to retain and win business’.³³⁰ The Index Franchise Association also said that bigger law firms are adopting compliance aspects of conveyancing ancillary services earlier than smaller firms. It explained that the majority of clients prefer to buy searches and ancillary services from the same supplier, as this is more efficient. The Index Franchise Association also told us that it is preferable for a supplier to have its own offering of ancillary services (as opposed to reselling third party services), as these can be better integrated with the online ordering platform. In relation to case management software, the Index Franchise Association told us that it is ‘massively important’ for the Index franchisees to be integrated with

³²⁶ PSG call note, 21 June 2022, paragraph 9.

³²⁷ PSG call note, 21 June 2022, paragraph 10.

³²⁸ PSG call note, 21 June 2022, paragraph 8.

³²⁹ The Index Franchise Association is a body of 17 Index franchisees operating in E&W pursuant to rights granted to them by Index Franchising Ltd.

³³⁰ Index call note, 23 June 2022, paragraph 4.

case management software, and that the Index franchisees have lost clients in the past because they could not integrate with their case management systems. The Index Franchise Association further told us that it is very difficult for law firms to change case management system, and this may make changing search supplier difficult too.³³¹

6.122 We also found that the Parties' documents showed that customers attach importance to case management software and provision of ancillary services. For example:

- (a) A D&D document in relation to the acquisition of PIE (see paragraph 6.81) identifies technology integrations as a driver of switching Real Estate DD software, noting that as interoperable technology grows, a missing integration to a case management provider can cause movement to another supplier; and that without immediate processing through API connectivity to data providers, delay in production can push a conveyancer to another provider.³³²
- (b) A June 2021 D&D strategy slide pack states its FY22 Product Strategy involved 'acquisition cross-sell' (slide 2). This document also shows the importance D&D attaches to integration with case management software (slide 4) and ancillary services (slide 5).³³³ In response to our Provisional Findings, the Parties submitted that this document suggests that D&D [REDACTED], and that therefore it is not appropriate to present D&D as having a material advantage over other suppliers in this regard.³³⁴ However, irrespective of whether D&D has an advantage, we consider that the fact that D&D compares its integration with case management software and ancillary services with those of its competitors suggests that D&D sees such features as important.
- (c) D&D (PIE) market research in 2021 listed D&D's competitors representing the biggest threat as [REDACTED] and identified as relevant product features, alongside search ordering platforms, the following: [REDACTED]. [REDACTED] is listed first, before search ordering platforms.³³⁵

6.123 In response to our Provisional Findings, the Parties submitted that 'the mere fact that the Parties may or may not consider integration with CMS and various ancillary services in their internal documents does not mean these are

³³¹ Index call note, 23 June 2022, paragraph 13.

³³² D&D's response to the Phase 2 Opening Letter, Annex DD116, Slide 29.

³³³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0002119, additional questions, slide 5.

³³⁴ [Parties' response to the Provisional Findings](#), paragraph 5.2.8.

³³⁵ D&D internal presentation dated January 2021 titled 'Market Research.pptx', Annex DD0001726, slides 5, 7 and 9.

important aspects of quality that are important to customers or are key drivers of competition [or] customer choice'.³³⁶ We accept that the Parties' internal documents do not directly give the customers' perspective, however, we consider it is reasonable to interpret discussions and comparisons of these features in the Parties' internal documents as providing support for them being important to customers or drivers of competition.

6.124 A D&D Indirect franchisee internal document also recognised the importance of case management software and ancillary services. The 'Index PI South West Business Plan – 2020/2021' dated May 2020 stated that the market is changing largely due to the impact of [X], who are majoring on service offerings outside traditional search provision, namely: a leading modern case management system offering in [X]; integration to a variety of third party case management software systems; and post completion functionality. As already noted (see paragraph 6.820), [X]. The Index Indirect franchisee also identified five areas where D&D would assist its business going forward which included: [X].³³⁷

6.125 In summary, the evidence is to some extent mixed in that, while our customer survey did not show integration with case management software and ancillary services to be an important factor in choosing a PSRB supplier for most customers (although it was important for some), evidence from competitors, the D&D Indirect franchisees and from the Parties' internal documents suggested that integration with case management software and ancillary services is important. Taking this evidence in the round, our conclusion is that integration with case management software and ancillary services is already a driver of competition in this market and could become more important as the digitisation trend continues.

PropTech

6.126 The Parties submitted that a recent feature of the industry is the emergence of PropTech companies. The Parties submitted that these are often small companies, backed by venture capital, offering technology solutions to improve different aspects of the property transaction workflow, including the way in which PSRBs are ordered.³³⁸

6.127 [X] (a PropTech company that provides an automated risk assessment service to lawyers, title insurers and property developers) told us that 'in the

³³⁶ [Parties' response to the Provisional Findings](#), paragraph 5.2.8.

³³⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD-0001298.

³³⁸ [Parties' response to the Issues Statement](#), paragraph 3.10.

last three or four years PropTech has really seen a boom in the UK', that numerous start-ups have been launched alongside several PropTech specific incubators and Venture Capital investment funds, and that 'change in this industry and innovation is going to come from start-ups rather than the incumbents'. [X] was concerned that the Merger would disincentivise innovation in real estate transactions, because it would increase the trend for conveyancers to select one big supplier to provide search reports rather than smaller or emerging players who are innovative.³³⁹

6.128 While we recognise PropTech developments across the whole property sector are beneficial to conveyancers and their customers (ie property buyers), we did not consider they would necessarily strengthen smaller PSRB suppliers in competing with the Parties, ATI and Landmark. Many of the services offered by PropTech companies address other aspects of the conveyancing process or other aspects of property management and ownership and so have no direct impact on the market for PSRBs that we are concerned with. To the extent that third party PropTech firms offer services that are sold by or compete with PSRB suppliers, these are likely to be widely available but other evidence suggests that smaller PSRB suppliers may find it more difficult to integrate them into their existing platforms or services (see Appendix C, paragraph 8).

Vertical integration

6.129 Suppliers of PSRBs, including the Parties, typically source some or all of the RLAS and RDWS reports they need from within their own business.³⁴⁰ D&D is also present (through FCI and Terrafirma) in the supply of environmental and flood reports and other property search reports such as ground and mining and chancel, which are often included in PSRBs.

6.130 Three of the four large national PSRB suppliers supply environmental search reports, which are included in almost all PSRBs. Of these, ATI's Groundsure is the market leader and accounts for [60–70%] of environmental search reports, followed by Landmark with [30–40%], and D&D's FCI with [5–10%].³⁴¹

6.131 The vertical integration of environmental search reports and PSRB provision is a recent development, following ATI's acquisition of Groundsure, and D&D's acquisition of FCI and Terrafirma, all of which occurred in 2021.

³³⁹ [X] call note, [X], paragraphs 5 and 11.

³⁴⁰ Response to the Enquiry Letter, paragraph 11.3.3.

³⁴¹ See Table 3 of Appendix B.

Conclusion on market dynamics

- 6.132 Suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers, unless they have an existing relationship with the supplier concerned. The supply of PSRBs is therefore to an extent an 'experience' product.
- 6.133 In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms and by integrating them with other existing software which the customer may use.
- 6.134 Suppliers also compete on price, often by offering discounts off the list price as part of negotiations to win new customers or to retain existing customers.
- 6.135 The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
- 6.136 There are few technical or contractual barriers to switching and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing may help to facilitate switching between existing suppliers. However, given that customers multi-source with a limited number of suppliers and for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
- 6.137 Associated with the need to experience the product, relationships between customers and suppliers are often long-lasting and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.
- 6.138 Economies of scale exist in this market, and we conclude that larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volume and number of customers supplied.
- 6.139 The market is characterised by technological innovation, and has become increasingly digitised, including through integration with case management and ancillary services. It has also become vertically integrated as large PSRB suppliers have acquired companies that compile environmental reports.

7. Theory of harm

Introduction and framework of assessment

- 7.1 This chapter sets out our assessment of whether the Merger has given or may be expected to give rise to an SLC in the supply of PSRBs in E&W, by removing a previous competitive constraint from the market. This is a horizontal unilateral effects theory of harm.
- 7.2 Unilateral effects can arise in a merger where one firm merges with a competitor that previously provided a competitive constraint. Through the merger, removing one party as a competitor might allow the merged entity profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation relative to what might occur in the counterfactual.³⁴²
- 7.3 The concern under horizontal unilateral effects relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.³⁴³
- 7.4 As noted in Chapter 6, the Parties overlap in the supply of PSRBs in E&W.
- 7.5 In response to our working papers, the Parties submitted that the Merger does not give rise to an SLC.³⁴⁴ In particular, the Parties submitted that:³⁴⁵
- (a) the Parties are not particularly close competitors;
 - (b) high levels of switching and multi-sourcing are a material constraint;
 - (c) customers multi-source to encourage competition;

³⁴² MAGs, paragraph 4.1.

³⁴³ MAGs, paragraph 4.3.

³⁴⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.2.

³⁴⁵ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.1–2.45.

- (d) customers are sensitive to price;
- (e) smaller competitors, which the Parties refer to as 'regional experts', are a significant cumulative constraint on the Parties;
- (f) franchisees are an important competitive constraint; and
- (g) there is evidence of 'historic disruptive new entrance and growth, and the prospect of new entry is real, imminent and potentially disruptive'.

7.6 In response to our Provisional Findings, the Parties submitted that the CMA had not met its burden of proof in showing that the Merger may be expected to give rise to an SLC. The Parties considered that the available evidence shows that it is more likely than not that there is no SLC arising from the Merger.³⁴⁶ In particular, the Parties submitted that:³⁴⁷

- (a) the survey shows that: the Parties are not especially close competitors; there are considerable ongoing competitive constraints assisted by customer multi-sourcing; and switching regularly occurs not only between the four largest suppliers of PSRBs but also other suppliers;
- (b) quantitative evidence including the RBB loss analysis and the Parties' customer overlaps show switching between the Parties is less than what might be expected in a '7-6' scenario;
- (c) the Provisional Findings favoured less representative third party views outside of the survey and a limited number of internal documents; and
- (d) the Provisional Findings misrepresented the significance and nature of integration with case management software and ancillary services.

7.7 We consider the Parties' submissions as part of our assessment, which is structured as follows:

- (a) We set out our estimates of the shares of supply of the Parties and their competitors in the PSRB market in E&W.
- (b) We assess whether the Parties are close competitors, ie to what extent they acted as a competitive constraint on one another before the Merger.
- (c) Finally, we assess the remaining competitive constraints that the Merged Entity faces following the Merger from other large national providers of

³⁴⁶ [Parties' response to the Provisional Findings](#), paragraphs 1.4, 1.7 and 5.6.

³⁴⁷ [Parties' response to the Provisional Findings](#), paragraph 1.6.

PSRBs, from smaller providers of PSRBs, from D&D's franchisees, and from intermediaries.

Market shares

- 7.8 This section sets out the estimates of the shares of supply of the Parties and their competitors. It reflects the submissions we have received from the Parties during phase 1 and phase 2, the responses to competitors' questionnaires, as well as other evidence we have received to date.
- 7.9 We first consider the Parties' submissions on market shares. We then set out our estimates of the shares of supply of the Parties and the other PSRB suppliers by number of PSRBs sold annually. The analysis below is based on our view that the relevant market in which to measure such shares is the supply of PSRBs in E&W (see Chapter 6).

Parties' submissions

- 7.10 In response to the Issues Statement, the Parties submitted that there were three errors in the CMA's phase 1 market share analysis:³⁴⁸
- (a) an incorrect assessment of the total size of the market;
 - (b) a disregard of significant competitors; and
 - (c) an overestimation of D&D's presence in the market.
- 7.11 However, in relation to the total size of the market, the Parties ultimately submitted that they 'strongly suggest that the best way to ascertain the market size with any certainty would be to ask all retailers of PSRBs for their sales'.³⁴⁹
- 7.12 In relation to whether the CMA's estimates disregarded significant competitors, the Parties submitted that the CMA did not substantiate the claims that: (i) the inclusion of smaller suppliers would not materially alter the CMA's analysis, and (ii) there is no evidence to suggest that the smaller retailers have material shares of supply.³⁵⁰ The Parties noted that CoPSO estimates that there are over 150 retailers of PSRBs in E&W, and that IPSA lists a total of 55 members.³⁵¹ The Parties submitted that, at an aggregate

³⁴⁸ [Parties' response to the Issues Statement](#), paragraph 3.13.

³⁴⁹ D&D's response to the CMA's s.109 Notice (RFI3) dated 17 February 2022, paragraph 26.5.

³⁵⁰ [Parties' response to the Issues Statement](#), paragraph 3.18.

³⁵¹ [Parties' response to the Issues Statement](#), paragraph 3.17. We note that in an internal document of January 2019 D&D estimated that there are only approximately 80 search providers left in the UK, with membership

level, these suppliers still constitute a substantial part of the market and should be considered.³⁵²

- 7.13 In relation to D&D's presence in the market, the Parties submitted that the CMA overestimated D&D's presence by including sales of all of D&D's franchisees within D&D's share.^{353, 354} The Parties submitted that the Index Indirect and PSG Indirect franchisees operate independently from and are economically independent of D&D, and that D&D cannot influence its D&D Indirect franchisees' commercial strategy or objectives.³⁵⁵ The Parties consider that D&D's share of supply should consist only of sales D&D makes directly to customers (ie D&D Direct).³⁵⁶

Our analysis

- 7.14 There is no publicly available information on the shares of supply or the total size of the market for the supply of PSRBs in E&W.³⁵⁷ We note that the total market size is largely determined by the number of property transactions. However, data received by the Parties and third parties (see Table 7.1 and Table 7.2 below) shows that the total number of PSRBs supplied in E&W in 2021 exceeded the number of completed property transactions recorded by HMRC,³⁵⁸ and the exact number of PSRBs supplied in E&W in 2021 is unknown.
- 7.15 For these reasons, we consider that the best way to estimate the market size, market shares, and their evolution over time is to use volume figures from suppliers of PSRBs. We therefore requested sales volume data from the Parties and all CoPSO members, as further explained below.
- 7.16 In order to cross-check our estimates of the total market size, we also requested data on the volume of environmental search reports purchased from the three main environmental report providers (see Appendix B). The Parties submitted that the estimates of the shares of supply based on environmental report data are likely to be a more reliable measure of the whole market than the estimates based on the Parties' and CoPSO members'

numbers of the Search Code being out of date (D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD937.

³⁵² [Parties' response to the Issues Statement](#), paragraph 3.18.

³⁵³ [Parties' response to the Issues Statement](#), paragraph 3.20.

³⁵⁴ We discuss the Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.9–5.14, below in paragraph 7.189.

³⁵⁵ [Parties' response to the Issues Statement](#), paragraphs 3.20–3.21.

³⁵⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 3, paragraph 1.4.

³⁵⁷ [Phase 1 Decision](#), paragraph 83.

³⁵⁸ [HMRC data](#) (accessed by the CMA on 1 August 2022) indicates that around 1,437,950 property transactions with a value of £40,000 or above were completed in E&W in 2021 (combining residential and non-residential property transactions).

data, as the former cover 98% of PSRBs (see Appendix B), while the latter are based on responses from only 39 out of the 88 listed CoPSO members (excluding the Parties).³⁵⁹ As explained in Appendix B, we consider that the two sets of shares of supply are not significantly different. Moreover, as explained in Appendix B, the estimates based on environmental reports only cover 2021, while the estimates based on the Parties' and CoPSO members' data cover 2018-2021. We therefore adopted the latter estimates for the purposes of our assessment but took into account the fact that the shares based on sales of environmental reports also supported our findings regarding the structure of the PSRB market.

- 7.17 In relation to the Parties' submission regarding the D&D Indirect franchisees (see paragraph 7.13), we consider below (paragraphs 7.187 to 7.227) the degree to which third-party owned franchisees (ie D&D Indirect franchisees) exert a sufficient competitive constraint on D&D. For the purposes of calculating market shares, we have presented D&D Indirect as part of the Merged Entity (see Table 7.1) as well as separately (see Table 7.2). We show below (see paragraph 7.22(a)) that the exclusion of D&D Indirect franchisees from the Merged Entity does not materially affect our conclusions in relation to the impact of the Merger on market structure.

Our estimates of shares of supply

- 7.18 We sought to estimate the shares of supply of the Parties, ATI, Landmark, the franchise groups, and the smaller competitors by verifying the volume of PSRBs that these suppliers sold to conveyancers and intermediaries in each year from 2017 to 2021. To do this, we requested sales volume data from the Parties and all CoPSO members.³⁶⁰ We received a total of 42 responses from third parties, which cover 39 out of the 88 listed CoPSO members (excluding the Parties) as well as three water companies.³⁶¹
- 7.19 Our shares of supply estimates are reported in Table 7.1 and Table 7.2. Appendix B includes the estimates listing each smaller supplier that provided its sales data individually.³⁶² We excluded from the estimates the responses

³⁵⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 3, paragraph 1.1. See also [Parties' Supplementary Response to the Provisional Findings](#), dated 27 June 2022, paragraphs 4.1–4.2.

³⁶⁰ Listed in D&D's response to the CMA's s.109 notice dated 23 December 2021, Annex DD003. We note that all the IPSA members listed in this Annex are also CoPSO members.

³⁶¹ Water companies are generally not registered with CoPSO. We also note that only ATI's brand InfoTrack and Landmark's brand OneSearch Direct are CoPSO members. Moreover, in an internal document of January 2019, D&D estimated that there are only approximately 80 search providers left in the UK, with membership numbers of the Search Code being out of date (D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See response to question 21, Annex DD-937).

³⁶² We chose to exclude the 2017 volumes and shares from our analysis because data was not available for PSG as well as several smaller competitors, *inter alia*, because they were established after 2017.

of five CoPSO members, which we identified to be resellers or specialist providers that do not compete with the Parties in the supply of PSRBs in E&W.³⁶³ One CoPSO member responded that it was too difficult to supply sales data.³⁶⁴

- 7.20 It was not possible to include all of the smaller suppliers of PSRBs active in E&W in the estimates because we did not receive responses from all CoPSO members. However, we consider that the inclusion of the remaining smaller suppliers would not materially alter the analysis as:
- (a) We show in Appendix B that an estimation of the shares of supply of each of the Parties, ATI, Landmark, franchise groups and the tail of smaller competitors based on the upstream supply of environmental search reports shows that no significant competitors are excluded from the estimates in Table 7.1 and Table 7.2 below.
 - (b) We show in Appendix B that our estimates based on downstream sales volume data are broadly consistent with the estimates in the Parties' internal documents.
 - (c) We find that the addition of 23 small competitors at phase 2: (i) increased the estimated market share of the tail of smaller competitors ('Others' in Table 7) by only [0–5] percentage points compared with the phase 1 estimates, and (ii) reduced the Merged Entity's estimated market share by only [0–5] percentage points in 2020 when third-party owned franchisees are included.
- 7.21 Therefore, we have three sources of evidence (the upstream environmental reports, the downstream sales volumes data, and estimates from the Parties' internal documents) to confirm that our methodology for estimating total market size and shares of supply over the last few years is appropriate, and we have found no evidence indicating that the missing small suppliers would have larger shares than those included in our estimates. On this basis, we consider that their inclusion would not materially change our estimates.

³⁶³ We excluded the following for specialist providers: [REDACTED] (coal mining reports), [REDACTED] ('Interpretive metalliferous Mining Searches'), [REDACTED] ('Chancel and Ground Risk' reports) and [REDACTED] (Electronic AML Certificates). We excluded the reseller [REDACTED].

³⁶⁴ [REDACTED].

Table 7.1: Shares of supply of PSRBs in E&W (including third-party owned franchisees in Merged Entity)

Supplier	Volume (in thousands)				Share (%)			
	2018	2019	2020	2021	2018	2019	2020	2021
PIE / PSG Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
GlobalX	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SDG	[X]	[X]	[X]	N/A	[0-5]	[0-5]	[0-5]	N/A
<i>D&D Direct</i>	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Indirect	[X]	[X]	[X]	[X]	[0-5]	[5-10]	[5-10]	[5-10]
PSG Indirect	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
<i>D&D Indirect</i>	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[5-10]
<i>D&D (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[20-30]	[20-30]	[20-30]
tmConvey	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
CDS	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[10-20]
<i>TMG (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
<i>Combined</i>	[X]	[X]	[X]	[X]	[40-50]	[40-50]	[40-50]	[40-50]
InfoTrack	[X]	[X]	[X]	[X]	[5-10]	[10-20]	[10-20]	[10-20]
Search Acumen	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
<i>ATI (total)</i>	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[20-30]
OneSearch Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SearchFlow	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
<i>Landmark (total)</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
<i>Others</i>	[X]	[X]	[X]	[X]	[20-30]	[10-20]	10-20]	[10-20]
<i>Total</i>	1,147	1,202	1,236	1,451	100	100	100	100

Source: CMA's estimates based on the Parties' and competitors' residential and commercial sales volume data.

Notes:

- [X] data for SDG is not available for 2021 (marked as N/A for clarity). [X].
- Data is not available for PSG before June 2018. The PIE/PSG figures for 2018 include only revenue and volumes for the period June-December 2018.
- Index franchisees and PSG franchisees owned and operated by D&D are referred to as, respectively, Index Direct and PSG Direct. Index franchisees and PSG franchisees owned and operated by third parties are referred to as, respectively, Index Indirect and PSG Indirect. All D&D owned and operated businesses (ie PIE, GlobalX, SDG, Index Direct, and PSG Direct) are referred to as D&D Direct. Index Indirect and PSG Indirect are referred to collectively as D&D Indirect.
- For the following suppliers, regulated and official Local Authority (LA) searches were used as a proxy for bundles: D&D, TMG, [X].
- Some competitors may have included sales to resellers, which could have led to double counting and, thus, overestimation of their share and of the total size of the market.
- 'Combined' figures include D&D's and TMG's brands, and all Index (Direct and Indirect) and PSG (Direct and Indirect) franchisees.

Table 7.2: Shares of supply of PSRBs in E&W (excluding third-party owned franchisees from Merged Entity)

Supplier	Volume (in thousands)				Share (%)			
	2018	2019	2020	2021	2018	2019	2020	2021
PIE / PSG Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Index Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
GlobalX	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SDG	[X]	[X]	[X]	N/A	[0-5]	[0-5]	[0-5]	N/A
D&D Direct	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
tmConvey	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
CDS	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[10-20]
TMG (total)	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Combined	[X]	[X]	[X]	[X]	[30-40]	[30-40]	[30-40]	[30-40]
Index Indirect	[X]	[X]	[X]	[X]	[0-5]	[5-10]	[5-10]	[5-10]
PSG Indirect	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
D&D Indirect	[X]	[X]	[X]	[X]	[5-10]	[5-10]	[5-10]	[5-10]
InfoTrack	[X]	[X]	[X]	[X]	[5-10]	[10-20]	[10-20]	[10-20]
Search Acumen	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
ATI (total)	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[20-30]
OneSearch Direct	[X]	[X]	[X]	[X]	[0-5]	[0-5]	[0-5]	[0-5]
SearchFlow	[X]	[X]	[X]	[X]	[10-20]	[10-20]	[10-20]	[10-20]
Landmark (total)	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Others	[X]	[X]	[X]	[X]	[20-30]	[10-20]	[10-20]	[10-20]
Total	1,147	1,202	1,236	1,451	100	100	100	100

Source: CMA's estimates based on the Parties' and competitors' residential and commercial sales volume data.

Notes:

1. [X], so data for SDG is not available for 2021 (marked as N/A for clarity). [X].

2. Data is not available for PSG before June 2018. The PIE/PSG figures for 2018 include only revenue and volumes for the period June-December 2018.

3. Index franchisees and PSG franchisees owned and operated by D&D are referred to as, respectively, Index Direct and PSG Direct. Index franchisees and PSG franchisees owned and operated by third parties are referred to as, respectively, Index Indirect and PSG Indirect. All D&D owned and operated businesses (ie PIE, GlobalX, SDG, Index Direct, and PSG Direct) are referred to as D&D Direct. Index Indirect and PSG Indirect are referred to collectively as D&D Indirect.

4. For the following suppliers, regulated and official LA searches were used as a proxy for bundles: D&D, TMG, [X].

5. Some competitors may have included sales to resellers, which could have led to double counting and, thus, overestimation of their share and of the total size of the market.

6. 'Combined' figures include D&D's and TMG's brands, and Index Direct and PSG Direct.

7.22 While we recognise there is some uncertainty about the exact size of the market, our estimates in Table 7.1 and Table 7.2 show the following:

- (a) The Merger combines two of the four main suppliers to create the largest player in the supply of PSRBs in E&W, with a share of supply in 2021 of about [40–50%] when third party owned franchisees (ie D&D Indirect) are included, and of about [30–40%] when they are excluded from the Merged Entity.³⁶⁵
- (b) The four large national suppliers before the Merger each held relatively similar shares of supply as of 2021, ranging between [10-20%] or [10–

³⁶⁵ As explained in paragraph 7.27 below, we reach the same conclusions even when using shares based on environmental report data.

20%] (depending on whether D&D Indirect shares are attributed to D&D) and [20–30%].

- (c) The market is highly concentrated, with the Merged Entity, ATI, and Landmark together accounting for around [80–90%] of the market.³⁶⁶ Even if the D&D Indirect franchisees are excluded, the share of supply of the Merged Entity, ATI, and Landmark together still accounts for around [70–80%] of the market.
- (d) D&D's share of supply has fallen since 2018, if D&D Indirect is excluded; if included, D&D's share has been relatively constant. Both TMG and Landmark have lost share of supply since 2018, whilst ATI's share has grown.
- (e) In 2018, the Merged Entity's next largest competitor aside from ATI and Landmark was X-Press Legal with a market share of [5–10%] (see Appendix B, Table 1 and Table 2). However, since 2018 this competitor has lost market share. While X-Press Legal is still the largest of these smaller competitors, it now has a share of supply of only [0–5%], as discussed in more detail in paragraphs 7.152 to 7.156 below. In 2021, no competitor in the tail of smaller suppliers had a share of supply of more than [0–5%].
- (f) The tail of smaller suppliers for which we have data has collectively lost market share since 2018 (down from [20–30%] to [10–20%] in 2021). Their aggregate share decreased each year between 2018 and 2021 by about [0–5] to [0–5] percentage points (see also paragraphs 7.157 to 7.161 below).

7.23 In response to our Provisional Findings, the Parties submitted that the unredacted shares of supply data provides evidence that the Parties are not particularly close competitors and that they are constrained.³⁶⁷ In particular, the Parties noted that:

- (a) Excluding D&D Indirect, the Parties' combined share of supply [REDACTED].³⁶⁸
- (b) ATI's market share has increased [REDACTED] between 2018 and 2021, [REDACTED], which 'strongly suggests that ATI's growth is not slowing, and that ATI's market share will continue to increase in future years'.³⁶⁹

³⁶⁶ See Table 1 in Appendix B.

³⁶⁷ Parties' Supplementary Response to the Provisional Findings, dated 27 June 2022, paragraph 2.

³⁶⁸ Parties' Supplementary Response to the Provisional Findings, dated 27 June 2022, paragraph 2.2.

³⁶⁹ Parties' Supplementary Response to the Provisional Findings, dated 27 June 2022, paragraph 2.4.

- 7.24 In relation to the fact that D&D Direct's and TMG's share have decreased, and that the Parties' combined share (excluding D&D Indirect) [REDACTED], we note that the Parties' internal records suggest that both Parties' lost more than [40-50]% of their switching customers to ATI in the last few years (see Tables 7.6-7.8). This suggests that the Parties' decreasing shares are largely due to ATI's recent expansion.³⁷⁰ We do not consider that comparing the market share trends of the Parties to those of the smaller suppliers is informative for our analysis of closeness of competition between the Parties or the competitive constraint the Parties face from smaller suppliers. The fact that the Parties' combined shares [REDACTED] (if D&D Indirect is excluded) does not in our view show that the Parties are not close competitors.
- 7.25 In relation to ATI's market share increase, we have considered this and the rest of the evidence on the competitive constraint exerted by ATI (and Landmark) at paragraphs 7.126 to 7.146. We concluded that ATI has been a particularly effective and successful competitor in recent years and is likely to remain an effective competitor to the Parties in the foreseeable future.
- 7.26 The Parties further submitted that the conclusions drawn in the Provisional Findings from the share of supply data are 'flawed'.³⁷¹ In particular, the Parties noted that when calculated on the basis of environmental search reports:³⁷²
- (a) the Parties' share of supply is lowered to [REDACTED]% when D&D Indirect is excluded and to [REDACTED]% when D&D Indirect is included, with the increment brought by the Merger lowered to [REDACTED]%; and
 - (b) ATI's share of supply in 2021 was [REDACTED]%, therefore [REDACTED].
- 7.27 As explained in paragraph 7.16 above, we consider that our shares of supply estimates based on environmental searches are not significantly different from those based on the Parties' and competitor data. Further, we consider that both sets of estimates clearly show that the Merger creates the largest player in the supply of PSRBs in E&W and that the four main suppliers represent around 70-80% of the market. When using the environmental searches data, the Merged Entity's estimated share in 2021 was [30-40]% or [30-40]% (depending on the inclusion of D&D Indirect), which is clearly larger than ATI's share [20-30]%.

³⁷⁰ We note that some of the Parties' brands did not lose market share between 2018 and 2021, including CDS and [REDACTED].

³⁷¹ Parties' Supplementary Response to the Provisional Findings, dated 27 June 2022, paragraph 4.

³⁷² Parties' Supplementary Response to the Provisional Findings, dated 27 June 2022, paragraphs 4.3-4.4.

Closeness of competition

- 7.28 Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, the stronger the *prima facie* expectation that any of the two firms are close competitors. In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.³⁷³
- 7.29 Before the Merger the Parties were two of the four main suppliers of PSRBs in E&W. As we set out in this chapter, the evidence available to us shows that competition mainly takes place among few firms, which together account for at least [70-80]% of the market,³⁷⁴ and with the other suppliers active in the market having a far less significant competitive presence.
- 7.30 In keeping with the approach set out in the CMA's guidance, we therefore consider that there is a strong *prima facie* likelihood that the two firms are close competitors and have considered whether there is persuasive evidence to suggest that they are not close competitors.
- 7.31 The Parties have commented that 'it is not credible to suggest that the Parties are particularly close competitors and there is no basis for the CMA to rely on the structural presumptions it identifies'.³⁷⁵
- 7.32 In relation to closeness of competition, the Parties submitted that they are not 'particularly close competitors', and that they focus on different parts of the market as evidenced by the low switching between them.³⁷⁶
- 7.33 In response to our Provisional Findings, the Parties submitted that they are not sufficiently close competitors for the Merger to give rise to competition concerns.³⁷⁷ In particular, the Parties submitted that:³⁷⁸

³⁷³ MAGs, paragraph 4.10.

³⁷⁴ Based on the environmental search report estimates and excluding D&D Indirect (see Appendix B). The estimates based on the Parties' and competitor data are slightly higher (see paragraph 7.23(c) above).

³⁷⁵ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.9, and Appendix 1, paragraph 2.12.

³⁷⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.6-2.11, and Appendix 1, paragraphs 2.1-2.12.

³⁷⁷ Parties' response to the Provisional Findings, paragraph 3.

³⁷⁸ Parties' response to the Provisional Findings, paragraphs 3.1.1 to 3.1.3.

- (a) 15 pieces of quantitative evidence show that the constraint posed by each Party on the other is more in line with a '7-6' scenario than with a '4-3' scenario;
- (b) the Provisional Findings only placed weight on a small part of the available quantitative evidence; and
- (c) properly considered, the evidence shows that the Parties are not sufficiently close competitors.

7.34 By way of context to our assessment, we note that we are not seeking to rely on 'structural presumptions' in our review of the Merger. However, it is the case that the evidence available to us in relation to the existing structure of the market (in which few firms account for the vast majority of supply), in conjunction with the change in market concentration brought about by the Merger (see our market shares analysis above), provides important context, considered in the round with all of the other available evidence, for our assessment.

7.35 Moreover, as set out in paragraph 7.28 above, the issue is not whether the Parties are 'particularly' close competitors but whether they are sufficiently close competitors for the Merger to raise competition concerns. Our guidelines³⁷⁹ describe our approach to assessing this issue.

7.36 In assessing closeness of competition between the Parties, we have considered:

- (a) the types of PSRB customers and search requests served by the Parties;
- (b) evidence of switching between the Parties;
- (c) the Parties' submission that evidence of multi-sourcing shows they are not close competitors;
- (d) evidence from the Parties' internal documents; and
- (e) evidence from customers (including customer survey respondents) and competitors.

³⁷⁹ [MAGs](#), paragraph 4.10.

Types of PSRB customers and search requests served by the Parties

Parties' submissions

- 7.37 The Parties submitted that '... there is very limited overlap between the Parties' customers. D&D's business is mainly the supply of regulated searches to small and medium sized conveyancers, who tend to focus on residential transactions. In contrast, TMG's main business is the supply of official searches to large city law firms, focusing more on commercial property transactions'.³⁸⁰
- 7.38 The Parties have made the related submission that that there are three main customer groupings:³⁸¹
- (a) intermediaries, which exercise effective buyer power;
 - (b) large law firms, where the Parties hardly overlap; and
 - (c) smaller conveyancers, which 'have regional demands and hence are served by the multitude of smaller regional players which compete alongside the national providers'.
- 7.39 At the site visit, the Parties described their business focus as follows:
- (a) D&D stated that 'Retailers target different types of customers. Dye & Durham targets small and medium conveyancers... Large law firms ... focus on commercial properties... Dye & Durham has little presence in this segment'.³⁸²
 - (b) TMG stated that 'TMG's clients are more targeted to large law firms than Dye & Durham. TMG's core brand, tmConvey, focuses on retailing property search report bundles to large law firms and conveyancers. These clients tend to work on commercial real estate transactions and have a lower profile in the residential segment. Commercial end consumers have different requirements than residential consumers: Preference for Official Local Authority Searches (as opposed to Regulated); Require efficient output that are able to be supplied quickly and in bulk; Value the service quality of the overall experience, including

³⁸⁰ [Parties' response to the Issues Statement](#), paragraph 4.2. Similarly, at phase 1, the Parties stated that '... the Parties themselves do not represent particularly close competitors. Dye & Durham's focus is on small residential conveyancers (e.g., a 'high street' conveyancer). In contrast, TMG's main customers are its prior Shareholders and large city law firms which, in the Parties' view, are likely to consider the TMG's service proposition to be better suited for more complex requirements' – see Response to the Enquiry Letter, paragraph 30.

³⁸¹ Response to the Issues Paper, paragraph 4.2.

³⁸² D&D Site Visit slide pack, dated 3 February 2022, slide 11.

efficient billing and support; Large law firms and conveyancers have buyer power'.³⁸³

7.40 In their response to our working papers, the Parties submitted that residential and commercial demand also differed by the type of searches required:³⁸⁴

- (a) TMG's core focus is as a retailer of PSRBs to large law firms and commercial conveyancers in E&W and Scotland. Its focus is on commercial transactions and the provision of OLAS and ODWS, which are overwhelmingly the preferred searches for commercial transactions.
- (b) In contrast, D&D's core focus is on the provision of RLAS reports and RDWS reports for residential conveyancers in E&W. D&D has no material presence in the supply of PSRBs to large law firms and commercial conveyancers. D&D is not regarded as a credible alternative to TMG in this space. D&D is also not active in Scotland.

7.41 We note that the Parties provided an account of residential and commercial search requests at phase 1, in which the distinctions between the two appeared less clear-cut:

'While the market distinguishes between residential and commercial, the sets of standard enquiries in a LA search report (ie usually an LLC1 and a CON29R form) are the same for both residential and commercial properties. An RLAS for a commercial property will generally cover a wider geographic area around the property and provides greater level of detail than an RLAS for a residential property. This is also the case for an RDWS for a commercial property. The vast majority of RLAS and RDWS are for residential properties (c.90% in E&W). Demand and supply for both residential and commercial property searches tends to be through the same customers and suppliers/retailers. The spread of residential vs commercial will reflect the customers' respective businesses. For example, the smaller high street law firms and conveyancers will tend to deal with residential properties whereas larger law firms will tend to deal with commercial properties'.³⁸⁵

³⁸³ TMG Site Visit slide pack, dated 3 February 2022, slide 6.

³⁸⁴ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.6, and Appendix 1, paragraph 2.3.

³⁸⁵ Response to the Enquiry Letter, paragraph 11.9.

Our assessment of closeness of competition

7.42 As explained in Chapter 6, we considered the impact of the Merger in relation to the supply of PSRBs, without further dividing this product market between residential and commercial or by customer group. We found that all of the Parties' brands supply both residential and commercial reports, and that all of the Parties' brands serve small conveyancers, medium/large conveyancers, large law firms and intermediaries to some degree.

7.43 In the following we consider:

- (a) whether there are distinct categories of demand for search reports from different customer types, that is from (i) small to medium-sized conveyancers focused on residential transactions on the one hand and (ii) large law firms focused on commercial transactions on the other;
- (b) the Parties' respective presence in each of these categories; and
- (c) the potential for D&D to expand its presence in the supply of search services to large law firms.

Whether there are distinct categories of demand from different customer types

7.44 In order to explore the Parties' claims, the CMA requested sales data from the Parties, split between: '(i) small conveyancers (residential); (ii) large city law firms (residential); (iii) small conveyancers (commercial); and (iv) large city law firms (commercial)'.³⁸⁶ In order to respond to this request, the Parties categorised³⁸⁷ 'large' customers as being law firms in the 'Top 100' of a publicly available ranking by *The Lawyer*, 'small' customers as those who had completed up to 240 transactions in 2020, with the remaining conveyancers being categorised as 'medium', and a number of other customer types, including Panel Managers, being listed in their own categories.

7.45 In particular, the Parties provided customer lists showing sales revenues for each PSRB customer in E&W in 2020.^{388,389} We have considered whether the data indicates a clear distinction between small/medium conveyancers that purchase residential PSRBs and large law firms that purchase commercial PSRBs. To do this we assessed the combined revenues of the Parties by customer and PSRB type as shown in Table 7.3.

³⁸⁶ Parties' response to the CMA's s.109 Notice dated 27 September 2021, question 12.

³⁸⁷ Parties' response to the CMA's s.109 Notice dated 27 September 2021, question 12.

³⁸⁸ D&D response to CMA's s.109 Notice dated 23 December 2021, Annex 2.

³⁸⁹ TMG's response to CMA's s.109 Notice dated 23 December 2021, Annex 2.

Table 7.3: Parties' combined 2020 sales revenues by customer type and PSRB type

<i>Customer type</i>	<i>Residential PSRBs</i>	<i>Commercial PSRBs</i>
Small	[REDACTED]	[REDACTED]
Medium	[REDACTED]	[REDACTED]
Top 100	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]

Source: D&D's response to CMA's s.109 Notice dated 23 December 2021, question 2. See also, TMG's response to CMA's s.109 Notice dated 23 December 2021, question 2.

7.46 In relation to the above data we note the following:

- (a) Residential PSRBs acquired by small and medium conveyancers and intermediary/others, accounted for £[REDACTED] million of the Parties' combined £[REDACTED] million revenues in 2020.
- (b) A majority of the revenues from the Parties' customers which are Top 100 law firms is also derived from the sale of residential PSRBs (£[REDACTED] million, compared to £[REDACTED] million from the sale of commercial PSRBs).
- (c) While demand for commercial PSRBs is highest from Top 100 law firms, small and medium firms also account for a substantial proportion of demand for commercial PSRBs (£[REDACTED] million out of a total £[REDACTED] million).

7.47 While this data relates only to the Parties and not the entire market, it does not support a clear division between demand for commercial PSRBs from Top 100 law firms on the one hand, and demand for residential PSRBs from small and medium firms on the other. That is, we do not see the Top 100 law firms accounting for a large majority of demand for commercial PSRBs.

7.48 We asked several law firms about their demand for PSRBs in relation to large commercial transactions, and how this differs from residential transactions. It emerged from these discussions that commercial searches tend to be substantially more expensive than residential searches (which are around £200 to £500) for a given property:

- (a) Eversheds Sutherland told us that commercial property searches are more expensive than residential searches because they are backed up by a higher indemnity limit, so commercial searches could be priced at between £1,500 and £2,500 per property.³⁹⁰
- (b) Mincoffs Solicitors said that the cost of searches for a transaction involving purchase of an industrial unit for £400,000, or a big commercial

³⁹⁰ Eversheds Sutherland call note, 23 February 2022, paragraph 10.

site for a £100 million development project, will range from £700 to £1,100 approximately.³⁹¹

7.49 The number of law firms engaged in such large projects may be even more limited than the Top 100 law firms. In particular Eversheds Sutherland told us that it faced competition from the top 50 law firms in real estate work, but there were five to ten law firms which regularly competed with Eversheds Sutherland on large commercial real estate work and which had the same resources and expertise.³⁹²

7.50 According to the customers we spoke to, the aspects that were important to be able to support customers engaged in large commercial transactions appeared to be efficiency and reputation:

(a) [REDACTED] said that the size of the search report provider is not considered an issue so long as they have the technological infrastructure needed to action search requests with the source providers quickly and efficiently. [REDACTED].³⁹³

(b) Mincoffs Solicitors told us that for commercial transactions, D&D is reliable for completing a range of searches in a short period of time and the D&D business contact is efficient and effective at dealing with all enquiries. Mincoffs Solicitors saw D&D's competitors as all very similar.³⁹⁴

(c) Eversheds Sutherland look for search providers who have sufficient reputation in the market and their representative said 'I will only ever stay at the top with those who we consider to be market leaders.... or the longest established or just the ones we are used to or the ones we are set up with'. For Eversheds Sutherland, the options are TMG, SearchFlow (Landmark) and InfoTrack (ATI). Their representative would not choose D&D and 'have not considered them as a search provider', adding 'they have not come across my radar'.³⁹⁵

7.51 Taking this evidence in the round, we consider that there appears to be a difference between (on the one hand) search services for very large multi-unit transactions carried out by some of the largest law firms, and (on the other hand) the wider demand for residential or commercial PSRBs from other customers. Moreover, this top-end demand appears to be narrower than the categories of 'commercial', 'Top 100', or even 'commercial top 100'.

³⁹¹ Mincoffs Solicitors call note, 22 February 2022, paragraph 10.

³⁹² Eversheds Sutherland call note, 23 February 2022, paragraph 15.

³⁹³ [REDACTED] call note, [REDACTED], paragraph 7.

³⁹⁴ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

³⁹⁵ Eversheds Sutherland call note, 23 February 2022, paragraph 13.

The Parties' presence by customer type and PSRB type

7.52 Table 7.4 sets out how the Parties' 2020 sales revenues were split between customer type and PSRB type.

Table 7.4: Parties' 2020 sales revenues by customer type and PSRB type

(%)

Customer type	D&D			TMG		
	Residential PSRBs	Commercial PSRBs	Total	Residential PSRBs	Commercial PSRBs	Total
Small	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Medium	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Top 100	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Panel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
All customers	[REDACTED]	[REDACTED]	100	[REDACTED]	[REDACTED]	100

Source: D&D's response to CMA's s.109 Notice dated 23 December 2021, question 2. See also, TMG's response to CMA's s.109 Notice dated 23 December 2021, question 2.

7.53 Table 7.4 shows that the Top 100 law firm category accounted for a substantially larger share of TMG's business ([REDACTED]%) than D&D's business ([REDACTED]%). We note that this was the case for the sale of both residential and commercial PSRBs. However, we also note the following:

- (a) The evidence does not support the Parties' submission that 'TMG's main business is the supply of official searches to large city law firms, focusing more on commercial property transactions.' In fact, TMG's business is not primarily focused on the Top 100 law firms (other customer types make up a [REDACTED] ([REDACTED]%) of its business by revenue), nor on the sale of commercial searches (residential PSRBs account for [REDACTED]%) of its business by revenue).
- (b) TMG has a substantial presence serving small customers ([REDACTED]%) of its business by revenue) and medium customers ([REDACTED]%).
- (c) D&D has a material presence in the sale of commercial PSRBs, accounting for [REDACTED]%) of its revenues.
- (d) Both Parties have a material presence in serving residential demand through Panel Managers (including a large proportion of TMG's business for 'other' customer types, consisting of referrals from the three estate agents which are TMG's former Shareholders).

7.54 We consider that this evidence is not consistent with there being very limited overlap between the Parties' customers.

7.55 The Parties did not comment directly on this evidence in their response to our working papers. However, they submitted that: 'While TMG owns CDS, which supplies RLAS and RDWS reports, including to residential properties, this is

not the core focus of the group'.³⁹⁶ We note that TMG's presence in the supply of reports for residential properties is not limited to those supplied by CDS. Indeed, in 2021, tmConvey's residential revenues exceeded £[X] million, more than double its commercial revenues (£[X] million) and substantially more than CDS's residential revenues (£[X] million).³⁹⁷ TMG further submitted that of tmConvey's £[X] million residential revenues in 2021 £[X] million relate to sales to TMG's former shareholders, and £[X] million revenues relate to sales to Top 100 law firms.³⁹⁸ However, we consider that, even excluding sales to these two customer groups, tmConvey's remaining residential revenues from sales to small and medium/large conveyancers and intermediaries, around £[X] million, are still significant.

- 7.56 In addition, the Parties' submission that TMG is focused on official searches for commercial transactions, while D&D is focused on regulated searches, is not supported by the evidence. As set out in Table 7.5Table 7.6, each of the Parties' sales are split between RLAS and OLAS with a substantial proportion in each category. While for each Party the relative proportion of RLAS and OLAS varies by brand, each brand provides substantial volumes of both types of searches.

Table 7.5: Parties' proportion of RLAS and OLAS

			(%)
<i>D&D brand</i>	<i>Proportion of RLAS</i>	<i>Proportion of OLAS</i>	<i>Total</i>
PIE/PSG	[70-80]	[20-30]	100
GlobalX	[40-50]	[50-60]	100
Index Direct	[60-70]	[30-40]	100
<i>TMG brand</i>	<i>Proportion of RLAS</i>	<i>Proportion of OLAS</i>	<i>Total</i>
tmConvey	[40-50]	[50-60]	100
CDS	[70-80]	[20-30]	100

Source: D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Table 4; TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022 Table 3.

- 7.57 TMG submitted that the proportion of tmConvey's sales that are RLAS is only [X]% excluding sales to former shareholders, and [X]% when also excluding intermediaries.³⁹⁹ However, we consider that this does not undermine the point that TMG (including both tmConvey and CDS) provides substantial volumes of RLAS.

- 7.58 In summary, the Parties' submissions as to the differences between their respective businesses are not supported by the evidence available to us. Both

³⁹⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1 paragraph 2.3.3.

³⁹⁷ TMG's response to CMA's s.109 Notice dated 23 December 2021, Annex TM001.

³⁹⁸ TMG response to provisional findings put back request sent on 11 May 2022.

³⁹⁹ TMG response to provisional findings put back request of 11 May 2022.

Parties predominantly provide residential PSRBs to small, medium, and large conveyancers and intermediaries, while earning the remainder of their PSRB revenues from the sale of commercial PSRBs to small, medium, and large conveyancers (and, to a lesser extent, intermediaries). The Parties have not presented evidence that, within either the residential or the commercial segment, their respective PSRB services differ from one another in their characteristics such that they would not be close substitutes. However, we recognise that D&D currently has a limited presence in serving Top 100 law firms, which we consider further below.

Prospective expansion by D&D into serving large transactions

- 7.59 As discussed above, our customer engagement indicated that the property business of some Top 100 law firms is predominantly or exclusively focused on large transactions, including multi-unit transactions or refinancing, which entail a large volume of searches.⁴⁰⁰
- 7.60 The evidence we have received indicates that D&D is not currently perceived as a particularly strong competitive option by this customer group. In particular:
- (a) Out of the TMG customers we spoke to in this category one was not aware of D&D;⁴⁰¹ one did not consider D&D to be among the credible alternative search providers for its requirements;⁴⁰² and one had used D&D in the past, but it was not happy with how its account had been handled and had stopped using D&D.⁴⁰³ Eversheds Sutherland explained that it perceives D&D as a residential search provider.⁴⁰⁴
 - (b) ATI told us that the strongest competitors in the commercial search sector include TMG and Landmark, as they have built their reputations up over a long time and therefore law firms feel comfortable using them.
 - (c) As shown in Table 7.4 above, only a small proportion of D&D's revenues are from sales to Top 100 law firms ([REDACTED]%).

⁴⁰⁰ We understand that while the customers in these transactions are typically corporate entities (including commercial firms and Housing Associations), the property itself may be either commercial or residential.

⁴⁰¹ Devonshires call note, 25 February 2022, paragraph 11.

⁴⁰² Eversheds Sutherland call note, 23 February 2022, paragraph 13.

⁴⁰³ [REDACTED] call note, [REDACTED], paragraph 4.

⁴⁰⁴ Eversheds Sutherland call note, 23 February 2022, paragraph 11.

(d) A sales 'Training Manual' document for PIE's 'Brighter Law Solutions'⁴⁰⁵ dated December 2021 states that the [REDACTED].⁴⁰⁶ [REDACTED].⁴⁰⁷

- 7.61 We found a few internal documents that may suggest that some of D&D's brands may have expanded in the commercial segment and targeted customers with bigger spend.^{408,409,410} However, D&D provided alternative explanations for these documents.⁴¹¹
- 7.62 Considering this evidence in the round, we consider that D&D currently has a relatively limited presence in relation to the Top 100 law firms and in serving large transactions. We have found only limited evidence suggesting that D&D may have expanded in this customer group absent the Merger and we therefore do not consider that the Parties compete closely for these customers (or would compete more closely with each other in future). However, based on the revenues of ATI, D&D Direct, Landmark and TMG (see Appendix B, Table 9), we estimate that this customer group (Top 100 law firms) accounts for only [10–20%] of the PSRB market (by revenue). Therefore, we do not consider that the fact that the Parties do not compete closely in this area undermines our view that both Parties have a significant presence in the supply of PSRBs in the market generally, including to conveyancers ranging from small to large, and to Panel Managers, both for residential and commercial transactions (see paragraph 7.58).

Switching estimates

Parties' submissions

7.63 The Parties submitted⁴¹² that:

'An analysis of the Parties' documents that track their lost customers during the ordinary course of business shows that losses from each Party to the other are low. Specifically:

- only [10–20%] of PIE's lost customers went to TMG/CDS;

⁴⁰⁵ The document explains that 'Brighter Law Solutions offer a suite of marketing products and services to help conveyancers maximize their business'. See also [Brighter Law | poweredby pie Group](#), accessed by the CMA on 1 August 2022.

⁴⁰⁶ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2726, page 6.

⁴⁰⁷ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2467, page 40.

⁴⁰⁸ D&D's response to the Phase 2 Opening Letter, Annex DD112, page 4.

⁴⁰⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2726, page 37.

⁴¹⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD2467, page 40.

⁴¹¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.4.3; Transcript of the main party hearing with D&D, 12 April 2022, pages 55–59.

⁴¹² D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2866.

- only [0–5%] – [10–20%] of tmConvey’s lost customers went to D&D; and

- only [5–10%] – [10–20%] of CDS’s lost customers went to D&D’.

7.64 The Parties claimed that this degree of switching between the Parties ([0–5%] to [10–20%]) is very different from what would be expected were the market one with just four credible providers ([30–40%]). The Parties submitted that each Party’s strongest rival appears to be ATI and that important competition also comes from Landmark, the Index Indirect franchisees, and other smaller suppliers (which the Parties described as ‘regional experts’), all of which won significant numbers of customers from the Parties.⁴¹³

7.65 In their response to our working papers, the Parties submitted that the switching rates presented in the customer survey, based on the Parties’ own internal documents, and in an analysis carried out by RBB using the Parties’ sales data are at most 24% and in most cases below 17%, implying that the Merger is not a ‘4 to 3’, with the switching rates being more in line with a ‘7-6’, and that the Parties are not close competitors.⁴¹⁴ The Parties submitted that three sets of estimates from three different sources (namely the customer survey responses, the Parties’ internal documents, and RBB’s estimates) covering in total 14 different data points, illustrate that the Merger is not a ‘4-3’ and the Parties are not particularly close competitors.⁴¹⁵

7.66 In response to our Provisional Findings, the Parties further submitted that ‘15 pieces of quantitative evidence’ (including also evidence on customer overlap and multi-sourcing between the Parties) all show that the constraint posed by each Party on the other is more in line with a ‘7-6’ and the Parties are not sufficiently close competitors for the Merger to raise competition concerns.⁴¹⁶ The Parties also submitted that the revenue-weighted results from the Parties’ switching data show switching between the Parties of less than expected in a ‘5-4’ scenario.⁴¹⁷

Our assessment

7.67 We have considered all the available quantitative evidence to which the Parties referred (and which the Parties refer to as ‘15 pieces of quantitative evidence’). This comprises: three sets of switching rates between the Parties

⁴¹³ D&D response to the CMA’s s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2866.

⁴¹⁴ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.7.

⁴¹⁵ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 2.8–2.9

⁴¹⁶ [Parties’ response to the Provisional Findings](#), paragraphs 1.6, 3.1, 3.5 and 3.9.

⁴¹⁷ [Parties’ response to the Provisional Findings](#), paragraph 3.23.

and between the Parties and their competitors, which are discussed in this section; survey respondents' feedback on good and best alternatives to D&D and TMG, which is discussed in paragraphs 7.101 to 7.112; and evidence on customer overlap and multi-sourcing between the Parties, which is discussed in paragraphs 7.87 to 7.94.⁴¹⁸

7.68 The three sets of estimates of the switching rates between the Parties and between the Parties and their competitors comprise:

- (a) data used by each of D&D and TMG in the ordinary course of business (see paragraph 7.63 above), but only including customers for which the Parties could identify the competitor the customers switched to (covering 2017 to 2021) (**Parties' Switching Data**);
- (b) customer survey data (covering switching since January 2020) (**Survey Switching Data**); and
- (c) RBB's estimates based on RBB's analysis of the Parties' sales volume data (**RBB Loss Analysis**) (covering 2021).⁴¹⁹

7.69 We note that the Survey Switching Data relies on a very low number of respondents – 21 for D&D and five for TMG (see Appendix D). Given this low number and in accordance with our guidance (as set out more fully in Appendix E⁴²⁰) we consider that any inferences about the Parties' customers' switching patterns from this data would be unreliable, and we have therefore not relied upon them in our assessment.

7.70 In response to our Provisional Findings, the Parties submitted that dismissing the Survey Switching Data based on the (small) sample size was inconsistent with giving evidential weight to three in-depth interviews with customers of the Parties.⁴²¹ We reject this view. Qualitative evidence derived from the statements of market participants is of a completely different character to quantitative evidence from a survey which means that direct comparisons about the weight placed on one or the other type of evidence based on 'sample size' or number are not appropriate. Further, our guidelines are clear that we may attach greater weight to one or the other as appropriate in the circumstances, depending on the relative quality of such evidence.⁴²² In any

⁴¹⁸ We note that the Parties consider that each of these sources of evidence include more than one 'data point' or 'piece of evidence' – see [Parties' response to the Provisional Findings](#), footnote 16.

⁴¹⁹ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Annex DD2865. See also, TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, Annex TM2745. See also D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, question 12, Tables 3–6.

⁴²⁰ See Appendix E, paragraph 13.

⁴²¹ [Parties' response to the Provisional Findings](#), paragraphs 3.7-3.8.

⁴²² See Appendix E, paragraph 5.

event, we have considered evidence from customer calls in the round with the rest of the evidence when concluding on closeness of competition (see paragraph 7.119).

- 7.71 The Parties submitted that the RBB Loss Analysis shows limited switching between the Parties.⁴²³ We consider that RBB's estimates are subject to significant limitations. In particular, they only cover 2021 and are based on a relatively low number of customer losses (at least compared with D&D's and TMG's data discussed below) – between [X] and [X] (see Appendix D). Moreover, the estimates are not based on a definitive record of customers lost and won by each Party but instead on a comparison of each Party's customers' sales data in the second half of 2021 relative to a selection of 'benchmark' time periods in 2019 and 2020 (see Appendix D). For these reasons, we have focused our analysis on the Parties' Switching Data rather than on the RBB Loss Analysis (see also paragraph 7.75) as we consider the Parties' Switching Data to be more robust and comprehensive.
- 7.72 In response to our Provisional Findings, the Parties submitted that 'Even if one single piece of evidence is based on a small sample size ... and so, by itself, carries less weight, this is not an appropriate reason to discount the aggregate finding of many different pieces of evidence that point in the same direction. That is, the cumulative weight of evidence from the CMA's own survey, the Parties' internal documents, and RBB's assessment of the Parties' transaction data points strongly to the view that the Parties are not sufficiently close competitors ...'.⁴²⁴ We disagree with the Parties' conclusion. As explained below, we consider that the Parties' Switching Data is the best switching evidence available, and we consider it appropriate to focus on it as an indication of the degree of switching between the Parties. Moreover, we consider, as explained further below, that the Parties' Switching Data does not support the view that the Parties are not sufficiently close competitors. In any event, we have considered the Parties' Switching Data in the round with the rest of the evidence on closeness of competition (see paragraphs 7.118-7.119 below). However, where we consider that evidence is not robust enough for us to rely on at an individual level and more robust evidence is available, we do not consider it appropriate to include it as part of our aggregate assessment either.
- 7.73 The Parties' Switching Data is also subject to some limitations. In particular:
- (a) The customer losses recorded by D&D, as noted in Appendix D, vary widely by year. Moreover, the estimates include only customers for which

⁴²³ Parties' response to the Issues Statement, paragraphs 4.10-4.11.

⁴²⁴ Parties' response to the Provisional Findings, paragraph 3.9.

D&D was able to identify the competitor the customer switched to (see Appendix D) and exclude all other customers who switched.

- (b) In relation to TMG's data, TMG submitted that, while its board packs (which record customer losses) are prepared with the intention of capturing all lost customers, recording lost customers is not always straightforward as clients often do not notify TMG that they are switching, and TMG only observes they have done so once their purchases decline.⁴²⁵ Moreover, the estimates include only customers for which TMG was able to identify the competitor the customer switched to (see Appendix D) and exclude all other customers who switched.

7.74 We note that some features of the market, such as customers' multi-sourcing and the fact that customers generally do not give notice before switching suppliers,⁴²⁶ make tracking switching in the PSRB market difficult.

7.75 Despite these limitations, the Parties' Switching Data include many more lost customers than the Survey Switching Data and the RBB Loss Analysis, cover a longer period of time (from 2017 to 2021), and are used by the Parties in the ordinary course of business. Therefore, we consider the Parties' Switching Data to be the best switching evidence available and consider it appropriate to focus on it as an indication of closeness of competition between the Parties and with other competitors.

7.76 Table 7.6 below includes the results of the analysis of D&D's switching data. Detailed tables are included in Appendix D.

Table 7.6: Switching estimates – D&D's data (2017-2021)

(%)

<i>By number of customers lost</i>						
<i>Customers switching from...</i>	<i>Proportion of customers switching to...</i>					
	TMG	<i>ATI</i>	<i>Landmark</i>	<i>Other</i>	<i>Index Indirect franchisees</i>	<i>Total</i>
PIE/PSG	[10-20]	[40-50]	[10-20]	[10-20]	[10-20]	100
<i>By revenues lost</i>						
<i>Customers switching from...</i>	<i>Proportion of revenues switching to...</i>					
	TMG	<i>ATI</i>	<i>Landmark</i>	<i>Other</i>	<i>Index Indirect franchisees</i>	<i>Total</i>
PIE/PSG	[20-30]	[40-50]	[10-20]	[5-10]	[10-20]	100

Source: D&D response to RFI3 of 15 February 2022, Annex DD2865; Annex DD2871 of D&D's response to RFI4.
Note: See Appendix D for further information.

⁴²⁵ TMG's response to CMA's s.109 Notice (RFI6) issued on 24 March 2022, paragraph 1.1.

⁴²⁶ D&D told us that 'Customers, when they switch away, do not phone you up to tell you that is what they are doing... Because of the simplicity of switching, they do not have to close down any account or change anything. Sometimes they just go' – see Transcript of the main party hearing with D&D, 12 April 2022, page 39.

- 7.77 We consider that the estimates reported in the Table 7.6 above suggest material switching from D&D to TMG, consistent with them being close competitors with one another. This is especially the case when customer switching is weighted by revenues.
- 7.78 The Parties submitted that the results weighted by revenues could be skewed by larger customers or customers that happened to purchase more or less from the Party in the year before being lost relative to other years, while the results by number of customers would not be affected by this.⁴²⁷ However, we consider that revenues are a better indicator of the competitive constraint the Parties provide on each other. This is because the loss of revenues is likely to reflect the loss in profits that would occur if customers switched to the other Party in response to a price increase or deterioration in quality. Moreover, we have seen no evidence indicating that the results (which we note cover multiple years) are likely to be skewed.
- 7.79 We consider that the estimates above indicate that:
- (a) ATI won the highest share of revenues (and customers) lost by D&D between 2017 and 2021.
 - (b) TMG won the second highest share of revenues lost by D&D and the third highest share of customers lost by D&D.
 - (c) Landmark won the third highest share of revenues lost by D&D and the second highest share of customers lost by D&D.
 - (d) Other, smaller competitors also won, collectively, a material proportion of revenues (and customers) lost by D&D, but lower than the proportion won by each of ATI, TMG, and Landmark. No individual smaller competitor won more than [0-5]% of revenues lost by D&D (see Appendix D).
 - (e) Index Indirect franchisees also won a material proportion of revenues (and customers) lost by D&D (we note D&D only acquired Index in September 2020), but lower than the proportion won by ATI and TMG (and similar to the proportion won by Landmark).
- 7.80 Table 7.7 and Table 7.8 below include the results of the analysis of TMG's switching data. TMG could not ascertain whether customers lost to Index and PSG switched to Index Indirect and PSG Indirect franchisees or to Index Direct and PSG Direct franchisees. On this basis, we have presented the results in two separate tables; Table 7.7 assumes that Index and PSG refer to

⁴²⁷ [Parties' response to the Provisional Findings](#), paragraph 3.20.

Index Direct and PSG Direct franchisees and shows them together with D&D, while Table 7.8 assumes that Index and PSG refer to Index Indirect and PSG Indirect franchisees and shows them separately. In reality, the balance of Direct and Indirect franchisees is likely to be in between these two positions. Detailed tables are included in Appendix D.

Table 7.7: Switching estimates – TMG’s data (2017-2021), with Index and PSG shown as part of D&D

(%)

By number of customers lost

Customers switching from...	Proportion of customers switching to...					Total
	D&D	ATI	Landmark	Other	Index and PSG	
tmConvey	[10-20]	[50-60]	[20-30]	[5-10]	[X]	100
CDS	[10-20]	[70-80]	[0-5]	[5-10]	[X]	100
TMG (total)	[10-20]	[50-60]	[10-20]	[5-10]	[X]	100

By revenues lost

Customers switching from...	Proportion of revenues switching to...					Total
	D&D	ATI	Landmark	Other	Index and PSG	
tmConvey	[10-20]	[50-60]	[10-20]	[10-20]	[X]	100
CDS	[20-30]	[60-70]	[5-10]	[0-5]	[X]	100
TMG (total)	[10-20]	[50-60]	[10-20]	[10-20]	[X]	100

Source: TMG response to RFI3 of 15 February 2022, Annex TM2745; Annex TM2749 of TMG’s response to RFI4.
Note: See Appendix D for further information.

Table 7.8: Switching estimates – TMG’s data (2017-2021), with Index and PSG shown separately

(%)

By number of customers lost

Customers switching from...	Proportion of customers switching to...					Total
	D&D	ATI	Landmark	Other	Index and PSG	
tmConvey	[0-5]	[50-60]	[20-30]	[5-10]	[10-20]	100
CDS	[5-10]	[70-80]	[0-5]	[5-10]	[5-10]	100
TMG (total)	[5-10]	[50-60]	[10-20]	[5-10]	[10-20]	100

By revenues lost

Customers switching from...	Proportion of revenues switching to...					Total
	D&D	ATI	Landmark	Other	Index and PSG	
tmConvey	[5-10]	[50-60]	[10-20]	[10-20]	[10-20]	100
CDS	[5-10]	[60-70]	[5-10]	[0-5]	[10-20]	100
TMG (total)	[5-10]	[50-60]	[10-20]	[10-20]	[10-20]	100

Source: TMG response to RFI3 of 15 February 2022, Annex TM2745; Annex TM2749 of TMG’s response to RFI4.
Note: See Appendix D for further information.

7.81 We consider that the switching estimates reported in the Tables above suggest that:

- (a) ATI won the highest share of revenues (and customers) lost by TMG between 2017 and 2021.

- (b) D&D won the second highest share of revenues lost by TMG and the third highest share of customers lost by TMG if Index and PSG are considered as part of D&D. If Index and PSG are considered separately, Index and PSG won the third highest share of revenues (and customers) lost by TMG, and D&D won the fourth highest share of revenues (and customers) lost by TMG.
- (c) Landmark won the third highest share of revenues lost by TMG if Index and PSG are considered as part of D&D, and the second highest share of revenues lost by TMG if Index and PSG are considered separately. Landmark also won the second highest share of customers lost by TMG (irrespective of how Index and PSG are considered).
- (d) Other, smaller competitors also won, collectively, a material proportion of revenues (and customers) lost by TMG, but lower than the proportion won by each of ATI and Landmark. If Index and PSG are considered as part of D&D, the proportion of revenues won, collectively, by smaller suppliers is also lower than the proportion won by D&D; if Index and PSG are considered separately from D&D, the proportion of revenues won, collectively, by smaller suppliers is lower than the proportion won by Index and PSG, but higher than the proportion won by D&D. No individual smaller competitor won more than [0-5%] of revenues lost by TMG (see Appendix D).

7.82 As the Parties have submitted, in recent years ATI has accounted for a significant proportion of customers switching from each of the Parties. ATI entered the UK market in 2015⁴²⁸ and has grown rapidly. The Parties told us that ATI's revenues grew 60% year-on-year from 2018 to 2020.⁴²⁹ ATI told us that it entered the UK market with an innovative offering and this was the reason for its rapid growth, but that its competitors had since developed similar offerings.⁴³⁰ ATI also noted that while it is still expanding rapidly, this growth has slowed a fraction recently as it moves towards targeting larger firms who are slower to change suppliers.⁴³¹

7.83 We have considered whether the rate of switching between D&D and TMG in recent years is an indicator of their closeness of competition. In this context, the fact that ATI has accounted for a substantial share of switching away from D&D and TMG reflects ATI's recent market growth, at the expense of the other incumbents, and may have led to a higher than usual overall rate of

⁴²⁸ ATI call note, 16 February 2022, paragraph 1.

⁴²⁹ [Parties' response to the Issues Statement](#), paragraph 3.8.2.

⁴³⁰ ATI call note, 16 February 2022, paragraph 4.

⁴³¹ ATI call note, 16 February 2022, paragraph 21.

switching away from each of the Parties.⁴³² In our view, this makes it difficult to interpret the switching rates between D&D and TMG (expressed as a percentage of total switching) as necessarily indicating their closeness of competition in future periods.

- 7.84 The Parties have commented that '[the CMA] asserts that switching to ATI should be discounted due to ATI's recent market growth', and that '...the basis for the assertion that ATI is expected to stop growing and winning business from the Parties in the future is unclear'.⁴³³ We have not asserted either of these points. We recognise that ATI is an important competitor and expect it will continue to seek to develop and grow its business (although there is some evidence that its growth is slowing). In any event, we consider that the Parties' data suggests that switching between TMG and D&D would still be material in the absence of the Merger under a wide range of assumptions about ATI's future performance.
- 7.85 In relation to the Parties' submission that a range of estimates indicate that the Parties are not particularly close competitors (see paragraphs 7.63 to 7.66), we have focused our analysis on the Parties' Switching Data for the reasons set out in paragraphs 7.67 to 7.75 above. The Parties' Switching Data indicates that each Party competes with ATI, the other Party and Landmark. The data also indicates that each Party competes with other, smaller competitors, but these smaller competitors attract fewer switching customers (and less revenue) than the Parties' main competitors. We therefore do not agree with the Parties' submission that the rates of switching show them to be relatively distant competitors. As set out above (at paragraph 7.34) we are not relying on 'structural presumptions' and do not need to show that the switching between the Parties exceeds any particular threshold.
- 7.86 In summary, we note that the switching data available to us has some limitations and should be interpreted with caution. However, in our view the Parties' Switching Data is sufficiently robust for us to place weight on and does not support the Parties' suggestion⁴³⁴ that they are not sufficiently close competitors for the elimination of competition between them not to raise competition concerns. In particular, the Parties' data suggests that TMG won the second highest share of revenues lost by D&D, and that D&D won the second highest share of revenues lost by TMG if Index and PSG are considered as part of D&D, and the fourth highest if Index and PSG are

⁴³² We recognise that ATI is an important competitor, and this is reflected in its market share (see paragraphs 7.8 to 7.22 above) and in the following section on remaining competitive constraints.

⁴³³ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.10.

⁴³⁴ [Parties' response to the Issues Statement](#), paragraph 2.3.1. See also, [Parties' response to the Provisional Findings](#), paragraph 2.3.1.

considered separately. The fact that ATI appears to have acquired a disproportionate share of customers who have switched from the Parties in recent years is not evidence that the Parties are not also close competitors to one another. The impact of the constraint offered by ATI on the assessment of the Merger is considered in detail later in this chapter (see paragraphs 7.125 to 7.146).

Multi-sourcing as evidence of closeness of competition

7.87 During our phase 2 inquiry, the Parties submitted an updated analysis by RBB relating to multi-sourcing (**RBB Multi-sourcing Analysis**).⁴³⁵ We first describe the RBB Multi-sourcing Analysis and then set out our assessment of this evidence.

RBB Multi-sourcing Analysis

7.88 RBB calculated that in 2019-2021 around [X]% of D&D's sales were to customers who were also served by TMG, and that [X]% of TMG's sales were to customers who were also served by D&D (ie common customers).⁴³⁶

7.89 RBB also calculated that [X]% of these common customers ([X]% if weighted by size) purchased a number of PSRBs from the Parties that was lower than their total Land Registry transaction volumes.^{437, 438} The Parties submitted that, assuming that each customer's PSRB purchases were at least as large as its total Land Registry transaction volume, this indicated that a large proportion of the Parties' common customers were purchasing from at least one other PSRB supplier (in addition to D&D and TMG), ie from at least three PSRB suppliers.⁴³⁹

7.90 RBB considered that the overlap between the Parties' customers was relatively small, given this degree of multi-sourcing. RBB explained this by noting that, if all customers were purchasing from three suppliers, and choosing randomly between them, then with four suppliers in the market one

⁴³⁵ RBB Report of 29 October 2021, titled 'Evidence on market size and Multi-sourcing – update with 2021 data' dated 24 February 2022, Annex DD2869.

⁴³⁶ This represented [X]% of D&D's customers and [X]% of TMG's customers, [Parties' response to the Provisional Findings](#), paragraph 3.18.3 and table 1.

⁴³⁷ D&D's response to CMA s.109 Notice dated 17 February 2022, Table 6.

⁴³⁸ The Parties submitted that the data collection process for the customers' total Land Registry transaction volumes for each Party was different. For D&D, a list of D&D's customers was sent to an external industry expert, [X]. This expert added the Land Registry transaction volumes in 2019 and 2020 to this list. TMG already had a dataset containing the Land Registry transaction volumes for all conveyancers in the market in 2019 and 2020, on a monthly basis. This data ultimately also came from the industry expert [X]. See D&D's response to CMA s.109 Notice dated 17 February 2022, paragraphs 22.1-22.3; and TMG response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022, paragraphs 22.1-22.3.

⁴³⁹ [Parties' response to the Provisional Findings](#), paragraph 3.17.

would expect the rate of overlap between any two suppliers to be 67%,⁴⁴⁰ which is much higher than the [X] % observed for the Parties. RBB noted that, under these assumptions, a comparable rate of overlap to that observed would require there to be seven suppliers. RBB inferred that the observed level of common customers suggested that the Parties were relatively distant competitors and/or that there was a broad range of competitive alternative suppliers.⁴⁴¹

Our assessment

- 7.91 RBB's estimated [X] % overlap between the Parties appears broadly consistent with the customer survey results.⁴⁴² Also, we note that, among respondents to our customer survey, the number of the Parties' common customers was material but somewhat less than the number of common customers between each Party and ATI, and between each Party and Landmark.⁴⁴³ However, as explained further below, we consider that the extent of overlap in customer purchases between two suppliers is not necessarily indicative of the closeness of competition between them.
- 7.92 In our Provisional Findings, we noted that in its analysis RBB stated that it assumed customers choose from three suppliers at random (ie if all rivals were equally good alternatives for each other),⁴⁴⁴ and that this assumption was not supported by evidence from our customer survey, which indicated that over a two-year period 35% of respondents used only a single supplier, and the average number used over the two-year period was 2.2 to 2.4, ie below the three suppliers assumed in the RBB analysis to be used by customers at any one time.⁴⁴⁵
- 7.93 In their response, the Parties submitted that the RBB Multi-sourcing Analysis did not depend on assuming that customers purchase equally from all of their suppliers; that triple-sourcing was widespread with larger customers being more likely to multi-source; and that even if the survey data on number of

⁴⁴⁰ If there are four firms in the market, A, B, C and D, a customer purchasing from supplier A could choose the combinations ABC, ABD or ACD. Of these, B appears alongside A in two out of the three possible combinations (67%), and similarly for other combinations.

⁴⁴¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 2.10.3. See also, RBB Multi-sourcing Analysis, section 3.2.

⁴⁴² Among the respondents, there were 24 common customers between the Parties, compared with 89 total D&D customers and 87 total TMG customers.

⁴⁴³ There were 24 common customers between the Parties. This compared to 29 between D&D and ATI and 27 between TMG and ATI; and 37 between D&D and Landmark and 34 between TMG and Landmark.

⁴⁴⁴ RBB Multi-sourcing Analysis, paragraph 3.2. More generally, RBB stated that its stylised model assumed that customers multi-sourced at random from a given subset of a given number of suppliers in the market, RBB Multi-sourcing Analysis, Annex B.

⁴⁴⁵ The average number of suppliers used was 2.2 if all D&D brands (including Index and PSG) are counted as one supplier. This increases to 2.4 if all Index and PSG volume is for franchisees (rather than direct sales by D&D under the Index and PSG brands) and Index and PSG franchisees are counted separately from D&D.

suppliers was used, this did not affect RBB's qualitative findings.⁴⁴⁶ On the last point, the Parties submitted that the 'actual unweighted customer overlap' (ie when not weighted by sales volume) between the Parties is 20-27%, and that this is consistent with the customer overlap expected in a '7-6' or a '6-5' scenario if (as the survey suggests) customers purchase from 2.3 suppliers on average.⁴⁴⁷

7.94 We note that the estimated customer overlap is broadly consistent with the survey results. However, we place very limited weight on RBB's inferences about how closely the Parties compete based on the RBB Multi-sourcing Analysis because, as explained in paragraph 6.71, customers multi-source for a variety of reasons, some of which are not linked to closeness of competition: for example some customers multi-source because different suppliers have different strengths and weaknesses or because intermediaries require the use of specific suppliers (see Figure 6.1).⁴⁴⁸ Further, more direct evidence on closeness of competition and competitive constraints is available (as set out in the remainder of this chapter) .

Evidence from internal documents

7.95 We have considered whether the Parties' internal documents provide evidence as to whether the Parties are close competitors.

D&D internal documents

7.96 We have found D&D documents indicating that D&D considers TMG as one of its key competitors. For example:

(a) A June 2021 D&D strategy slide pack⁴⁴⁹ identifies competitors in 'Real Estate UK Residential' as InfoTrack, SearchFlow and TMG (slide 42).

⁴⁴⁶ Parties' response to the Provisional Findings, paragraphs 3.16 to 3.18.

⁴⁴⁷ Parties' response to the Provisional Findings, paragraph 3.18.

⁴⁴⁸ As shown in Figure 6.1, and as stated in the Parties' response to the Provisional Findings paragraph 3.19, the most commonly given reason for multi-sourcing was 'shopping around to encourage suppliers to remain competitive'. Of the other reasons given by customers for multi-sourcing in Figure 6.1, 'too risky to rely on one supplier' also could be regarded as suggesting that their suppliers are close competitors. However, the other reasons given by customers for multi-sourcing do not seem to suggest their suppliers are close competitors ('different suppliers have different strengths and weaknesses', 'colleagues in the business have different provider preferences', 'intermediaries insist on the use of certain providers', 'different suppliers used in different areas'). Further analysis of the underlying data for multi-sourcing customers shows that there were 10 respondents that agreed or strongly agreed with one of the two reasons for multi-sourcing linked to closeness of competition and no other reasons; 18 that did not agree or strongly agree with one of the two reasons for multi-sourcing linked to closeness of competition; and 82 that gave mixed responses (ie agreed or strongly agreed with at least one of the two reasons for multi-sourcing linked to closeness of competition and also with at least one of the other reasons). Therefore, we do not believe that survey responses support supplier overlap being a good indicator of closeness of competition.

⁴⁴⁹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See questions 10, 11 and 13, Annex DD2284.

- (b) Another June 2021 D&D strategy slide pack⁴⁵⁰ compares D&D's product features with those of InfoTrack, SearchFlow and TMG and notes that [REDACTED] (slide 5).
- (c) A January 2021 D&D slide pack asks, 'Out of all our competitors, who are the biggest threat to us?'. TMG is listed as one of the biggest threats to PIE, PSG and D&D, as well as [REDACTED] and [REDACTED].⁴⁵¹
- (d) An August 2020 presentation prepared for the D&D board discussing the potential acquisition of PIE, which includes a competitive assessment, and lists TMG as one of the four PIE competitors considered.⁴⁵²
- (e) D&D's document '[REDACTED]' dated April 2021 explains that the largest search platforms include D&D, TMG, Landmark, and ATI.⁴⁵³
- (f) D&D's document 'Acquisition Review' dated February 2021 lists D&D, [REDACTED] as 'Key Players' among search platforms.⁴⁵⁴

TMG internal documents

7.97 We have also found TMG documents indicating that TMG considers D&D as one of its key competitors. For example:

- (a) A CDS (owned by TMG) internal document from May 2021 identifies D&D [REDACTED] a list of competitors, which also includes InfoTrack (ATI), SearchFlow (Landmark) and 'Small independent search companies'.⁴⁵⁵
- (b) A TMG document which provides a briefing on D&D as background for their potential acquisition of TMG states that '[REDACTED]'. The document also notes that [REDACTED].⁴⁵⁶ TMG told us that this was a document for former shareholders and that the documents is 'very specifically about the vertical market rather than anything else' and that 'in other documents there are plenty of representations to other [major horizontal competitors]'.⁴⁵⁷ However, we consider that this document is not focused

⁴⁵⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD2303.

⁴⁵¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide 9, Annex DD1910. In the 12 April 2022 D&D Hearing, D&D noted that this presentation, judging by the style and format, was produced prior to the acquisition of PIE by D&D (see page 54 of the transcript). However, we note that slide 12 shows PIE/PSG as being part of the D&D group. We also note that an email shows that the slide pack was created by [REDACTED], Internal Account Manager at D&D, and emailed to other D&D staff on 11 January 2021 (Annex 1909), which is after D&D's acquisition of PIE in September 2020.

⁴⁵² Response to Question 10 of s.109 Notice dated 23 December 2021, Annex DD116, slide 28. Other competitors listed include SearchFlow (Landmark), InfoTrack (ATI), and Search Acumen (ATI).

⁴⁵³ Response to Enquiry Letter, Annex 23.07 pages 4 and 10.

⁴⁵⁴ Response to Enquiry Letter, Annex 23.05, page 4.

⁴⁵⁵ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex TM1708, slide 40.

⁴⁵⁶ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 pages 1-2, Annex TM015.

⁴⁵⁷ Transcript of the main party hearing with TMG, 12 April 2022, pages 46–47.

exclusively on the vertical market, given that, for example, it notes that '[X]'. We consider mentions of other competitors in the internal documents in the Remaining competitive constraints section.

- (c) A December 2019 TMG presentation prepared to give an assessment of the competitive landscape for a 'managers meeting' lists PIE/PSG as one of four competitors.⁴⁵⁸
- (d) Slides from a November 2019 TMG sales meeting asks the question 'What are the key messages when selling against our competitors?' and lists SearchFlow, Search Acumen, InfoTrack and PIE/PSG as competitors.⁴⁵⁹ The Parties submitted that no inferences should be taken from this document as it had been created to motivate TMG's sales team.⁴⁶⁰ However, in this instance any inferences we have made are limited to which brands are named as competitors and we do not believe the context of the document undermines this inference. We note the document lists the same TMG competitors listed in the other internal documents.
- (e) TMG's document '2020 and beyond' dated June 2018 lists D&D, ATI, and Landmark as TMG's 'Core Market Competitors'.⁴⁶¹

7.98 Other internal TMG communications also recognise D&D and its franchisees as a competitor:

- (a) A TMG SWOT analysis notes, [X]: '[X]'.⁴⁶²
- (b) A May 2021 TMG email identifies twelve competitor brands, of which four are D&D brands (PIE/PSG, HomeInfoUK, Brighter Law, and Index).⁴⁶³
- (c) A TMG 'board report' dated March 2020 notes that 'Index are now selling themselves as 'the PSG of 10 years ago' and winning on personal service'.⁴⁶⁴

⁴⁵⁸ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide Annex TM526. Prepared by Bobby Brittain and sent to Kate Barlow. The other competitors being SearchFlow, InfoTrack and Search Acumen.

⁴⁵⁹ TMG response to CMA's s.109 Notice dated 23 December 2021, internal document entitled 'Sales Meeting' dated 7 November 2019, slide 5. Annex TM022.

⁴⁶⁰ [Parties' Response to Provisional Findings](#) dated 8 June 2022, paragraph 2.13

⁴⁶¹ Response to the Enquiry Letter, Annex 20.07, page 19

⁴⁶² Response to the Enquiry Letter, Annex 20.8.

⁴⁶³ TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex TM1524. Other competitors included are SearchFlow (owned by Landmark), Search Acumen (owned by ATI), InfoTrack (owned by ATI), STL (owned by ATI), Searches UK, ETSOS (owned by Landmark) and Geodesys.

⁴⁶⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. [X].

7.99 A number of email exchanges internally within TMG and between TMG and its customers refer to D&D as a competitor, for example:⁴⁶⁵

(a) [REDACTED]⁴⁶⁶ [REDACTED]⁴⁶⁷ [REDACTED]⁴⁶⁸ [REDACTED].

(b) [REDACTED].⁴⁶⁹

(c) [REDACTED].⁴⁷⁰

7.100 Therefore, evidence from a number of internal documents from different parts of both businesses shows that the Parties see each other as close competitors.

Evidence from customers and competitors

Customer feedback

Customer survey responses

7.101 In our customer survey, the Parties' customers were asked about good and best alternatives for the supply of PSRBs. Out of the 83 D&D customer respondents, 37 identified one or more suppliers who would be a good alternative to D&D and 47 out of the 87 TMG customer respondents identified one or more suppliers who would be a good alternative to TMG. While the bases for these questions are smaller than the 100 that we generally consider to be required for full evidential weight to be accorded, we assess the responses as likely to be at least indicative of the views of the respective customer bases.⁴⁷¹

7.102 Figure 7.1 and Figure 7.2 below illustrate how many times each supplier was identified as the best alternative to, or a good alternative to, D&D by D&D customers. It is not possible from the survey responses to ascertain whether references to Index and PSG refer to Index Indirect and PSG Indirect franchisees or to Index Direct and PSG Direct franchisees.⁴⁷² On this basis, we have presented the survey responses in two separate charts; Figure 7.1

⁴⁶⁵ See also [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022.

⁴⁶⁶ [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

⁴⁶⁷ A Chancel search is carried out by a solicitor during a domestic conveyance to establish whether or not the property a buyer is proposing to purchase might be affected by a potential "Chancel Repair" obligation to the local Parish Church.

⁴⁶⁸ [REDACTED] in TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

⁴⁶⁹ [REDACTED].

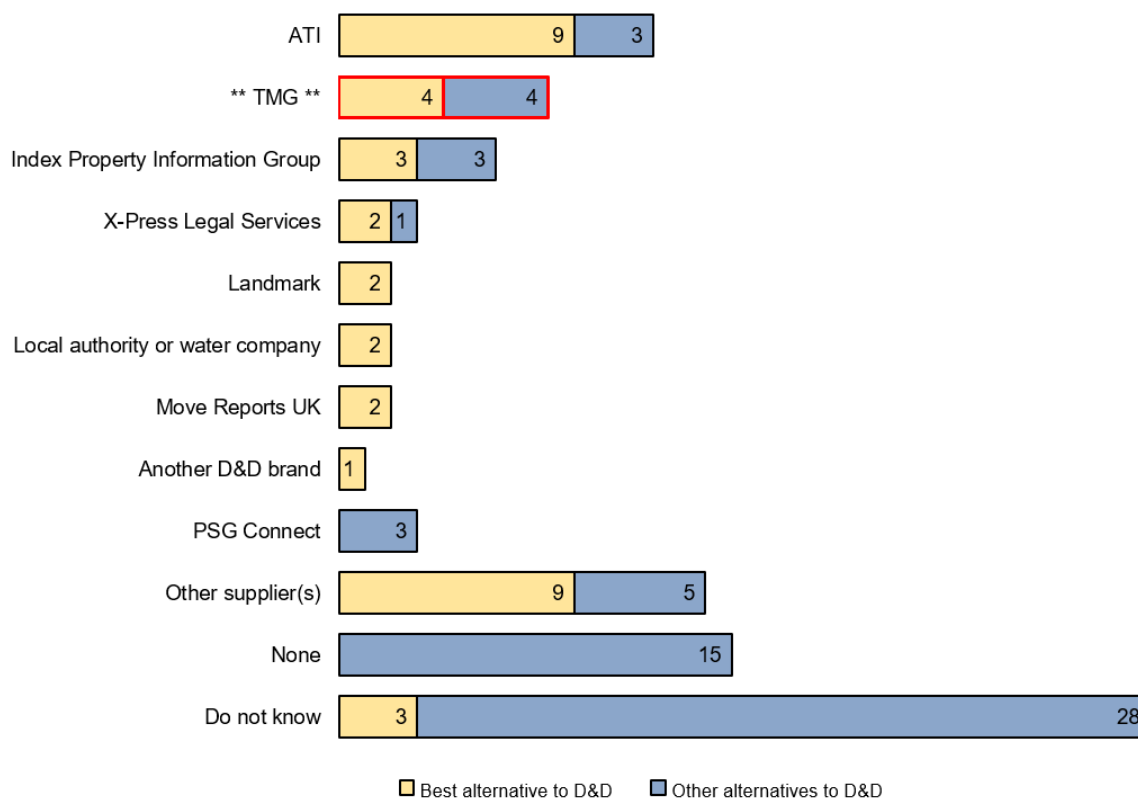
⁴⁷⁰ TMG's response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, [REDACTED].

⁴⁷¹ See Appendix E, paragraph 12.

⁴⁷² We did not capture this in the customer survey as we considered that respondents would, most likely, think of alternatives in terms of the brands available, rather than whether they are owned by D&D or a third party.

assumes that Index and PSG refer to Index Indirect and PSG Indirect franchisees and so shows them separately, while Figure 7.2 assumes Index and PSG refer to Index Direct and PSG Direct franchisees and so shows them together with D&D brands. In reality, the balance of Direct and Indirect franchisees is likely to be in between the two positions.

Figure 7.1: Best and other good alternative suppliers to D&D (with Index and PSG shown separately and TMG highlighted)

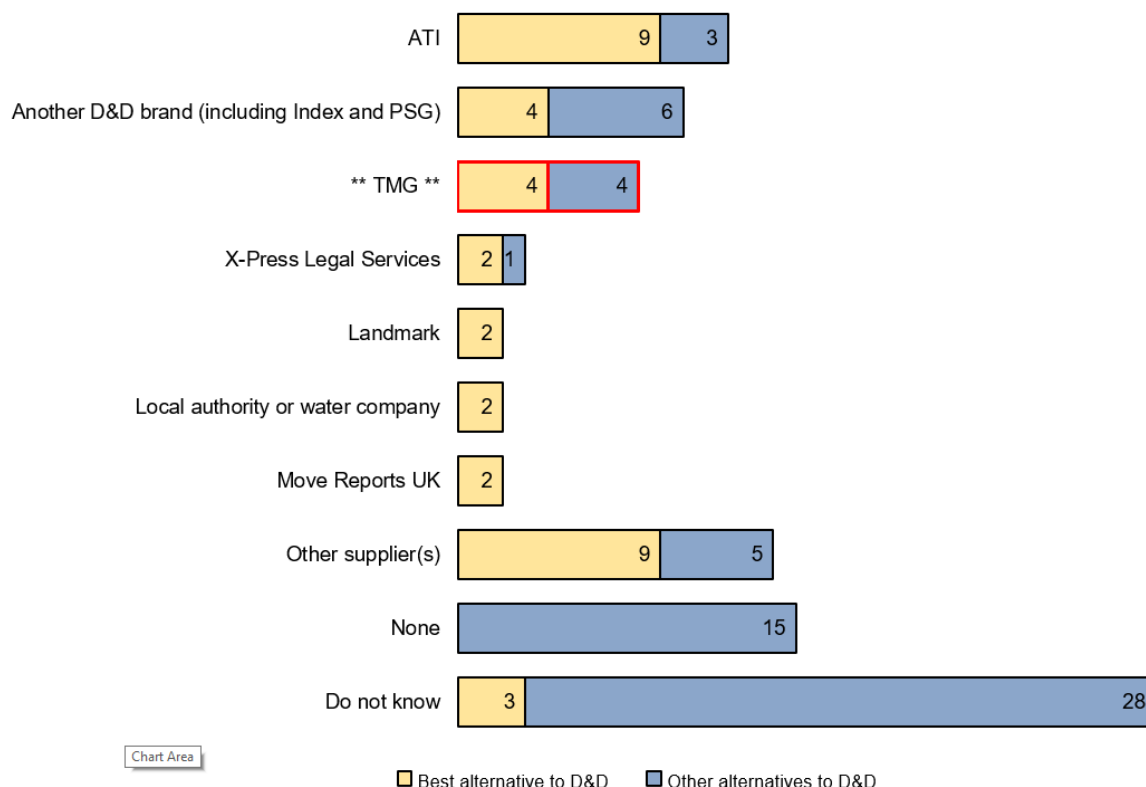


Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and The Search Bureau.
2. Ten mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

Figure 7.2: Best and other good alternative suppliers to D&D (with Index and PSG shown as part of D&D and TMG highlighted)



Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and The Search Bureau.
2. Ten mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

7.103 As illustrated by Figure 7.1 and Figure 7.2 above, the most frequent response to being asked about good alternatives to D&D was either 'Do not know' or 'None'. Aside from these answers, ATI was the competitor most often identified as a good/best alternative to D&D. TMG ranks second in the list of competitors most often identified as good/best alternative to D&D in Figure 7.1 and third in Figure 7.2. The second competitor identified in Figure 7.2 is D&D itself (together with the PSG Index franchisees).

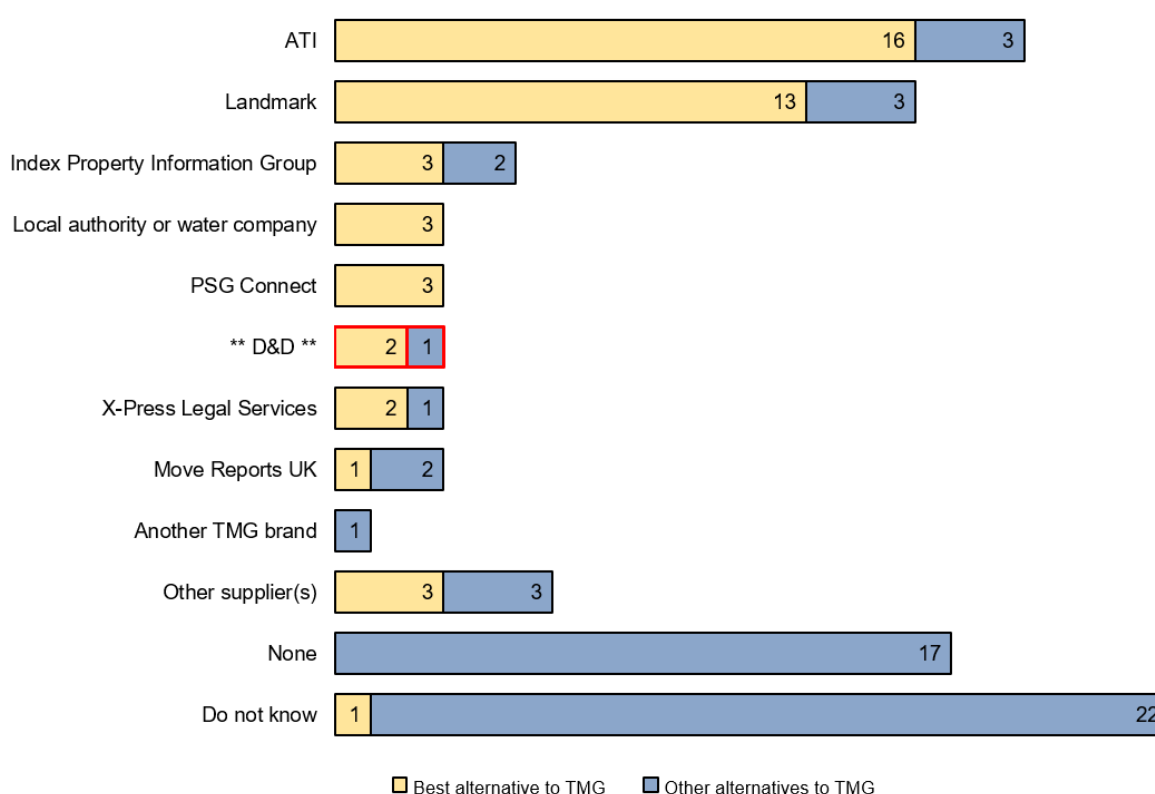
7.104 We note that for the purpose of our analysis, intra-company competition (ie competition between different D&D brands) is not relevant, as we are examining the competition between the Parties and (in the next section) the competitive constraints exercised by the Parties' independent competitors. The fact that other D&D brands are identified as good alternatives to D&D in Figure 7.1 and especially in Figure 7.2 is therefore not relevant to our analysis. The relative position of the D&D Indirect franchisees is relevant but, as noted above, we are not able to determine from the survey whether or to what extent references to Index and PSG are references to Index Indirect and PSG Indirect franchisees or Index Direct and PSG Direct franchisees.

7.105 As will be discussed below, in paragraphs 7.187 to 7.227, we consider that Index Indirect and PSG Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. On this basis, even if the survey respondents were referring to Index Indirect and PSG Indirect franchisees as their good/best alternative, these would not be fully independent alternatives for the purposes of our assessment.

7.106 Other suppliers, including X-Press Legal, Landmark, Move Reports UK, a local authority and a water company, were also identified as alternatives to D&D by some customers.

7.107 Figure 7.3 and Figure 7.4 below illustrate how many times each supplier was identified as the best alternative to, or a good alternative to, TMG by TMG customers. Figure 7.3 assumes that Index and PSG refer to Index Indirect and PSG Indirect franchisees, while Figure 7.4 assumes Index and PSG refer to Index Direct and PSG Direct franchisees.

Figure 7.3: Best and other good alternative suppliers to TMG (with Index and PSG shown separately and D&D highlighted)

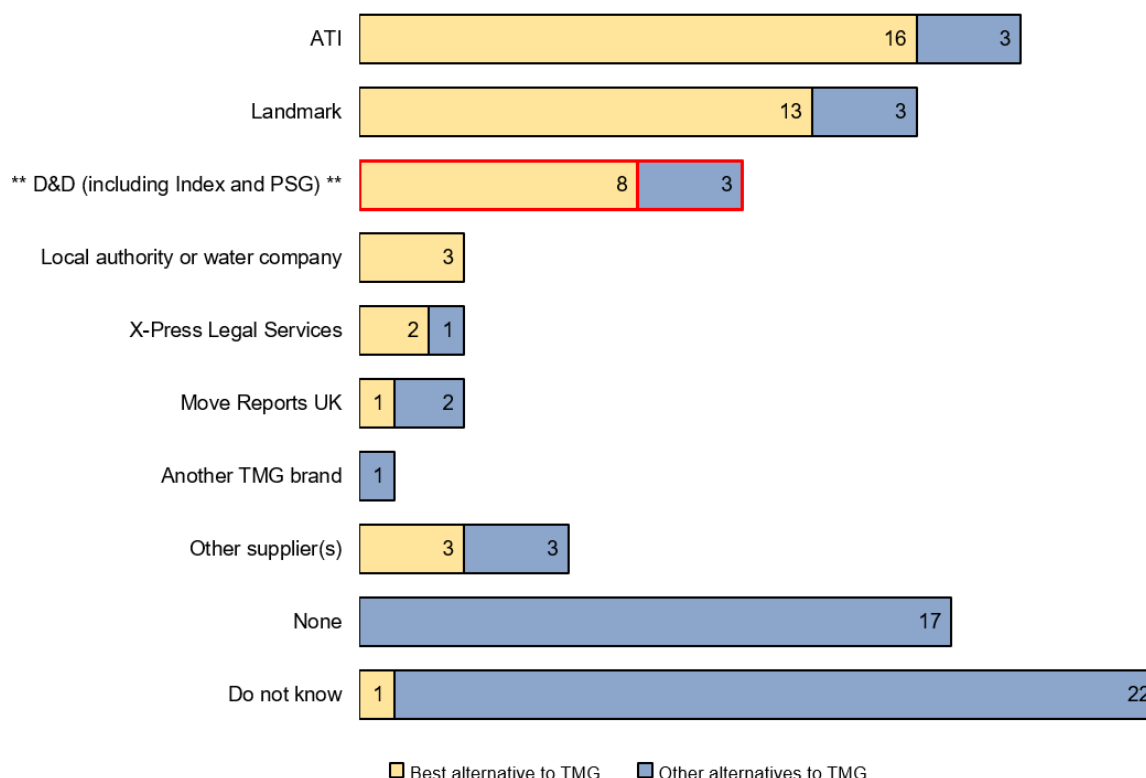


Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and ISA Yorkshire.
2. Two mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

Figure 7.4: Best and other good alternative suppliers to TMG (with Index and PSG shown as part of D&D and highlighted)



Source: CMA analysis of customer survey responses.

Notes:

1. Other supplier(s) that were mentioned only once each were Legal Bricks, Quantus, Searches UK and ISA Yorkshire.
2. Two mentions were of individual businesses that could not be matched to PSRB supplier lists. These are also included in 'Other supplier(s)'.
3. The questions were question 13a '[Which suppliers] (if any) do you consider to be a good alternative to your particular D&D supplier?' and question 13b 'And [...] which one would you say is the best alternative?'.

7.108 As illustrated by Figure 7.3 and Figure 7.4 above, the most frequent response to being asked about good alternatives to TMG was either 'Do not know' or 'None'. Aside from these answers, ATI was the competitor most often identified as a good/best alternative to TMG, followed by Landmark.

7.109 As discussed above, we cannot determine whether the mentions of Index and PSG as alternatives to TMG refer to Index Indirect and PSG Indirect franchisees or Index Direct and PSG Direct franchisees. If the former, then D&D is mentioned infrequently. If the latter, then D&D is the third most frequently identified. Since we do not know, we cannot draw any clear conclusions about whether D&D is considered as a significant alternative by TMG's customers from this data.

7.110 Other providers, including a local authority or water company, X-Press Legal, Move Reports UK and other suppliers, were also identified as alternatives to TMG by some customers.

- 7.111 In response to our Provisional Findings, the Parties submitted that the customer survey does not support an SLC and in particular that the survey showed that ‘the proportion of respondents who viewed one Party as a valid alternative to the other was only 7-16%, i.e. even less than the proportion expected from a merger reducing the number of firms in the market from 7 to 6 (16.7%)’.⁴⁷³
- 7.112 As set out above (at paragraph 7.34) we are not relying on ‘structural presumptions’ and do not need to show that the proportion of the Parties’ customers identifying the other Party as an alternative exceeds any particular threshold. As set out above, we consider that the survey results suggest that ATI is the competitor most often considered as an alternative supplier by both D&D’s and TMG’s customers. This is consistent with the switching evidence presented above (see paragraphs 7.67 to 7.86). The results also suggest that TMG is the second most common competitor considered as an alternative by D&D’s customers, and that Landmark is the second most common competitor considered by TMG’s customers. We acknowledge that the survey results do not show clearly that D&D is considered a significant alternative by TMG’s customers, and we take this into account in the round with the other evidence on closeness of competition. Finally, the results suggest that smaller suppliers are also considered to be a valid alternative by some customers of both Parties.

Customer calls

- 7.113 We had calls with several customers of the Parties. In relation to whether these customers would see the Parties as alternatives to each other:
- (a) LMS told us that before the Merger it would have considered D&D as an alternative to TMG.⁴⁷⁴
 - (b) [X] said that if [X] were no longer available or satisfactory, it would consider [X] or a panel arrangement.⁴⁷⁵
 - (c) The large law firms Eversheds Sutherland and Devonshires did not identify D&D as a possible alternative to TMG, reflecting D&D’s limited presence in serving Top 100 Law Firms engaged in large transactions.⁴⁷⁶

⁴⁷³ Parties' response to the Provisional Findings, paragraphs 2.3 and 2.6. See also Parties' response to the Provisional Findings, paragraph 3.24.1.

⁴⁷⁴ [X] call note, [X], paragraph 22.

⁴⁷⁵ [X] call note, [X], paragraph 7.

⁴⁷⁶ Eversheds Sutherland call note, 23 February 2022, paragraph 13. See also, Devonshires call note, 25 February 2022, paragraph 11.

Competitor feedback

7.114 We asked the Parties' competitors who they consider to be the closest competitors of each Party.

7.115 [REDACTED] submitted that it considers that:⁴⁷⁷

- (a) D&D's closest competitors include TMG (especially CDS), [REDACTED], [REDACTED] and, to a lesser extent, Legal Bricks and X-Press Legal; and
- (b) TMG's closest competitors include D&D (especially for CDS), [REDACTED] and [REDACTED] (especially for tmConvey) and, to a lesser extent (and for CDS only), X-Press Legal and Legal Bricks.

7.116 [REDACTED]:⁴⁷⁸

- (a) [REDACTED]; and
- (b) [REDACTED].

7.117 We asked smaller competitors via a questionnaire who they considered to be the closest competitors for each Party (see Appendix C, paragraphs 2 to 4).

- (a) The most frequently mentioned close competitors to D&D included ATI, TMG and Landmark. Competitors mentioned less frequently included X-Press Legal and Searches UK, amongst others.
- (b) Similarly, the most common close competitors for TMG included ATI, D&D and Landmark. Less frequently mentioned competitors included X-Press Legal and Searches UK, amongst others.

Our current view on closeness of competition

7.118 Our guidelines make clear that the merger firms need not be each other's closest competitors for unilateral effects to arise. It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.⁴⁷⁹

7.119 Having taken into account the evidence set out above in the round, we consider that the Parties are close competitors. In particular, we note that:

⁴⁷⁷ Competitor response to the phase 2 competitor questionnaire, questions 9-10.

⁴⁷⁸ [REDACTED].

⁴⁷⁹ MAGs, paragraph 4.8.

- (a) Both Parties have a significant presence in the supply of PSRBs to conveyancers ranging from small to large, and to Panel Managers, both for residential and commercial transactions, albeit that TMG is stronger than D&D in the supply of PSRB services to support large transactions led by the Top 100 law firms.
- (b) The available evidence on customer switching between the Parties, which we interpret with caution, supports the view that the Parties are close competitors. Each of the Parties appears to have won a material proportion of the revenues (and customers) lost by the other.
- (c) It is clear from the Parties' internal documents that each Party sees the other as a key competitor. These internal documents show that the Parties monitor each other and recognise one another as important competitors, and this is also evident from their exchanges with customers.
- (d) Our engagement with customers through the customer survey and calls suggests that a material proportion of D&D's customers see TMG as an alternative to D&D. We cannot determine from the customer survey results whether a material proportion of TMG's customers see D&D as an alternative to TMG, although we take into account the fact that some of TMG's customers that we spoke to directly did not see them as alternatives.
- (e) Competitors consider that D&D and TMG are among each other's closest competitors.

7.120 We therefore consider that even though some of the evidence suggests that TMG is a stronger constraint on D&D than D&D is on TMG,⁴⁸⁰ taken in the round the evidence clearly supports a finding that the Parties are close competitors.

Remaining competitive constraints

7.121 In this section we consider the remaining competitive constraints on the Merged Entity. Our guidelines state that the concern under a horizontal unilateral effects theory of harm relates to the elimination of a competitive constraint by removing an alternative that customers could switch to. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the Merged Entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong

⁴⁸⁰ Our guidelines note that the constraints exerted by the merger firms on each other may be asymmetric – see [MAGs](#), paragraph 4.11.

constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.⁴⁸¹

7.122 The Parties have submitted that:

‘Instead of the static market contemplated in the Issues Statement, in which just four main national suppliers are predominant, the Parties compete with seven or more credible competitors in all regions of England and Wales ... This is especially the case in residential conveyancing where national suppliers, franchise operations and regional suppliers all compete strongly for the business of mid-sized and small conveyancers in the main area of overlap between the Parties’ otherwise complementary businesses’.⁴⁸²

7.123 In the following, we consider:

- (a) the constraints on the Merged Entity from the other two large suppliers, ATI and Landmark;
- (b) the constraints on the Merged Entity by smaller suppliers;
- (c) whether the Merged Entity will face a competitive constraint from D&D’s franchisees; and
- (d) whether intermediaries exert competitive constraint on the Merged Entity to offset the loss of competition.

7.124 When considering these constraints, we have taken into account, together with the rest of the evidence, the Merged Entity’s and its competitors’ market positions as described by the shares of supply estimates in paragraphs 7.8 to 7.27 above.

Large PSRB suppliers (ATI and Landmark)

7.125 The Parties compete with two other large PSRB suppliers, ATI and Landmark. The Parties, ATI and Landmark all have a national offering, multiple brands, relatively similar shares of supply ranging between [10–20%] or [10–20%] (depending on whether D&D Indirect’s share is attributed to D&D)⁴⁸³ and [20–30%], substantial shares in both the residential and commercial segments

⁴⁸¹ MAGs, paragraph 4.3.

⁴⁸² Parties’ response to the Issues Statement, paragraph 2.1.

⁴⁸³ See paragraph 7.25(b) above.

(see Chapter 6), and all serve all customer groups to some extent (see Chapter 6).

7.126 As explained in Chapter 6, these suppliers also integrate their PSRB ordering platforms with ancillary services used by conveyancers and with platforms provided by a number of case management software suppliers, and increasingly they themselves offer these services to conveyancers. D&D, ATI and Landmark are also all vertically integrated with environmental search report providers (see Tables 7.3 and 7.4).

7.127 As set out in paragraphs 7.8 to 7.27 above, ATI is a relatively recent entrant to the market and has gained significant market share over the past few years. Landmark is a well-established provider, although it has lost market share to some extent in recent years.

7.128 The Parties submitted that they consider ATI and Landmark as credible competitors, with ATI being a ‘particularly formidable competitor’.⁴⁸⁴

7.129 In assessing the strength of competitive constraint from these suppliers we have considered:

- (a) the market shares of ATI and Landmark;
- (b) the views of ATI and Landmark;
- (c) switching estimates between the Parties and these suppliers;
- (d) discussion of these suppliers in the Parties’ internal documents; and
- (e) customer views.

Market shares of ATI and Landmark

7.130 As shown in Table 7.1 and Table 7.2, we estimate that ATI’s and Landmark’s shares in 2021 were around [20–30%] and [10–20%], respectively. We also estimate that ATI’s share increased significantly between 2018 and 2021.

Views of ATI and Landmark

7.131 ATI told us that it plans to continue to invest in its technology and service over the coming years. ATI said that while its UK business was still expanding

⁴⁸⁴ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1 paragraph 5.1.

rapidly, growth had slowed a fraction as it moved towards larger firms who are slower to change suppliers.⁴⁸⁵

7.132 ATI rated TMG as [X] out of 5 on closeness of competition to ATI,⁴⁸⁶ noting that it was 'No. 1 / No. 2 in market'. It gave SearchFlow (owned by Landmark) the same rating for the same reason. However, it rated CDS (owned by TMG) and D&D brands (Index, PSG, PIE) as [X] out of 5 on closeness of competition, noting that each of these 'Produces their own Regulated Property Search ("RLAS") [...]. Large number of smaller conveyancing firms. Very strong local presence due to franchise model'.⁴⁸⁷

7.133 [X] described [X]. Landmark identified TMG, ATI, and D&D as 1 out of 5 for closeness of competition, noting for each of them that this was due to their 'similar offering and target customers' and their high market share.⁴⁸⁸

7.134 Both ATI and Landmark said they considered competitor prices alongside other factors, when setting their own prices for search reports and bundles.⁴⁸⁹ Landmark commented that 'Normally competitor pricing is unknown and can only be ascertained indirectly from customer and prospect conversations. If a competitor price rise were to occur, we would observe the willingness of their customers to accept the price increase. Additionally, we monitor ATI's, TMG's, and D&D's reactions to any one price move (if known)'.

7.135 [X].⁴⁹⁰ [X] expect that the Merger will reduce competition in the market.⁴⁹¹

Switching estimates

7.136 As noted earlier, the switching estimates based on the Parties' internal records indicate that ATI won the highest share of revenues (and customers) lost by each Party in the last few years, and that Landmark also attracted a material share of customer switching (see paragraphs 7.72 to 7.86 above).

⁴⁸⁵ ATI call note, 16 February 2022, paragraph 21.

⁴⁸⁶ Where 1 = 'closest competitor' and 5 = 'remote competitor'.

⁴⁸⁷ ATI response to competitor questionnaire, question 7.

⁴⁸⁸ Landmark response to competitor questionnaire, questions 6 and 7.

⁴⁸⁹ ATI response to competitor questionnaire, question 10(a). Landmark response to competitor questionnaire question 11(a).

⁴⁹⁰ Competitor response to the phase 2 competitor questionnaire, question 12.

⁴⁹¹ Competitor response to the phase 2 competitor questionnaire, question 12.

Discussion of ATI and Landmark in Parties' internal documents

7.137 As set out in paragraphs 7.95 to 7.99 above, each Party's internal documents identify ATI and Landmark (and/or their brands) among their key competitors (together with the other Party).

Customer views of ATI and Landmark

7.138 As noted in paragraphs 7.101 to 7.112, ATI was the most cited alternative by both D&D's and TMG's customers amongst respondents to the customer survey. Landmark was the second most cited alternative to TMG identified by TMG's customers who responded to the customer survey, but it was not among the most significant alternatives to D&D cited by D&D's customers.

7.139 [X] said it had switched from [X] to [X] because of poor service, but also that it would consider TMG, SearchFlow and InfoTrack as options.⁴⁹²

7.140 [X] said that its current suppliers are TMG and Search Acumen (owned by ATI) and that while SearchFlow provides equivalent services to TMG and Search Acumen, [X] is currently happy with the service it receives and is therefore not looking to add another provider.⁴⁹³

7.141 Hugh James told us it had recently begun using InfoTrack.⁴⁹⁴ It said that CDS (owned by TMG) is a conventional search provider, whereas InfoTrack provides a more innovative technology-focused offering.⁴⁹⁵ [X].⁴⁹⁶ InfoTrack also provides a reporting system which gives an overview of items which require manual review as well as other useful services. These additional benefits come at little extra cost in comparison to using other search providers but provide an incentive for Hugh James to use InfoTrack as much as possible.⁴⁹⁷

7.142 Mincoffs Solicitors told us that it found InfoTrack especially useful for complex transactions (eg those including additional small parcels of land) for which often additional queries are required.⁴⁹⁸ Moreover, it views InfoTrack to have a good onboarding system that integrates with theirs for anti-money-laundering checks.⁴⁹⁹

⁴⁹² [X] call note, [X], paragraphs 11 and 13.

⁴⁹³ [X] call note, [X], paragraphs 4 and 6.

⁴⁹⁴ Hugh James call note 3 March 2022, paragraph 3.

⁴⁹⁵ Hugh James call note 3 March 2022, paragraph 4.

⁴⁹⁶ Hugh James call note 3 March 2022, paragraph 5.

⁴⁹⁷ Hugh James call note 3 March 2022, paragraph 5.

⁴⁹⁸ Mincoffs Solicitors call note, 22 February 2022, paragraph 6.

⁴⁹⁹ Mincoffs Solicitors call note, 22 February 2022, paragraph 5.

7.143 Simply Conveyancing considered OneSearch Direct but not InfoTrack in its latest review of search providers.⁵⁰⁰

7.144 [X] told us that besides D&D, InfoTrack and Landmark stand out in terms of offering scale.⁵⁰¹ [X] also said that InfoTrack, amongst others, has carved out a niche and targets specialist conveyancing firms who have different technology needs compared to national providers.⁵⁰²

7.145 [X] had considered companies owned by Landmark (eg SearchFlow) but did not appoint them because [X] directly competed with companies in the same group.⁵⁰³ [X] also considered InfoTrack; however, InfoTrack was not able to remove some of the additional features of its searches that [X] did not require or that would compete directly with their own products.⁵⁰⁴

Our assessment

7.146 We consider that the evidence set out above indicates that ATI and Landmark are each effective competitors to the Parties, with ATI having been a particularly effective and successful competitor in recent years. We consider that both ATI and Landmark are likely to remain effective competitors to the Parties for the foreseeable future.

Smaller competitors

7.147 The Parties submitted⁵⁰⁵ that smaller competitors exert a significant competitive constraint. In particular, the Parties said that:

- (a) Size does not give national competitors a material advantage, as there are no economies of scale.
- (b) Smaller retailers can replicate national coverage, either through interaction facilitated by IPSA with search providers, or through 'development of a franchise network or relationships with independent search agents'.
- (c) Competition for small and medium customers, where the Parties mostly overlap, takes place at a local or regional level, where 'the Merged Entity

⁵⁰⁰ Simply Conveyancing call note, 11 March 2022, paragraph 9.

⁵⁰¹ [X] call note, [X], paragraph 19.

⁵⁰² [X] call note, [X], paragraph 31.

⁵⁰³ [X] call note, [X], paragraph 13.

⁵⁰⁴ [X] call note, [X], paragraph 12.

⁵⁰⁵ [Parties' response to the Issues Statement](#), paragraphs 3.2 to 3.7.

will face competition from a significant number of strong regional competitors’.

- (d) Individual property purchasers usually choose local conveyancers, and these conveyancers ‘tend to value the regional expertise and relationships they have with regional providers of PSRBs (including their often close relationships with the local authorities who provide the information for the searches which can be invaluable to speeding up the process)’.
- (e) ‘[W]ithin each region in E&W, the Parties face competition from no fewer than seven competitors (including ATI and Landmark) and sometimes as many as 26. It is difficult to see how the CMA can reach a conclusion that the Merged Entity will not face sufficient competitive pressure when customers have so many alternative sources for the supply of PSRBs’.

7.148 In response to our working papers, the Parties submitted that they face considerable competition from a range of ‘regional experts’, who together account for 20–30% of the market.⁵⁰⁶ The Parties further submitted that these competitors compete intensely within their regions and, collectively, they amount to a significant competitive force.⁵⁰⁷ In particular, the Parties submitted that:⁵⁰⁸

- (a) National coverage is only a significant consideration for the largest law firms, conveyancers, and intermediaries.
- (b) Most competition for residential conveyancing transactions and for small and medium customers takes place on a local or regional basis. Small and medium customers tend to value the regional expertise and relationships they have with regional providers of PSRBs, which includes them often having close relationships with the local authorities.
- (c) The importance of regional expertise is borne out by the data, including the market share estimates, the customer survey data, and the fact that new smaller and regional suppliers continue to enter the market and register as new members of CoPSO.

⁵⁰⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.3.

⁵⁰⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.4.

⁵⁰⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.5–5.8.

- (d) Within each region in E&W, the Parties face competition from no fewer than seven competitors (including ATI and Landmark) and sometimes as many as 26.

7.149 In response to our Provisional Findings, the Parties submitted that the evidence ‘shows that suppliers outside of the largest four exercise considerable constraint on the Parties, both individually and in aggregate’.⁵⁰⁹ The Parties also submitted that:⁵¹⁰

- (a) IPSA and CoPSO help facilitate the competitiveness of their members;
- (b) questionnaire responses from smaller suppliers paint the picture of a highly competitive market for the supply of PSRBs to small and medium sized law firms and conveyancers; and
- (c) it is possible for small suppliers to reach out to large customers through intermediaries and search panels.

7.150 In assessing competition from smaller PSRB suppliers, we have considered the competitive constraint from:

- (a) X-Press Legal (the largest of the smaller PSRB providers); and
- (b) the remaining smaller PSRB suppliers.

7.151 In our analysis, we have considered:

- (a) market share trends;
- (b) switching estimates between the Parties and smaller suppliers;
- (c) discussion of smaller suppliers in the Parties’ internal documents;
- (d) the views of smaller suppliers on their ability to compete with the Parties;
- (e) the views of ATI and Landmark on the constraint from smaller suppliers;
- (f) whether smaller suppliers can compete against the Parties on price;
- (g) whether vertical integration in the supply of environmental searches limits the ability of smaller suppliers to compete; and

⁵⁰⁹ [Parties' response to the Provisional Findings](#), paragraph 4.8.

⁵¹⁰ [Parties' response to the Provisional Findings](#), paragraphs 4.5–4.6.

- (h) the views of customers on the smaller suppliers' ability to compete with the Parties.

Competitive constraints from X-Press Legal

- 7.152 As explained in paragraph 3.54 above, X-Press Legal was founded in 1998 and operates a franchise model, selling through 27 franchisees. X-Press Legal is the largest of the smaller PSRB providers with [0–5%] market share (see Table 7.1 and Table 7.2). The market share of X-Press Legal has declined in the last few years from [5–10%] in 2018 to [0–5%] in 2021.
- 7.153 The switching estimates based on the Parties' internal records indicate that X-Press Legal won less than [0-5%] of the revenues (and customers) lost by each of D&D and TMG between 2017 and 2021 (see Appendix D).
- 7.154 The Parties' internal documents refer to very few PSRB providers outside of each other, ATI, and Landmark. X-Press Legal is one of the very few smaller providers that is mentioned occasionally in the Parties' documents.⁵¹¹ Even so, X-Press Legal is mentioned relatively rarely by the Parties, in comparison to references to the other Party, ATI and Landmark. Moreover, the references to X-Press Legal tend to highlight its limitations as a competitor to the Parties.
- (a) A competitor report submitted by D&D for Index gives an overview of D&D's assessment of X-Press Legal as a competitor to Index. [REDACTED].⁵¹²
- (b) A TMG internal document⁵¹³ refers to X-Press Legal and notes that [REDACTED]. TMG submitted that this document was created for a national sales meeting, that it may have never been presented, and that therefore 'it is erroneous to draw any inferences' from this document.⁵¹⁴ We consider that the fact that this document was prepared for a TMG sales meeting does not mean that no inference on X-Press Legal can be drawn from it as even if it was intended to motivate sales teams it would be unlikely to be false or misleading. We have not found any TMG document indicating that TMG considers X-Press Legal as a strong competitor.
- 7.155 X-Press Legal was considered as an alternative to D&D and TMG by a few customer survey respondents, but it did not appear as one of the most

⁵¹¹ See D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slide 29, Annex DD2467.

⁵¹² See D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, internal document entitled 'Brief market competitor report', dated 16 January 2019, slide 29, Annex DD929.

⁵¹³ See TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 internal document entitled 'Competitor Analysis', dated 14 January 2022, page 5, Annex TM2653.

⁵¹⁴ Transcript of the main party hearing with TMG, 12 April 2022, page 55 and The Parties' Response to Provisional Findings dated 8 June 2022, paragraph 2.13.

frequently mentioned alternatives to either Party (see paragraphs 7.101 to 7.112).

- 7.156 X-Press Legal submitted [REDACTED].⁵¹⁵ X-Press Legal also told us that it expects that technological development will mean bigger national players will tend to dominate the market in the future, but that it considers that X-Press Legal's technology is comparable to that of its larger competitors.⁵¹⁶ X-Press Legal told us [REDACTED].⁵¹⁷

Competitive constraints from the remaining smaller competitors

Market share trends

- 7.157 The Parties submitted that, on the basis of the estimates based on environmental reports data (see Appendix B), which the Parties consider a more reliable measure than the estimates based on the Parties' and competitor data, smaller suppliers have a combined share of 20-30%, and that this indicates that smaller competitors form a strong collective competitive constraint. The Parties also submitted that this aggregate share exceeds that of each of Landmark, TMG and D&D Direct, and that this is inconsistent with a claim that the Merger is a '4-3'.⁵¹⁸
- 7.158 As set out in Table 7.1 and Table 7.2 we estimate that the smaller suppliers who responded to our investigation (including X-Press Legal) had an aggregate market share of around [10–20%] in 2021. According to the shares based on environmental search report data (see Table 7.1 and Table 7.2), the aggregate share of all smaller suppliers was [20–30%]. However, we estimate that none of the smaller suppliers had an individual share larger than [0–5%]. These smaller competitors include both small suppliers that compete nationally and small suppliers that compete only locally (see Chapter 6). We recognise that some of these competitors may have a larger share in specific regions of E&W than is reflected in their national share. However, we have not seen evidence suggesting that any of the smaller competitors has a particularly large share in any specific region.
- 7.159 We estimate that the smaller suppliers have steadily lost market share in recent years, with the aggregate share of the smaller suppliers who

⁵¹⁵ X-Press Legal's response to the phase 2 competitor questionnaire, questions 6, 11-12 and 15.

⁵¹⁶ Xpress Legal call note, 27 June 2022, paragraphs 7 and 9.

⁵¹⁷ Xpress Legal call note, 27 June 2022, paragraph 6.

⁵¹⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 3, paragraphs 1.1-1.3.

responded to our investigation (including X-Press Legal) falling from [20–30%] in 2018 to [10–20%] in 2021.

7.160 Furthermore, there have only been small increases in the individual shares of smaller competitors (among those who responded to our investigation) between 2018 and 2021. We estimate that the individual share that increased the most, [X] share, only increased from [0–5%] to [0–5%], ie less than 1 percentage point over three years.

7.161 We consider that these estimates show that although, in aggregate, the smaller suppliers currently compete for a material share of customers and sales in the PSRB market, none of the smaller suppliers has an individual share larger than [0–5%], and the smaller suppliers' aggregate share has been diminishing in the last few years.

Switching estimates

7.162 The switching estimates based on the Parties' internal records indicate that each Party lost a number of customers (and revenues) to smaller suppliers (in aggregate) between 2017 and 2021, although fewer than to the Parties' main competitors (see paragraphs 7.72 to 7.86 above).⁵¹⁹ Moreover, no individual smaller competitor won more than [0-5]% of the revenues (or customers) lost by either D&D or TMG (see Appendix D).

Internal documents

7.163 The Parties' analysis of competitors in their internal documents is largely focused on one another and ATI and Landmark (see paragraphs 7.95 to 7.99). Discussion of smaller competitors is very limited – see, for example, paragraph 7.94(a). Moreover, some documents note the challenges these competitors face and their limitations as a competitive threat, especially in the future. For example:

(a) A March 2020 PIE presentation to D&D notes that: '[X]'.⁵²⁰

(b) A June 2021 D&D strategy slide pack⁵²¹ states that there are 'Minimal new but small entrants into the market. The dominant players limit the

⁵¹⁹ Note that for TMG's CDS brand, more customers (7%) switched from CDS to the 'Other' category (i.e. small suppliers) than switched from CDS to Landmark (4%).

⁵²⁰ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022. See internal document entitled 'Project Cubed – Trading Update', dated 17 March 2020. Slide 6, Annex DD1268.

⁵²¹ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, question 21, Annex DD2303.

penetration any new players can make. Automation, consolidation and up-front data will dominate the market for the next year or so' (slide 7).

- (c) A TMG internal document is largely dismissive of 'small regional' competitors [REDACTED].⁵²² TMG submitted that this document was created for a national sales meeting, that it may have never been presented, and that therefore 'it is erroneous to draw any inferences' from this document.⁵²³ We consider that the fact that this document was prepared for a TMG sales meeting does not mean that no inference on the constraint from smaller suppliers can be drawn from it as even if it was intended to motivate sales teams, it is unlikely to be completely false or misleading. We have not found any evidence to the contrary, ie any TMG document indicating that TMG considers the smaller suppliers as strong competitors.

7.164 In response to our Provisional Findings, the Parties submitted that the absence of references to the long tail of, particularly, regional suppliers in certain internal documents is wrongly construed as evidence that smaller suppliers do not exercise a competitive constraint on the Parties. However, given the extensive internal document evidence on the competitive constraint posed by the large national competitors, we believe that the fact that there are, by comparison, only very limited references to the smaller suppliers in these documents is a relevant consideration for our analysis.

7.165 We asked the Parties to provide any internal documents that illustrate that they consider smaller suppliers as a competitive constraint. In response, D&D provided a limited number of internal sales team updates and emails.⁵²⁴ The Parties submitted that these documents suggest that D&D considers smaller players to be strong competitors.⁵²⁵ Some of these documents indicate that D&D has on occasion lost customers to, or won customers from, smaller suppliers.⁵²⁶ Similarly, TMG provided a list of [REDACTED] customer losses to smaller suppliers (in [REDACTED] of the [REDACTED] cases TMG lost only part of the customer's business),⁵²⁷ and an unsuccessful attempt to win business from [REDACTED].⁵²⁸ The

⁵²² See TMG response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022 internal document entitled 'Competitor Analysis', dated 14 January 2022, page 6, Annex TM2653. TMG told the CMA that this document was part of a national sales meeting, and it may have never been presented – see transcript of the main party hearing with TMG, 12 April 2022, page 55.

⁵²³ Transcript of the main party hearing with TMG, 12 April 2022, page 55 and [Parties' response to the Provisional Findings](#), paragraph 2.13.

⁵²⁴ D&D's response to Main Party Hearing follow-up questions, paragraphs 7.1-7.7.

⁵²⁵ [Parties' response to the Provisional Findings](#), paragraph 4.3.1.

⁵²⁶ In particular: Annex 03 indicates that D&D may have lost a customer to [REDACTED]; Annex 04 indicates that D&D lost a customer to [REDACTED] and '[REDACTED]'; Annex 05 and Annex 06 indicate that D&D won a customer from [REDACTED]; Annex 07 indicates that D&D tried to win a customer from [REDACTED] by [REDACTED]; Annex 08 indicates that D&D lost a customer to an [REDACTED].

⁵²⁷ The smaller suppliers include: [REDACTED].

⁵²⁸ TMG's response to Main Party Hearing follow-up questions, paragraphs 4.1-4.3; [Parties' response to the Provisional Findings](#), paragraph 4.3.2.

Parties further submitted that TMG [REDACTED] lost two significant customers, one won by [REDACTED] and one by [REDACTED].⁵²⁹ We consider that this evidence is consistent with the position that there is some switching between the Parties and smaller suppliers (as shown in paragraphs 7.72 to 7.86 above) but it does not show that smaller competitors are a significant consideration within the Parties' competitive strategy. We therefore do not consider that the Parties' internal documents show that the Parties consider smaller suppliers to be a significant competitive constraint, either individually or in aggregate.

Views of ATI [REDACTED]

7.166 ATI suggested that its fast growth is due to an innovative offering which smaller search providers would struggle to replicate, and as a result the long tail of smaller search providers can no longer offer what they need to in order to compete.⁵³⁰ ATI also submitted that regional suppliers do not represent a competitive constraint for its business because they 'do not have the financial resources to compete in this marketplace, which is currently being digitised' and 'Medium, Large and City Law conveyancing firms require national presence through one point of contact'.⁵³¹

7.167 [REDACTED].⁵³²

Views of smaller suppliers

7.168 We sent a questionnaire to 84 smaller suppliers of PSRBs and received 40 responses. The responses are set out in more detail in Appendix C. The views expressed suggest that the balance of power in the market has increasingly shifted towards the large suppliers ATI, Landmark, TMG and D&D at the expense of smaller suppliers. The smaller suppliers generally considered that they were restricted in the range of customers they could credibly compete for outside the smaller conveyancers,⁵³³ and in their ability to compete against the large suppliers in general. They faced disadvantages with regard to their technology offerings, pricing, and lack of vertical integration.

7.169 We have found little evidence that any ability these smaller suppliers would have to group together could replicate the national coverage of the Parties (and ATI and Landmark). For example, IPSA told us that its members can obtain searches outside the area they cover through IPSA, and that the newly

⁵²⁹ Parties' response to the Provisional Findings, paragraph 4.3.3.

⁵³⁰ ATI call note, 16 February 2022, paragraphs 8 and 15.

⁵³¹ Competitor response to the phase 2 competitor questionnaire, question 8.

⁵³² Competitor response to the phase 2 competitor questionnaire, question 8.

⁵³³ Although one smaller supplier ([REDACTED]) noted that it could reach larger firms through panels – see Appendix C.

launched 'IPSA Searches' operates as a gateway website to reach smaller local search firms.⁵³⁴ The Parties submitted that IPSA membership helps facilitate the competitiveness of local and regional suppliers by, for example, organising regional seminars with local conveyancers.⁵³⁵ However, IPSA explained that IPSA members do not have common portals, ordering platforms, software systems or billing systems like the big national competitors.⁵³⁶

7.170 Moreover, IPSA told us that the market will shift towards new technologies such as case management systems and integrated portals, and that local firms are not as prepared to adapt as the large, national PSRB suppliers.⁵³⁷ For example, while a small supplier may outsource anti-money laundering and ID checking to another firm, a client would need to exit the small supplier's website and log to a new one to use these services, while customers of large, national providers would not need to.⁵³⁸ IPSA further explained that an IPSA member's typical client would be a high-street legal firm or estate agent that either already have such software or are the kind of firm that sees no need for a case management system or a digital onboarding service.⁵³⁹

7.171 IPSA told us that IPSA members' selling point is that they are local companies and do not have call centres and centralised billing,⁵⁴⁰ potentially suggesting smaller suppliers may be able to provide a more personalised service than the large, national suppliers. However, we have found little evidence that the smaller suppliers have any substantial competitive advantages arising from regional expertise or relationships with local authorities and we estimate that the smaller suppliers' aggregate share has been decreasing in recent years (see paragraph 7.159). We also note that D&D submitted that 'D&D organises certain of its sales managers into local and regional teams ensuring it competes effectively for local and regional customers'.⁵⁴¹ Similarly, TMG submitted that CDS has regional account managers and regional sales teams.⁵⁴²

⁵³⁴ IPSA call note, 14 April 2022, paragraphs 4–6. See also the IPSA Searches [website](#), accessed by the CMA on 13 July 2022, and the [Parties' response to the Provisional Findings](#), paragraph 4.5.2.

⁵³⁵ [Parties' response to the Provisional Findings](#), paragraph 4.5.1.

⁵³⁶ IPSA call note, 14 April 2022, paragraphs 4–6.

⁵³⁷ IPSA call note, 14 April 2022, paragraphs 13–14.

⁵³⁸ IPSA call note, 14 April 2022, paragraphs 13–14.

⁵³⁹ IPSA call note, 14 April 2022, paragraph 12.

⁵⁴⁰ IPSA call note, 14 April 2022, paragraph 5.

⁵⁴¹ D&D's response to Main Party Hearing follow-up questions, paragraph 7.1. We also note that in some regions D&D directly owns and operates some Index or PSG franchisees.

⁵⁴² TMG's response to Main Party Hearing follow-up questions, paragraphs 4.1–4.2.

Ability to serve different customers

- 7.172 We asked smaller competitors if there were any customer types they did not serve, and the reason for this. Most smaller competitors informed us that they were unable to compete in serving Top 100 law firms, larger national conveyancers, and panels. Barriers included reach, reputation, marketing budgets, the referrals process, price/margins, and exclusive contracts. One smaller supplier noted that it could reach larger firms through panels.
- 7.173 Some smaller suppliers considered that they were at a competitive disadvantage against larger providers in general and not just when competing for business from larger conveyancing firms or panels, because they were unable to achieve economies of scale. Some smaller PSRB suppliers focused on technology and product features as particular barriers to competing against large PSRB suppliers.

Vertical integration

- 7.174 A further challenge identified by smaller competitors is their lack of vertical integration and reliance on larger suppliers for upstream products and particularly environmental searches.
- 7.175 We note that the Merger has not increased concentration in the supply of environmental searches, as TMG was not present in this upstream market. Furthermore, as set out in Appendix B, Groundsure, owned by ATI, is the market leader in this segment, followed by Landmark. D&D's environmental search business FCI currently accounts for only [5–10%] of this market, and we note that D&D itself relies on Groundsure and Landmark for the majority [80–90%]) of its environmental searches. We discuss vertical integration as a recent market trend in Chapter 6.
- 7.176 Our current concern in relation to the Merger is the consolidation of the PSRB market among three large players. We consider that being vertically integrated with upstream providers may be an advantage – for example, in terms of reliability of the supply of upstream reports or protection from sudden cost increases. We have therefore considered it, to the extent appropriate, in assessing the competitiveness of PSRB suppliers, although we have not placed significant weight on this factor.

Customer views of smaller suppliers

Feedback from customer survey respondents

- 7.177 Some customer survey respondents identified smaller competitors as good alternatives to the Parties, but no individual smaller supplier scored highly (see paragraphs 7.101 to 7.112).
- 7.178 In response to our Provisional Findings, the Parties submitted that smaller suppliers were listed as a valid alternative by the survey respondents more often than the other Party.⁵⁴³ We acknowledge that some survey respondents identified smaller competitors as valid alternatives to the Parties,⁵⁴⁴ and that smaller suppliers in aggregate have a material presence in the PSRB market (see paragraphs 7.106, 7.110, 7.112 and 7.182). However, we also note that the Parties count references to all smaller suppliers collectively, which we do not consider to be appropriate, for the reasons set out at paragraph 7.183 below, and no individual smaller supplier scored highly. In particular, even X-Press Legal, which was the smaller supplier most often mentioned as an alternative to the Parties, was mentioned much less often than the top competitors (see paragraphs 7.101 to 7.112). In contrast, TMG was the second most common competitor considered as an alternative by D&D's customers. D&D was the third most common competitor considered as an alternative by TMG's customers if Index and PSG are considered together with D&D brands but was mentioned infrequently as an alternative to TMG if Index and PSG are considered separately.
- 7.179 In relation to regional expertise and national coverage, among respondents to our customer survey we note the following:⁵⁴⁵
- (a) Only three of the 170 survey respondents (2%) mentioned local/regional expertise as one of the three most important factors when choosing a provider, all of whom were in the lower half of survey respondents by transaction volume, and none said it was the most important factor.
 - (b) On the other hand, 11 survey respondents (spanning all customer groups apart from large law firms) out of 60 who were buying from one supplier agreed that one reason for this was that the supplier specialised in the local area or region in which their business conducted conveyancing, while 23 survey respondents out of 110 who were buying from more than

⁵⁴³ [Parties' response to the Provisional Findings](#), paragraph 3.24.2.

⁵⁴⁴ We note that some of survey respondents identified small, named suppliers; but others identified company names that could not be associated to suppliers of PSRBs.

⁵⁴⁵ As explained in Appendix E, paragraph 11, we assess that where the number of respondents is the full sample of 170 respondents (or generally above 100), we can place full evidential weight on the survey findings.

one supplier agreed that one reason for this was that their business used different suppliers for the conveyancing they conducted in different local areas or regions.

- (c) None of the survey respondents mentioned national coverage as one of their three most important factors when choosing a supplier.

7.180 In summary, only a few of the survey respondents placed significant weight on regional or local expertise. However, national coverage did not appear as a significant consideration either.

Feedback from Panel Managers

7.181 The Panel Managers we spoke to generally confirmed that smaller suppliers were not suitable for their requirements, because they did not have the same buying power (when purchasing searches from compilers), scale or ability to handle large volumes as the national suppliers:

- (a) [X] said that ‘The benefit to [X] of working with TMG is their ability to access and compile bespoke search packages, they clearly have greater buyer power than we have in the market because they are buying not just for us but for many other companies’.⁵⁴⁶ [X] gets the ‘benefit of volume buying’. In addition, [X] said it was difficult for it to buy from smaller suppliers due to the associated cost of integration that would have to be put in place for the arrangement to work efficiently, so there would need to be a compelling reason to connect with such a supplier.⁵⁴⁷
- (b) [X] said that there are a small handful of generalist providers, and also a ‘broader church of niche providers’. While the latter can theoretically offer the same generalist service as [X] (which was selected for national coverage, breadth of offer and price), in practice they can’t necessarily handle the large volumes that [X] requires.⁵⁴⁸ [X] had previously gone to smaller suppliers and the service from them had not been good. [X] considered that not that many PSRB suppliers could provide the coverage they would need as a national business, and that aggregating smaller suppliers to achieve national coverage would have significant cost implications and would pose a significant distraction for [X].⁵⁴⁹
- (c) [X] said that ‘when choosing a search provider, it wants to ensure a continuity of supply and, of the providers available in the market,

⁵⁴⁶ [X] call note, [X], paragraph 14.

⁵⁴⁷ [X] call note, [X], paragraph 21.

⁵⁴⁸ [X] call note, [X], paragraph 7.

⁵⁴⁹ [X] call note, [X], paragraph 7.

InfoTrack, D&D and Landmark stand out in terms of offering scale (ie supporting high volumes of transactions)'.⁵⁵⁰ [REDACTED] needs thousands of searches to be completed every year, and this will mean that smaller providers will very rarely be able to fulfil the size of these orders.⁵⁵¹ [REDACTED].⁵⁵²

- (d) [REDACTED] was to some extent an exception, in that it has arrangements with Searches UK, PALI, and has begun negotiations with [REDACTED].⁵⁵³ However [REDACTED] also told us that it values PIE and CDS for their tight integration with its service and their advanced technology.⁵⁵⁴

Our assessment of competition from smaller suppliers

7.182 The evidence shows that there are a number of small suppliers who collectively have a material presence in the PSRB market, compete for customers, and attract customers who switch. We have therefore considered the constraint they are likely to impose, both individually and in aggregate, on the Merged Entity.

7.183 In general, we consider that the aggregate constraint exerted by several very small competitors is not equivalent to the competitive constraint exerted by a single large competitor for the following reasons:

- (a) First, a large competitor with a large individual market share has shown its ability to win customers from competitors in the past, which, in turn, shows that a supplier is an effective option for customers. A small competitor with a small individual market share does not demonstrate this capacity.
- (b) Second, a group of small competitors would need to coordinate their strategies in order to provide an equivalent competitive constraint to a single large competitor. It is unlikely that a large number of small competitors would be able to do this effectively, or that it would be lawful for them to do so.
- (c) Third, a small competitor is generally only capable of attracting and serving fewer customers for reasons of both capacity and marketing reach, which means, for example, that an innovation on the part of a small competitor is unlikely to elicit the same strength of competitive response

⁵⁵⁰ [REDACTED] call note, [REDACTED], paragraph 19.

⁵⁵¹ [REDACTED] call note, [REDACTED], paragraph 14.

⁵⁵² [REDACTED] call note, [REDACTED], paragraph 31.

⁵⁵³ [REDACTED] call note, [REDACTED], paragraphs 9 and 11.

⁵⁵⁴ [REDACTED] call note, [REDACTED], paragraph 29.

from the Merged Entity as an equivalent innovation from a large competitor.

- (d) Finally, if economies of scale are a feature of the market, small competitors cannot internalise their combined costs in the same way as a single large competitor can realise economies of scale.

7.184 We consider that the specific evidence in relation to this PSRB market, taken in the round, does not show that the smaller suppliers exercise or will in future exercise an effective competitive constraint on the Parties. The individual shares of each of the smaller suppliers are very low (less than [0–5%]). At an individual level, no small supplier has increased its market share by more than 1 percentage point over three years (since 2018) (see paragraph 7.160), suggesting that individually the smaller competitors have an immaterial impact on competition at the national level. The switching estimates and the survey results suggest that the constraint exerted by smaller suppliers in aggregate is less significant than the constraint exerted on each Party by its main competitors.

7.185 Moreover, we note that the smaller suppliers tend to serve small, regional or local conveyancers focused on residential transactions, and are generally unable to compete for larger conveyancers, Top 100 law firms and panel work. In addition, the smaller suppliers face significant competitive disadvantages relative to the largest national providers. These include the lack of economies of scale, smaller marketing and IT budgets, and lack of vertical integration. The references to smaller suppliers that we have seen in the Parties' internal documents do not support the claim that they are a significant competitive constraint to the Parties.

7.186 Finally, as noted in Chapter 6, we have evidence that the market for PSRB supply is becoming increasingly digitised and the offering of the Parties and its main competitors more technologically sophisticated. Evidence (including from competitors and smaller suppliers themselves) indicates that these market trends will make it more rather than less challenging for smaller suppliers to compete with large suppliers, including the Parties, in the future.

D&D's franchisees

7.187 As set out in paragraphs 7.8 to 7.27 above, we estimate that in 2021 D&D generated about [30–40%] of its sales volume through franchisees owned and operated by third parties (ie Index Indirect and PSG Indirect). We also note that Index Indirect's aggregate share increased from [0–5%] in 2018 to [5–10%] in 2021, and that PSG Indirect's share has remained relatively stable at around [0–5%].

7.188 The Parties submitted⁵⁵⁵ that the D&D Indirect franchisees are credible competitors, and in particular that:

- (a) 'Index and PSG franchisees operate independently from D&D and have every incentive to win customers from D&D in the same way as any other supplier, because they hold no stake in D&D and gain nothing from D&D's sales'.
- (b) D&D cannot influence the commercial strategies or objectives of the D&D Indirect franchisees, such as through contractual obligations, equity interest or board presence.
- (c) While D&D provides a recommended maximum price, D&D Indirect franchisees determine their own prices and may reduce prices below the maximum recommended in order to attract customers.
- (d) D&D has lost a significant number of customers to Index Indirect over the years, which is conclusive evidence that the franchisees compete vigorously with D&D and have incentive to do so.
- (e) If D&D loses business to a D&D Indirect franchisee, it loses [~~3~~]~~0~~% of its revenues from the lost business, which is not materially different from what it would lose to any other rival.

7.189 In response to our working papers, the Parties submitted that the D&D Indirect franchisees are an important competitive constraint, which is material and will constrain the Merged Entity.⁵⁵⁶ In particular, the Parties submitted that:⁵⁵⁷

- (a) the D&D Indirect franchisees have the incentive to compete with D&D, because they do not gain anything when D&D serves customers directly;
- (b) D&D has the incentive to compete against the D&D Indirect franchisees, as it loses up to [~~3~~]~~0~~% of its revenue net of variable costs when losing a customer to the franchisees;
- (c) D&D loses meaningful volumes to the D&D Indirect franchisees, as shown by the switching data and the survey results; and

⁵⁵⁵ Parties' response to the Issues Statement, paragraphs 3.20-3.23.

⁵⁵⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraphs 2.32–2.34.

⁵⁵⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraphs 5.9–5.14.

- (d) the clauses in the franchise agreements are consistent with standard franchise models and do not materially affect competition between D&D and franchisees.

7.190 In response to our Provisional Findings, the Parties submitted that:⁵⁵⁸

- (a) D&D loses meaningful volumes to the D&D Indirect franchisees, showing that there is material competition between them;
- (b) D&D has a strong incentive to compete against the D&D Indirect franchisees, and the D&D Indirect franchisees have a strong incentive to compete against D&D as they earn nothing if D&D serves a customer directly; and
- (c) the evidence does not support an assumption that the D&D Indirect franchisees may become more dependent on D&D in the future.

7.191 In this section we consider the Parties' submissions on these points and set out relevant evidence as regards the relationship of D&D with the D&D Indirect franchisees, including relevant terms of the standard Index and PSG franchise agreements, the views of D&D Indirect franchisees, evidence of competition with D&D Indirect franchisees from D&D's internal documents, evidence of customer switching between D&D and the D&D Indirect franchisees, survey evidence, and views of competitors.

Relationship between D&D and the D&D Indirect franchisees

7.192 The D&D Indirect franchisees rely on D&D for a number of aspects of their market presence. In particular:

- (a) Franchisees operate under D&D brands. [REDACTED].⁵⁵⁹
- (b) D&D provides all Index Indirect franchisees and PSG Indirect franchisees with common websites, ordering platforms and case management software, as well as with nationwide marketing programmes.⁵⁶⁰ For example, two Index Indirect franchisees said their business depended on D&D's investment in the software used by all Index franchisees.⁵⁶¹

⁵⁵⁸ Parties' response to the Provisional Findings, paragraphs 4.9.1. to 4.9.3.

⁵⁵⁹ [REDACTED].

⁵⁶⁰ Response to the Issues Paper, Annex 03.01 (clauses 4.1, 10.9) and Annex 03.02 (clauses 4.1, 10.9). See also Response to the Issues Paper, Annex 03.01 (clauses 11.1–11.2) and Annex 03.02 (clause, 11.1). D&D also provides training, guidance, assistance and strategic business input; Index Indirect franchisees call note, 3 February 2022, paragraphs 1, 8; PSG [REDACTED] call note, paragraph 7; PSG [REDACTED] call note, paragraph 4.

⁵⁶¹ Index Indirect franchisees call note, 3 February 2022, paragraphs 4 and 8.

7.193 In return, the D&D Indirect franchisees pay D&D monthly royalties over their revenue.⁵⁶²

7.194 In addition, D&D enters into supply agreements with certain customers (eg high value supply agreements) for the benefit of its franchisees (including the D&D Indirect franchisees).⁵⁶³ D&D also supplies certain upstream property search reports to the D&D Indirect franchisees.⁵⁶⁴

7.195 We also note that D&D has up to date data on the value and volume sales of Index Indirect and PSG Indirect franchisees, by category (residential and commercial).⁵⁶⁵

7.196 D&D's Index and PSG franchise agreements contain a number of clauses of relevance as to whether the D&D Indirect franchisees operate independently, and/or have the potential to compete against D&D.⁵⁶⁶ In particular, [REDACTED]:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED]⁵⁶⁷ [REDACTED].⁵⁶⁸

(d) [REDACTED].

7.197 Other clauses give D&D [REDACTED] oversight or control over the D&D Indirect franchisees' operations:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

(e) [REDACTED].

⁵⁶² Response to the Issues Paper, Annex 03.01 (clauses 9.1–9.2) and Annex 03.02 (clauses 9.1–9.2).

⁵⁶³ Response to the Issues Paper, Annex 03.01 (clause 10.8) and Annex 03.02 (clause 10.8).

⁵⁶⁴ Response to the Issues Paper, paragraphs 3.6, 3.10–3.11, table 3.

⁵⁶⁵ See for example Annex DD001 of D&D's response to the CMA's s.109 Notice dated 23 December 2021.

⁵⁶⁶ PSG franchise agreement and the Index franchise agreement. The two agreements are essentially identical in terms of the clauses as both are versions of a master franchise agreement. Prior to that, PSG used a different set of franchise agreements some of which have been extended and are still in use, see for example the franchise agreement with [REDACTED].

⁵⁶⁷ [REDACTED].

⁵⁶⁸ [REDACTED].

7.198 In response to our working papers, the Parties submitted that:⁵⁶⁹

- (a) the clause preventing the D&D Indirect franchisees from competing nationally (see paragraph 7.193(b)) has not been enforced, and D&D Indirect franchisees do operate national accounts; and
- (b) certain non-competes and other oversight clauses (for example the clauses at paragraphs 7.196(a), and 7.197) are consistent with standard franchise models, but do not materially affect competition between the D&D Indirect franchisees and D&D.

7.199 In our view, the D&D Indirect franchisees rely on D&D for important aspects of their business which influence their ability to compete with D&D (see paragraph 7.192). In particular, the reliance on D&D for inputs such as their websites, ordering platforms and case management software limits the ability of the D&D Indirect franchisees to differentiate and innovate, and hence limits their ability to compete over time with D&D. Moreover, the terms of D&D's franchise agreement give D&D a [X] degree of control over and oversight of [X], in addition to [X]. Even if these clauses are not enforced systematically, there is a contractual right to do so which may have a stifling effect on franchisees. Overall, we consider that these terms, even if some clauses are not enforced or are similar to other franchise models, are likely to limit the independence of the D&D Indirect franchisees and limit competition between the D&D Indirect franchisees and D&D.

Views of franchisees

7.200 We spoke to two Index Indirect franchisees (Index [X] and Index [X]), the Index Franchise Association and a number of PSG Indirect franchisees (including [X]).

7.201 Our engagement with these franchisees indicates that the D&D Indirect franchisees have a degree of independence from D&D and can set some parameters of their competitive offering. In particular:

- (a) Index [X] said that the Index Indirect franchisees compile their own RLAS and RDWS reports (although they source searches from outside of their franchise areas from D&D).⁵⁷⁰ PSG [X] also said that PSG [X] compiles its own RLAS and RDWS reports; PSG [X] also sells official searches,

⁵⁶⁹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.12.

⁵⁷⁰ Index [X] response to follow-up questions dated 28 April 2022.

which are ordered through D&D's portal technology, which transmits the orders directly from the conveyancers through the various suppliers.⁵⁷¹

- (b) Index [X] and Index [X] told us that they can set their retail prices independently from D&D.⁵⁷² PSG [X], told us that the [X].⁵⁷³
- (c) Index [X] submitted that the Index Indirect franchisees proactively try to win business (some of which served by D&D brands), and that each Index Indirect franchisee handles its own local marketing activity (although some of the offices have a shared external resource).⁵⁷⁴ PSG [X] submitted that it tries to win clients from other suppliers based on quality of service, speed, affordability, local connections, and offering searches specific to rural areas.⁵⁷⁵

7.202 However, our engagement with the D&D Indirect franchisees also shows that D&D influences and has [X] oversight over their commercial activities. In particular:

- (a) Index [X] and Index [X] told us that D&D negotiates upstream supplier prices for Index, which in turn may affect the prices that the franchisees can charge to conveyancers.⁵⁷⁶ PSG [X], told us that D&D [X].⁵⁷⁷
- (b) PSG [X] told us it has [X].⁵⁷⁸ [X].⁵⁷⁹
- (c) Although PSG [X] clients are free to order third party reports via the ordering platform, D&D made attempts to persuade the franchisees to suggest to clients that they should move from their preferred suppliers to FCI/Terrafirma.⁵⁸⁰
- (d) PSG [X] told us that as franchisees, they have little or no say in third party products.⁵⁸¹

7.203 Index [X] and Index [X] also noted examples of D&D interfering with or influencing their commercial activities, including pricing (in addition to other problems with their franchising arrangements, [X]):⁵⁸²

⁵⁷¹ PSG [X] response to follow-up questions dated 22 April 2022.

⁵⁷² Index Indirect franchisees call note, 3 February 2022, paragraph 3.

⁵⁷³ PSG [X] call note, paragraph 9.

⁵⁷⁴ Index [X] response to follow-up questions dated 28 April 2022.

⁵⁷⁵ PSG [X] response to follow-up questions dated 22 April 2022.

⁵⁷⁶ Index Indirect franchisees call note, 3 February 2022, paragraph 3.

⁵⁷⁷ PSG [X] call note, paragraph 4.

⁵⁷⁸ PSG [X] call note, paragraph 10.

⁵⁷⁹ PSG [X] call note, paragraph 10.

⁵⁸⁰ PSG [X] response to follow-up questions dated 22 April 2022.

⁵⁸¹ PSG call note, 21 June 2022, paragraph 4.

⁵⁸² Index Indirect franchisees call note, 3 February 2022, paragraphs 7 and 12.

(a) [REDACTED].

(b) [REDACTED].⁵⁸³ [REDACTED].

7.204 Index [REDACTED] and Index [REDACTED] also told us that it is difficult to match the IT products and services that competitors and other D&D brands offer, [REDACTED].⁵⁸⁴ Index [REDACTED] also submitted a list of several IT products/services that D&D own brands offer and that have not been made available to the Index Indirect franchisees by D&D.⁵⁸⁵ The Index Franchise Association told us that the Index Indirect franchisees had to challenge D&D as franchisor due to a lack of or insufficient ancillary services, and that they formed the Index Franchise Association for this reason.⁵⁸⁶ The Index Franchise Association also told us that while it can negotiate third party reseller agreements for ancillary services, D&D always sees the agreements to sign them off, and that IT provision has to come from the franchisor. The Index Franchise Association further submitted that the Index franchisees are dependent on D&D for case management software integrations.⁵⁸⁷

7.205 We also note that Index [REDACTED], Index [REDACTED], PSG [REDACTED] and PSG [REDACTED] told us that they serve predominantly small/residential conveyancers.⁵⁸⁸

7.206 The Index Franchise Association submitted that Clause 2.2 of the franchise agreement with Index in practice meant that D&D have sought to restrict the ability of Index Indirect franchisees to accept work from certain potential customers within their allocated territories and discourages franchisees from accepting passive sales from outside their territory.⁵⁸⁹ It also submitted that Index Indirect franchisees have tried to add new products to the portfolio and some have been rejected, because D&D wanted to promote a similar insurance product themselves.⁵⁹⁰ The Index Franchise Association also told us that [REDACTED], but that they refused to sign them.⁵⁹¹

⁵⁸³ We understand that this presentation is included in the D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, Annex DD1018, page 56.

⁵⁸⁴ Index Indirect franchisees call note, 3 February 2022, paragraphs 8.

⁵⁸⁵ Index [REDACTED] response to follow-up questions dated 28 April 2022. The products/services include: DUAL (insurance offering with multi quotes); CMS integration; [Brighter Law](#) (offered by PIE); Cloud Convey (a client onboarding system); Water Authority and Coal Authority xml (an automated system to order upstream reports).

⁵⁸⁶ Index Franchise Association call note, 23 June 2022, paragraph 7.

⁵⁸⁷ Index call note, 23 June 2022, paragraph 13.

⁵⁸⁸ Index Indirect franchisees call note, 3 February 2022, paragraph 2; PSG call note, paragraphs 11-12; PSG [REDACTED] call note, paragraph 3.

⁵⁸⁹ Response by Index Franchise Association of 6 May 2022, in response to question 1a of CMA information request of 29 April 2022.

⁵⁹⁰ Response by Index Franchise Association of 6 May 2022, in response to question 5 of CMA information request of 29 April 2022.

⁵⁹¹ Index call note, 23 June 2022, paragraph 10.

Evidence from D&D internal documents

7.207 We have considered whether D&D internal documents support a view that it sees itself as facing competition from its D&D Indirect franchisees.

7.208 We have not seen any internal documents indicating that D&D sees the D&D Indirect franchisees as a competitive threat. Rather, a few D&D internal documents suggest that D&D considers the D&D Indirect franchisees as a way to expand its outreach:

(a) A document [REDACTED]:⁵⁹² '[REDACTED]'.

(b) A January 2021 [REDACTED].⁵⁹³

(c) An [REDACTED]⁵⁹⁴ [REDACTED].

7.209 However, [REDACTED],⁵⁹⁵ potentially suggesting that D&D does not see the D&D Indirect franchisees as part of its market presence in the same way as its other brands.

7.210 We also note that PIE/PSG's switching records (see paragraph 7.69(a)) include at least [REDACTED] customers lost by PSG Indirect franchisees.⁵⁹⁶

7.211 The Parties have submitted that 'D&D [REDACTED]. This gives D&D a clear incentive to compete against and win business from the D&D Indirect franchisees as, if it does not, it loses up to [REDACTED]% of its revenue net of variable costs'.⁵⁹⁷ We note that while D&D makes more profit (in GBP terms) from direct sales than from sales through the D&D Indirect franchisees, the cost to D&D in losing business to a franchise is still less than the cost of losing business to an independent rival.

⁵⁹² D&D internal document, '[REDACTED]', dated 22 January 2019. Slide 4, Annex DD937.

⁵⁹³ D&D response to the CMA's s.109 Notice (RFI2a) issued on 25 January 2022, slides 3-12, Annex DD1910. In the 12 April 2022 D&D Hearing, D&D noted that this presentation, judging by the style and format, was produced prior to the acquisition of PIE by D&D (see page 54 of the transcript). However, we note that slide 12 shows PIE / PSG as being part of the D&D group. We also note that an email shows that the slide pack was created by [REDACTED] at D&D and emailed to other D&D staff on 11 January 2021 (Annex 1909), which is after D&D's acquisition of PIE in September 2020.

⁵⁹⁴ D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, question 21, Annex DD1285.

⁵⁹⁵ D&D response to the CMA's s.109 Notice (RFI2a) issued on 19 January 2022, internal document entitled 'Budget 2020 presentation', dated 13 December 2019. Annex DD1197, page 7.

⁵⁹⁶ D&D response to the CMA's s.109 Notice (RFI3) issued on 17 February 2022. See 'lost customers' spreadsheet, Annex DD2867. The [REDACTED] lost customers are [REDACTED].

⁵⁹⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.9.2. D&D submitted that revenue net of variable cost is equivalent to the measure of 'gross profit' that D&D uses for internal analyses and financial reporting – see D&D's response to Main Party Hearing follow-up questions, paragraph 8.2.

Switching estimates and survey evidence

- 7.212 The Parties' switching data shows that [10–20%] of PIE's customers ([10–20%] of revenues) switched to Index Indirect franchisees from 2017 to 2021.⁵⁹⁸ The Parties provided comments on four examples of such customer losses in their response to the Issues Statement.⁵⁹⁹ The Parties commented that 'While many of these examples are before the period during which PIE was owned by D&D, they do continue after this period. D&D considers that these examples are still indicative of the constraint that Index Indirect franchisees place on D&D today'.⁶⁰⁰ The Parties further submitted that consistent with the Parties' evidence on customer switching, the survey suggests that D&D likely competes with its D&D Indirect franchisees.⁶⁰¹
- 7.213 D&D acquired PIE in September 2020.⁶⁰² In our view, any losses of customers from PIE to Index prior to this acquisition are evidence of competition between Index and a (then) independent PIE and not relevant to the question of whether D&D currently faces competition from the D&D Indirect franchisees.
- 7.214 D&D's internal records (see paragraph 7.69(a) above and Appendix D) identify only two customers who have been lost by PIE to Index after September 2020.⁶⁰³ [REDACTED].
- 7.215 Overall, we consider that there is limited evidence of customers switching from PIE to Index Indirect franchisees after September 2020, that is after PIE and Index became part of the same group. Moreover, as reported at paragraphs 7.101 to 7.112, we cannot determine whether Index Indirect and PSG Indirect are considered significant alternatives by D&D's (and TMG's) customers by looking at the customer survey responses, as we cannot determine whether the mentions of Index and PSG as alternatives to D&D refer to franchisees owned by third parties (D&D Indirect franchisees) or to franchisees owned by D&D (Index Direct and PSG Direct).

⁵⁹⁸ Parties' response to the Issues Statement, Table 1. See also Table 7.7 and Table 7.1 above.

⁵⁹⁹ Parties' response to the Issues Statement, paragraph 3.22.

⁶⁰⁰ Parties' response to the Issues Statement, Footnote 15, page 9.

⁶⁰¹ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 1, paragraph 5.11.

⁶⁰² Response to the Enquiry Letter, paragraph 11.5.1.

⁶⁰³ And a further three in September 2020, and 12 before September 2020.

Competitor feedback

7.216 We asked ATI and Landmark if they consider that franchise groups represent a competitive constraint for their businesses (we note that the question did not refer to Index and PSG specifically, but rather to franchise groups in general).

(a) ATI submitted that franchise groups do not currently represent a significant competitive constraint as they generally do not have the resources to develop technology to compete in the marketplace, given the substantial margins that are retained by the local franchisees.⁶⁰⁴

(b) Landmark submitted that franchise groups represent a competitive constraint at most to a limited degree. In particular, Landmark submitted that 'franchisees have established market share and relationships which to some degree limit the readily available market to SearchFlow. However, the market share of franchisees is less than the other 3 large search providers, so they are not as much of a constraint to SearchFlow as compared to the larger competitors ... However, if the franchisee were not truly independent from a large search provider, then they would be a far more significant constraint to our business'.⁶⁰⁵

7.217 We also asked smaller competitors their opinion on whether franchise groups are better able to compete with national suppliers, such as D&D and TMG, than individual independent smaller suppliers (we note that the question did not refer to Index and PSG specifically, but rather to franchise groups in general). The evidence was mixed. As set out in Appendix C, some respondents said that franchise groups are in a better position to compete because they benefit from volume discounts and brand recognition, while other respondents did not think that franchise groups were better able to compete with large national suppliers.

7.218 Overall, we consider that the evidence from competitors is inconclusive as to whether franchise groups are a material competitive constraint for the large national providers.

Our assessment of competitive constraints from D&D Indirect franchisees

7.219 As explained above, some franchisees are owned and operated by D&D (ie the Index Direct and PSG Direct franchisees) and are therefore considered to be part of D&D for the purposes of our competitive assessment. We have therefore focused this assessment on the third-party owned franchisees (ie

⁶⁰⁴ Competitor response to the phase 2 competitor questionnaire, question 8.

⁶⁰⁵ Competitor response to the phase 2 competitor questionnaire, question 8.

the D&D Indirect franchisees, namely Index Indirect and PSG Indirect). However, we note that it is not always possible to distinguish between the different types of franchisees in the evidence.

- 7.220 The evidence we have received as to whether Index Indirect and PSG Indirect are a material competitive constraint for the Merged Entity is mixed. In addition, D&D only acquired Index in March 2019 and PIE/PSG in September 2020, making it hard to draw conclusions from internal documents and switching data that relate to different periods. We also cannot determine whether Index Indirect franchisees and PSG Indirect franchisees are considered good alternatives by D&D's customers in our customer survey as we cannot determine whether the mentions of Index and PSG as alternatives to D&D refer to franchisees owned by third parties or by D&D.
- 7.221 Overall, we consider that, in aggregate, the D&D Indirect franchisees may exert some competitive constraint on the Merged Entity. In particular, we note that the D&D Indirect franchisees are able to differentiate their offering in relation to price and local or personal service (but not in relation to other parameters, such as the operating platform). We also note that the Index Indirect franchisees' aggregate market share increased from [0–5%] in 2018 to [5–10%] in 2021, although we do not know whether this has been at the expense of the Parties or other competitors.
- 7.222 However, we also consider that any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is likely to be limited, and inferior to the constraint exerted by a fully independent competitor, for a number of reasons.
- 7.223 First, the D&D Indirect franchisees face some of the same disadvantages that the smaller suppliers face. The franchise model may in principle help overcome some disadvantages, for example in relation to national marketing, common software and platforms. However, the D&D Indirect franchisees rely entirely on D&D for these aspects of their market presence. The D&D Indirect franchisees' dependence on D&D limits their ability to differentiate themselves and innovate, and hence limits their ability to compete with the Merged Entity.
- 7.224 While the Merged Entity may have an incentive to enable the franchisees to compete effectively with rivals like ATI and Landmark, the terms of the franchise agreements give D&D [§§] oversight or control over the franchisees' operations which we would expect to be used to limit the D&D Indirect franchisees' ability to compete with each other and with D&D.
- 7.225 Second, the D&D Indirect franchisees' feedback indicates that they tend to serve small, regional or local conveyancers focused on residential

transactions, and we do not consider that the D&D Indirect franchisees would be likely to present an effective alternative for the larger customers, including large conveyancers and Panel Managers.



7.226 Third, the cost to D&D in losing business to a D&D Indirect franchisee is still less than the cost of losing business to an independent rival (given D&D Indirect franchisees pay D&D royalties over their revenues). This means that the competitive threat to D&D from independent rivals is likely to be greater than the threat from the D&D Indirect franchisees, even if D&D could not otherwise limit that threat through the operation of the franchise agreements.

7.227 Fourth, as noted in Chapter 6, the market for PSRBs is becoming increasingly digitised, and the offering of the Parties and their main competitors more technologically sophisticated. We consider that as these trends continue, the D&D Indirect franchisees will be even more dependent on D&D for their capacity to compete.

The constraint from intermediaries

7.228 The Parties submitted that:

‘The increasing power of intermediaries in the area of residential conveyancing provides a significant additional pricing constraint. Intermediaries operate as gatekeepers to the conveyancer and the end consumer, enabling them to aggregate demand and extract significant discounts from search pack retailers’.⁶⁰⁶

7.229 In response to our Provisional Findings, the Parties submitted that their evidence, such as the fact that CDS was required to [] prices for PSRBs sold through the [] platform, supports a finding that intermediaries are able to negotiate lower price than conveyancers.⁶⁰⁷

7.230 The Parties also submitted that:

‘For intermediaries, as the CMA confirms, ATI is not active in that segment pre-merger. Given that these customers achieve low prices pre-merger, this suggests that competition is strong even with a small pool of large suppliers. If the Parties were to increase prices post-merger, ATI would be well placed to start serving

⁶⁰⁶ [Parties' response to the Issues Statement](#), paragraph 2.3.4.

⁶⁰⁷ [Parties' response to the Provisional Findings](#), paragraph 4.11.

intermediaries at short notice, to replicate the premerger situation'.⁶⁰⁸

7.231 In relation to ATI's potential expansion, the Parties further submitted that:⁶⁰⁹

- (a) ATI would be well placed to start serving intermediaries as it is one of the biggest suppliers of PSRBs;
- (b) ATI's potential expansion would be likely to bring ATI higher revenue net of variable costs from intermediaries and would be likely to have no detrimental effect on its profits from its existing customer base;
- (c) the threat of ATI's potential expansion would ensure that prices to intermediaries remain at pre-Merger levels; and
- (d) ATI has a strong interest in the Merger not going forward, and no significant weight should be put on ATI's submission on this matter.

7.232 Our guidelines note that where a customer has the ability and incentive to trigger new entry, it may be able to restore competitive conditions to the levels that would have prevailed absent the merger.⁶¹⁰ We consider entry as a countervailing factor in Chapter 8.

7.233 Most other forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers' buyer power.⁶¹¹

7.234 We note that the Parties' submission that intermediaries provide a pricing constraint (see paragraph 7.228) is not supported by the evidence available to us. We consider that intermediaries would be unlikely to be able to obtain discounts or resist price increases in the absence of sufficient switching options. In particular, the Panel Managers we spoke to expressed a concern that the Merger would reduce their bargaining power relative to search

⁶⁰⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.31.

⁶⁰⁹ [Parties' response to the Provisional Findings](#), paragraph 4.12.

⁶¹⁰ [MAGs](#), paragraphs 4.19.

⁶¹¹ [MAGs](#), paragraphs 4.20.

providers (typically because of the reduction in viable alternative options to switch to):

- (a) [X] said⁶¹² it faced a concentration risk in using [X], in that if TMG were no longer available or satisfactory, [X] would probably look at SearchFlow, D&D/PSG, or a panel arrangement (ie a number of different suppliers). Not many alternatives could provide the coverage they would need as a national business. [X].⁶¹³
- (b) [X] said it had been concerned with ongoing consolidation, noting that 'PSG has been acquired as well as CDS. There are fewer options available in terms of companies we could tender to'.⁶¹⁴ [X] competes with a number of organisations who have bought these businesses. [X].⁶¹⁵ For [X], the identity of the parent company of the search provider is a consideration when conducting tendering.⁶¹⁶ [X] overarching concern about the Merger was a further lack of choice and less competition between providers, leading to [X] having to pay more for inferior products.⁶¹⁷ [X] noted that if the Panel Manager wanted to buy from somebody other than the big four, the cost would be [X] higher than it would have been a few years ago.⁶¹⁸
- (c) [X] had a concern about concentration, as the Merger means fewer and fewer competitors.⁶¹⁹ [X] noted that [X], there had been 12 options six years ago, 7-8 options two years ago, and there will be 3-4 credible options in 2022.⁶²⁰ [X] is concerned that the ability to apply competitive pressure is harder when there are fewer competitors in the market.⁶²¹
- (d) [X] said that there is a concentration risk developing in this market and that the Merger could lead to less choice for customers and to price increases.⁶²² In particular, [X] noted that following D&D's past acquisitions, prices generally increased, not benefiting the customer or the market.⁶²³

⁶¹² [X] call note, [X], paragraph 7.

⁶¹³ [X] call note, [X], paragraph 12.

⁶¹⁴ [X] call note, [X], paragraph 23.

⁶¹⁵ [X] call note, [X], paragraph 7.

⁶¹⁶ [X] call note, [X], paragraph 24.

⁶¹⁷ [X] call note, [X], paragraph 25.

⁶¹⁸ [X] call note, [X], paragraph 25.

⁶¹⁹ [X] call note, [X], paragraph 29.

⁶²⁰ [X] call note, [X], paragraph 29.

⁶²¹ [X] call note, [X], paragraph 30.

⁶²² [X] call note, [X], paragraph 29.

⁶²³ [X] call note, [X], paragraph 28.

7.235 As regards the Parties' further submissions in relation to intermediaries (see paragraphs 7.230 to 7.231):

- (a) In principle, it is difficult to draw comparisons between different market segments (because of the difficulties inherent in establishing whether existing prices in other segments are 'competitive' and how particular aspects of that market segment impact on pricing).
- (b) Even if certain intermediaries were in a better position to negotiate prices than other customer groups, this in itself does not preclude the risk of a reduction in competition following the Merger, given that other customers might not be in the same position and that the Parties are able to price discriminate (and, as explained above, the intermediaries do not believe, in any case, that they would be in a position to exercise buyer power after the Merger). We consider differences in prices between customer groups and between customers within the same groups in detail in Chapter 6.
- (c) We are not able to rely on ATI entering the market in the way suggested by the Parties. In particular, ATI told us that it does not take part in panel work due to the high costs involved and the lack of connection with quality of services provided. As such, it considers that this portion of the market is unavailable to it.⁶²⁴ We consider entry as a countervailing factor in Chapter 8.

7.236 Based on this evidence, we consider that, while certain intermediaries may be currently able to negotiate better terms than other customers, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

Our current view of remaining competitive constraints

7.237 We consider that only two other PSRB suppliers, ATI and Landmark, are effective competitors to the Parties, with ATI having been particularly effective in recent years. Like the Merged Entity, these PSRB suppliers are able to take advantage of economies of scale in order both to invest in integrated software systems and other ancillary services to customers, and to compete with the Parties in terms of marketing. These advantages are not available to the smaller suppliers, who have been losing market share in recent years.

⁶²⁴ ATI call note, 16 February 2022, paragraph 22.

- 7.238 The evidence on market shares, the Parties' internal documents, and the views of competitors and customers support the view that competition in the supply of the PSRBs is centred on the large national providers.
- 7.239 We consider that the competitive constraint that the smaller suppliers, individually and in aggregate, exert on the Merged Entity is limited and may diminish in the future. In particular, we consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. We therefore do not consider that smaller suppliers, taken separately or together, either currently or in future, impose a sufficient ongoing competitive constraint on the Merged Entity to offset the loss of competition arising from the Merger.
- 7.240 We also consider that any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is likely to be and to remain limited. D&D Indirect franchisees face some of the same disadvantages that the smaller suppliers face. Moreover, we consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offer and are subject to various restrictions in the franchise agreements. This limits their ability to differentiate themselves, innovate, and compete with the Merged Entity, and their dependence on D&D is likely to increase given the increasing importance of digitisation.
- 7.241 We further consider that the constraints exerted by ATI, Landmark, the smaller suppliers, and any competitive constraint exerted by the franchisees, even in aggregate, will be insufficient to offset the loss of competition arising from the Merger.
- 7.242 We also consider that, while certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

Conclusion

- 7.243 In this chapter we have considered whether the Merger would lead to a substantial lessening of competition by removing a previous competitor from the market and whether there would remain sufficient competitive constraints to offset the effects of the Merger.
- 7.244 The Merger eliminates one of the main PSRB suppliers and creates the largest player in the market with a very significant share of the supply of PSRBs in E&W. In particular:

- (a) The Merged Entity is larger in terms of market share than the two largest competitors, ATI and Landmark, in a market in which we have evidence that economies of scale are important.
- (b) The market is highly concentrated. The three largest competitors post-Merger, ie the Merged Entity, ATI, and Landmark together account for over 80% if D&D Indirect franchisees are included and over 70% of the market if D&D Indirect is excluded from the Merged Entity.
- (c) There are a number of smaller suppliers in the market but they all have much lower market shares. The tail of smaller suppliers for which we have data all have individual market shares of less than [0–5%] and together account for less than [10–20%] of the market on a national basis.

7.245 The evidence available to us consistently shows that the Parties are close competitors. In particular we note:

- (a) Despite the Parties' submission that they focus on different parts of the market, the data shows that both Parties have a significant presence in the supply of both residential and commercial PSRBs.
- (b) While there are some differences in their competitive strengths (with TMG stronger than D&D in the supply of PSRBs to the Top 100 law firms, which represents a relatively small part of the overall market), both Parties supply PSRBs to conveyancers ranging from small to large law firms, and to intermediaries (such as Panel Managers).
- (c) Both Parties also provide ancillary services that are closely linked to the supply of PSRBs and which are an aspect of competition in this market.
- (d) The Parties' internal documents show that each Party sees the other as a key competitor and that the Parties monitor each other.
- (e) Our engagement with customers indicates that a material proportion of D&D's customers see TMG as an important alternative to D&D (although we also recognise that it is more difficult to determine whether TMG's customers see D&D as an important alternative).
- (f) This is consistent with the evidence provided by competitors, which consider that D&D and TMG are among each other's closest competitors, and the available evidence on customer switching (albeit that we interpret this evidence with caution, for the reasons explained above).

7.246 The Merged Entity would face only limited competition, and the remaining competitive constraints would be insufficient to offset the loss of competition resulting from the Merger. In particular:

- (a) Our view is that the two large national providers (ATI and Landmark) each would provide an effective competitive constraint post-Merger, with ATI having been particularly effective in recent years. ATI and Landmark are mentioned as close competitors in the Parties' internal documents, and the evidence from customers and competitors corroborates this view. The evidence from the survey and the available evidence on switching data, both of which we interpret with caution, shows ATI to be a strong constraint with Landmark attracting some customers but fewer than ATI. Like the Merged Entity, these providers are able to take advantage of economies of scale in order both to invest in integrated IT platforms and the provision of other ancillary services to customers, and to compete with the Parties in terms of marketing.
- (b) The competitive constraint that the smaller suppliers exert on the Merged Entity is limited and may diminish in the future. Whilst the customer survey and switching evidence shows that some customers see smaller suppliers as alternatives to the Parties, no individual smaller supplier scored highly. In particular, even X-Press Legal, which was the smaller supplier most often mentioned as an alternative to the Parties, was mentioned much less often than the top competitors. As noted above, all the smaller suppliers have very small shares of supply, and they consider themselves restricted in their ability to compete with the large suppliers. The Parties' internal documents contain very few references to these smaller suppliers. In some of the references that are included, the Parties indicate that these smaller competitors are not seen as a competitive threat by them. We therefore do not consider that the presence of the smaller suppliers, taken separately or together, is sufficient to offset the loss of competition arising from the Merger.
- (c) Any competitive constraint that the D&D Indirect franchisees may exert on the Merged Entity is limited. We consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. This limits their ability to differentiate themselves, innovate and compete with the Merged Entity. Moreover, the D&D Indirect franchisees are themselves small regional competitors, who lack the ability to compete for some customer groups or to constrain the Merged Entity to a significant degree.

- (d) While certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.

7.247 On this basis, our view is that the Merger eliminates a major national PSRB supplier from the market, that in addition to the Merged Entity only two large national PSRB suppliers would remain, and that the constraints from those large suppliers, franchisees and smaller suppliers would not impose a sufficient competitive constraint on the Merged Entity, either individually or collectively, to offset the effects of the Merger.

7.248 Before concluding on whether the Merger has resulted or may be expected to result in an SLC in the market for the supply of PSRBs in E&W, we have considered in Chapter 8 whether there are any countervailing factors (specifically entry and/or expansion) that could prevent an SLC arising from the Merger.

8. Countervailing factors

Introduction

8.1 In this chapter, we consider whether there are countervailing factors which may prevent the SLC we have found from arising. We note that we have not received any submissions on efficiencies, and we have not considered them further.

8.2 This chapter therefore assesses the potential for entry and/or expansion to mitigate the loss of competitive constraint resulting from the Merger.

Entry and expansion

Framework of assessment

8.3 If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect (for example, a price rise), the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger.⁶²⁵

8.4 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.⁶²⁶

⁶²⁵ MAGs, paragraph 8.28.

⁶²⁶ MAGs, paragraph 8.29.

8.5 The CMA will use the following framework to determine whether entry or expansion would prevent an SLC. The entry or expansion must be:

- (a) 'timely;
- (b) likely; and
- (c) sufficient to prevent the SLC'.⁶²⁷

8.6 These conditions are cumulative and must be satisfied simultaneously.⁶²⁸

Timely

8.7 What is considered to be timely in order to prevent or mitigate the adverse effects of a merger will depend on the industry and the characteristics and dynamics of the market, and the timeframe over which the CMA expects an SLC to result from a merger. The CMA guidance provides that '[t]ypically, entry or expansion being effective within two years of an SLC arising would be considered by the CMA to be timely although, depending on the nature of the market, the CMA may consider a period of time shorter or longer than this'.⁶²⁹

Likely

8.8 The CMA must be satisfied that potential rivals or existing rivals have both the 'ability and incentive' to enter and/or expand. The CMA will consider the scale of any barriers to entry and/or expansion.⁶³⁰

Sufficient

8.9 Entry or expansion should be of sufficient scope and effectiveness to prevent an SLC from arising as a result of the merger.⁶³¹ Small-scale entry that is not comparable to the constraint eliminated by the merger is unlikely to prevent an SLC. In a differentiated market, entry into a market niche may be possible, but to the extent the niche product may not necessarily compete strongly with other products in the overall market, it may not constrain incumbents effectively.⁶³²

8.10 In this chapter, we first look at:

⁶²⁷ MAGs, paragraph 8.31.

⁶²⁸ MAGs, paragraph 8.32.

⁶²⁹ MAGs, paragraph 8.33.

⁶³⁰ MAGs, paragraph 8.35.

⁶³¹ MAGs, paragraph 8.37.

⁶³² MAGs, paragraph 8.39.

- (a) potential barriers to both entry and expansion (paragraphs 8.11 to 8.17);
- (b) the evidence in relation to entry (paragraphs 8.18 to 8.22); and
- (c) the evidence in relation to expansion (paragraphs 8.23 to 8.35).

Barriers to entry and expansion

8.11 In this section we look at potential barriers to entry and expansion.

The Parties' view

8.12 The Parties submitted that there were no significant barriers to entry or expansion.⁶³³ The Parties argued that:

- (a) initial set-up costs were generally low;⁶³⁴
- (b) the importance of price and lack of close focus on quality meant that neither retailer nor customer clients placed a high value on the reputation of participants as a factor in ordering products;⁶³⁵
- (c) economies of scale in ordering products were not present at a compiler level;⁶³⁶
- (d) there was little to no use of term agreements or exclusivity requirements as regards the ordering of products by retailers and customers;⁶³⁷
- (e) search packs are essentially commodity products;⁶³⁸ and
- (f) customers can (and do) switch easily between providers, facilitated by multi-sourcing by customers.⁶³⁹

Third party views and the Parties' responses to these views

8.13 Third parties told us that the key factor preventing expansion is accessing sufficient resources to be able to compete with established larger property search businesses. The level of spend and capital to fund expansion is viewed as increasingly difficult to reach and the gap between their spending power and the larger suppliers is increasing. This specifically concerns

⁶³³ Response to the Enquiry Letter, paragraph 32.1.

⁶³⁴ Response to the Enquiry Letter, paragraphs 32.2-32.5. The Parties also provided a list of new market entrants at paragraph 33.2 of the Response to the Enquiry Letter.

⁶³⁵ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁶³⁶ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁶³⁷ Response to the Enquiry Letter, paragraphs 32.2-32.5.

⁶³⁸ Response to the Issues Paper, paragraphs 4.9-4.10.

⁶³⁹ Response to the Issues Paper, paragraphs 4.9-4.10.

spending on technology, as the processes and services relating to PSRBs has become more digitised,⁶⁴⁰ and marketing to attract new customers. No third party told us that ‘white label’ products were a way to bridge the technology spend gap. Detailed third party responses can be found in Appendix C.

- 8.14 In response, the Parties argued that expansion was a matter of financing and there was no lack of available finance for innovative products as shown by the proliferation of PropTech companies.⁶⁴¹ They considered that the increased digitalisation of property searches opened possibilities for expansion of PSRB suppliers⁶⁴² with the technology required to enter and expand being ‘readily available’ including through white label provision.⁶⁴³ The Parties also submitted that marketing spend was not a barrier to expansion. They provided the marketing spend for a number of their businesses stating that this was relatively modest and not insurmountable for other suppliers.⁶⁴⁴

Our assessment

- 8.15 We addressed the points set out at paragraph 8.12 on barriers in Chapter 6. These include the importance of quality as a competitive factor, economies of scale, supply agreements and exclusivity, and switching. In Chapter 6 we consider that not all customers are price sensitive and PSRB suppliers do compete on quality. While exclusive supply agreements are not widely used, customers do not tend to switch unless there is an issue with the service or quality they are already receiving, and the provision of ancillary services can contribute to making customers ‘sticky’. This customer inertia can act as a barrier to expansion. Furthermore, there are some economies of scale as large firms are able to spread fixed costs over a wider customer base, allocate staff efficiently, automate, and purchase inputs more efficiently than smaller firms. Smaller firms which are at a cost disadvantage may find it particularly difficult to expand (by competing on price or investing in service improvements). Smaller suppliers are at a distinct disadvantage in their ability to expand through competition with large suppliers because of a lack of ancillary services.

⁶⁴⁰ ATI response to phase 1 questionnaire, question 11.

⁶⁴¹ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.11.

⁶⁴² Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.12.

⁶⁴³ D&D Site visit slide pack, dated 3 February 2022, slide 18.

⁶⁴⁴ Parties’ response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4, paragraph 1.15. D&D’s marketing spend budget for PIE in FY21 was £[REDACTED]; and for Index Direct (with some budget items also applying to Index Indirect) it was £[REDACTED]. TM Convey spent £[REDACTED] and CDS spent £[REDACTED].

- 8.16 We also note in this regard that the PSRB market has become increasingly concentrated in recent years, with the supply of PSRBs in E&W by the Merged Entity, ATI, and Landmark together accounting for around [80–90%] of the market.⁶⁴⁵ Even if the D&D Indirect franchisees are excluded, the share of supply of the Merged Entity, ATI, and Landmark together still accounts for around [70–80%] of the market.
- 8.17 We therefore consider that large suppliers have a significant advantage over new entrants and smaller suppliers looking to expand. In addition to our findings, as summarised in paragraph 8.15, we consider the ability to invest in and develop technology and marketing at sufficient levels to compete with the large suppliers act as further barriers to expansion. The recent consolidation in the market we consider has also increased the disparity between large and smaller suppliers in recent years and thus increased the barriers faced by smaller suppliers.

Entry

- 8.18 We now look at past entry and how it can inform us of the potential for future entry.

The Parties' view

- 8.19 The Parties submitted that 'there is evidence of historic disruptive new entrance and growth and the prospect of new entry is real, imminent and potentially disruptive'.⁶⁴⁶ They also argued that entry 'even at a small scale is sufficient'⁶⁴⁷ and that it is 'not inconceivable' that property websites could enter into the provision of PSRBs.⁶⁴⁸

Our assessment

- 8.20 Entry (and exit) by firms on a small scale into the PSRB market has occurred on a regular basis in the past and is continuing to happen.⁶⁴⁹ However, in order to be taken into account in our assessment entry must be sufficient in scope and effectiveness to prevent an SLC from arising as a result of the Merger. As set out in paragraphs 7.182 to 7.186, the Merged Entity faces a

⁶⁴⁵ See Table 1 in Appendix B.

⁶⁴⁶ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.40.

⁶⁴⁷ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, paragraph 2.42.

⁶⁴⁸ Parties' response to the Annotated Issues Statement and Working Papers, dated 14 April 2022, Appendix 4 paragraph 1.12.

⁶⁴⁹ Response to the Enquiry Letter, paragraph 33.2. The Parties provided a schedule of small-scale entrants in 2021 (post-Merger) and to date in 2022.

limited competitive constraint from smaller suppliers, which is likely to diminish overall in the future. As such, any entry by smaller suppliers into the PSRB market would not be a sufficient constraint to prevent any SLC from arising as a result of the Merger.

- 8.21 We have not seen any new entry into the PSRB market on a large scale since ATI entered from outside the UK through the acquisition of a small supplier (STL) in 2015. In relation to evidence of potential large-scale entry into the market, third parties were sceptical of further entry from outside the UK.⁶⁵⁰ We have also not received any evidence from the Parties or through our enquiries, of any likely large-scale entrant who would enter in a timely manner. Three companies mentioned by the Parties as potential entrants confirmed that they did not have plans to enter the PSRB market.⁶⁵¹
- 8.22 We therefore do not consider that entry would be timely, likely and sufficient to prevent the SLC that we have found in the PSRB market in E&W.

Expansion

- 8.23 In this section we first look at the ease of expansion by looking at the extent and speed of growth seen historically in PSRB suppliers (paragraphs 8.24 to 8.31). We then look at the potential for expansion to be facilitated by larger customers (paragraphs 8.32 to 8.35).

Ease of expansion

The Parties' view

- 8.24 The Parties submitted that there were no significant barriers to expansion and that expansion was 'remarkably easy'.⁶⁵² The Parties argue that this was shown by the growth of the Parties and the emergence of the Index franchise group, InfoTrack, CDS, Search Acumen, Legal Bricks, Legal Brokers, Move Reports UK, and The Search Bureau.⁶⁵³ In addition, the Parties put forward as potential future constraints Elan Technology, Your Search Partner, Property Search Direct, and PSR Legal on the grounds these were all

⁶⁵⁰ For example, ATI stated that it was not aware of any other global players – similar to ATI and D&D – that could enter the property search reports industry in E&W. ATI call note, 28 September 2021, paragraph 20.

⁶⁵¹ [X] response to questions submitted to the CMA on 14 April 2022, [X] response to questions submitted to the CMA on 3 May 2022 and [X] response to questions submitted to the CMA on 26 April 2022.

⁶⁵² Response to the Enquiry Letter, paragraph 32.1. [Parties' response to the Issues Statement](#), paragraph 3.8.

⁶⁵³ [Parties' response to the Issues Statement](#), paragraph 3.8.

established by former D&D employees and therefore had the relevant industry experience and relationships.⁶⁵⁴

Third party views

8.25 No third party considered that expansion was easy. Almost all small PSRB suppliers told us that it was difficult, very difficult or impossible to expand in the property search market.⁶⁵⁵ This view was also supported by the other two large competitors:

- (a) Landmark stated that in its view it was very difficult for a new entrant to come into the market and grow.⁶⁵⁶
- (b) ATI told us that the barriers for new entrants into the market were higher than ever and as such there have not been any significant new entrants able to expand rapidly (other than D&D) since InfoTrack entered the market.⁶⁵⁷

Our assessment

8.26 Of the PSRB suppliers mentioned by the Parties, ATI has experienced the most significant expansion in recent years. ATI entered the market through acquisition of an existing smaller supplier (STL) in 2015, launching its own product InfoTrack in the same year. InfoTrack grew gradually, taking three years to reach a market share of [5–10%].

8.27 ATI attributed its success to certain advantages it had on entering the market. These were:⁶⁵⁸

- (a) a tried and tested product which was easily transferable to the UK;
- (b) an innovative product that was different to anything else in the UK PSRB sector at the time;
- (c) experience in a market (Australia) where the conveyancing and legal system were highly compatible with the UK; and

⁶⁵⁴ [Parties' response to the Provisional Findings](#), paragraph 4.4.3.

⁶⁵⁵ Third party respondents to phase 1 and phase 2 questionnaire, responses to question 'How easy or difficult is it for a small supplier to expand in the market for the supply of property search report bundles in England & Wales in your opinion? What are the main barriers (if any)?'. 28 out of 29 respondents who answered the question at Phase 1 or 2 stated that it was difficult, very difficult or impossible to expand in the property search market.

⁶⁵⁶ Landmark call note, 22 September 2021, paragraph 23.

⁶⁵⁷ ATI call note, 16 February 2022, paragraph 14.

⁶⁵⁸ ATI call note, 16 February 2022, paragraph 1.

(d) significant financial backing, being at the time the largest property search provider in Australia.

- 8.28 Of the other PSRB suppliers mentioned by the Parties, the Index Indirect franchise group, CDS and Search Acumen (prior to their acquisitions by D&D, TMG and ATI respectively) had market shares between [0-5%] and [5-10%] each.⁶⁵⁹ These shares had taken them five years or more to achieve.
- 8.29 Of other entrants mentioned in paragraph 8.24, Legal Bricks and Move Reports UK which are newer entrants into the PSRB market are the most significant. These are relatively recent entrants and therefore, potentially still in an initial growth phase, each have a market share as of 2021 of only about [0-5%]. Legal Bricks was acquired by The Access Group in November 2021. The Access Group told us that its projected growth for Legal Bricks meant that it would increase its market share from around its current [0-5%] to around [0-5%] in 2024.⁶⁶⁰ This growth would come from both new business and cross selling from The Access Group's legal customer base. The Access Group stated that the acquisition 'represented an opportunity for Access to enhance the breadth of its offering to its customers' and that for it a small acquisition made sense as it offered the ability to accelerate growth quickly.⁶⁶¹ The other suppliers mentioned by the Parties are also very small and we do not consider the fact that they had been established by former D&D employees would mean that they constitute a sufficient constraint to prevent any SLC from arising as a result of the Merger.
- 8.30 We consider that whilst some of the suppliers that have entered the market that were mentioned by the Parties were able to grow their market share, this was achieved slowly over time. Further, even after such growth, their market shares remained very substantially below the shares of the four main PSRB suppliers. [X] projected future growth while ahead of the historic growth of the market as a whole would still leave it significantly smaller than ATI, Landmark and the Merged Entity.⁶⁶²
- 8.31 ATI's explanation of its success suggests that there are significant barriers to expansion in the PSRB market which it was in a unique position to overcome. Specifically, it had an innovative product that was already an established offering in Australia, a similar market to the UK. It also had significant financial backing. As set out in our analysis of entry above, we are not aware of any

⁶⁵⁹ Market shares for the individual companies are shown in Table 7.1.

⁶⁶⁰ Response to a Request for Information (RFI) sent to The Access Group on 14 April 2022. Response dated 22 April 2022.

⁶⁶¹ Response to a Request for Information (RFI) sent to The Access Group on 14 April 2022. Response dated 22 April 2022.

⁶⁶² See [Parties' supplementary response to the Provisional Findings](#), dated 27 June 2022, paragraph 3.1.3.

PSRB suppliers from outside the UK that are looking to enter the market in E&W and would be potentially able to enter and expand in a timely, likely, and sufficient manner. We are not aware of any PSRB supplier that is already in the market which would be able to grow in a similar way to ATI.

Expansion facilitated by larger customers

The Parties' view

- 8.32 The Parties suggested that '[e]xpansion can be facilitated by the larger customers, including panels. For example, across the period 2014-2017, over 40% of CDS's growth can be attributed to increases in sales to one panel, [Conveyancing Alliance Limited] (**CAL**)'.⁶⁶³ The Parties have also said that '[a]cross the [...] period 2014–2017, 42% of CDS' total growth can be attributed to increased sales to CAL'.⁶⁶⁴

Our assessment

- 8.33 The argument that large customers and/or panels could divert work to smaller PSRB suppliers to facilitate their growth is an argument principally about buyer power. We address buyer power in Chapter 7⁶⁶⁵ where we found that, while certain intermediaries may be currently able to negotiate better terms, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.
- 8.34 In relation to CDS we consider the ability of CDS to grow its market share in 2014-2017 is unlikely to be informative as to the current scope for such growth, given in particular the changes in market shares of the main PSRB suppliers and the effect this has had on entry barriers in recent years (see paragraphs 8.11 to 8.17 above). In addition, CAL's purchases from CDS even in 2017 were relatively modest relevant to the total size of the market (around [0–5%] in volume terms). Even if a Panel Manager were to offer a similar volume of business to a smaller supplier in response to the Merger, in our view this is unlikely to be sufficient to allow timely expansion on a sufficient scale to address any concerns arising from the Merger.
- 8.35 Furthermore, we have seen no evidence that large customers or panels have looked to sponsor entry in the past nor have we received any evidence from

⁶⁶³ [Parties' response to the Issues Statement](#), paragraph 3.9.

⁶⁶⁴ D&D response to the [CMA's s.109 Notice issued on 17 November 2021](#), question 3(c).

⁶⁶⁵ See paragraphs 7.228 to 7.236.

them or from the Parties or third parties that this is likely to happen in the future.

Conclusion

- 8.36 We conclude that neither entry nor expansion would be timely, likely and sufficient to mitigate any potential adverse effects of the Merger and prevent the SLC we have found from arising.

9. Conclusion

- 9.1 As a result of our assessment, we conclude that the completed acquisition by D&D of TMG has resulted in the creation of an RMS.
- 9.2 We also conclude that the creation of that situation has resulted, or may be expected to result in an SLC in the supply of PSRBs in E&W.

10. Remedies

Introduction

- 10.1 Having found an SLC, we must now decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect which has resulted from or may be expected to result from the SLC.⁶⁶⁶
- 10.2 This chapter sets out our assessment of, and final decision on, the appropriate remedy to the SLC and resulting adverse effects we have found. In particular, this chapter discusses:
- (a) Framework for the assessment of remedies;
 - (b) Overview of remedy options;
 - (c) Remedy consideration process;
 - (d) Assessment of the effectiveness of remedy options:
 - (i) Full Divestiture, including our assessment of the Supply Agreements; and
 - (ii) Partial Divestiture;

⁶⁶⁶ The Act, section 35(3); [Merger remedies guidance CMA87](#) (CMA87), paragraph 1.2(b).

- (e) Assessment of relevant customer benefits (**RCBs**);
- (f) Consideration of the proportionality of effective remedies;
- (g) Remedy implementation, and
- (h) Our decision on remedies.

Framework for the assessment of remedies

- 10.3 The Act requires that the CMA, when considering possible remedial actions, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’.⁶⁶⁷
- 10.4 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:
- (a) impact on the SLC and the resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality in terms of implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect. In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.⁶⁶⁸
- 10.5 The CMA will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,⁶⁶⁹ to the effect of any remedial action on any RCBs arising from the merger.

⁶⁶⁷ The Act, [section 35\(4\)](#).

⁶⁶⁸ [CMA87](#), paragraph 3.5.

⁶⁶⁹ The Act, [section 35\(5\)](#).

- 10.6 A detailed description of the factors the CMA will examine in determining what remedial action is to be taken can be found in our Merger Remedies Guidance.⁶⁷⁰

Overview of remedy options

- 10.7 As set out in the Mergers Remedies Guidance,⁶⁷¹ remedies are conventionally classified as either structural or behavioural:
- (a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
 - (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.
- 10.8 In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies, because:⁶⁷²
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.
- 10.9 In this case, we have considered two structural remedy options:
- (a) full divestiture of TMG; or
 - (b) partial divestiture of TMG, with its Scottish operations, which trade under the PSS brand, being transferred to D&D.

⁶⁷⁰ See [CMA87](#).

⁶⁷¹ [CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to intellectual property (IP) rights may have features of structural or behavioural remedies depending on their particular formulation.

⁶⁷² [CMA87](#), paragraph 3.46.

10.10 Alongside the Provisional Findings, we published a Notice of possible remedies (**RN**)⁶⁷³. In the RN, we said that we were not proposing behavioural remedies on their own as none appeared likely to be effective in addressing the SLC that we had provisionally found. We said that we were willing to consider any behavioural remedies that were put forward as part of the consultation, but none were proposed by any of the respondents to the consultation. We do not therefore consider behavioural remedies further in this chapter.

Our remedy consideration process

10.11 In the RN we said we had identified only one potential structural remedy, being the divestiture of TMG. We did not identify any other divestiture package that we considered at that stage would be effective.

10.12 We considered that a full divestiture of TMG would be similar to a prohibition of the Merger as it would re-create a similar market structure to that which existed at the time of the Merger. We therefore took the preliminary view that, subject to implementation considerations, a full divestiture of TMG would represent a comprehensive and effective remedy to all aspects of the SLC provisionally found, and consequently any resulting adverse effects.

10.13 We also said that we would consider whether action needed to be taken in relation to the agreements entered into at the time of the Merger⁶⁷⁴ between TMG and the Shareholders,⁶⁷⁵ LSL and Connells. The Supply Agreements comprise a 'Services Agreement' between LSL and TMG (the **LSL Agreement**) and a 'Services Agreement' between Connells and TMG (the **Connells Agreement**) both dated [X].⁶⁷⁶ As Connells acquired Countrywide before the Merger, the Connells Agreement also applies to Countrywide.

10.14 As set out in paragraph 5.16 the Supply Agreements contain Exclusive Purchasing Obligations which provide for the exclusive supply of PSRBs by TMG to the Shareholders for a period of [X] years. The Supply Agreements also include **Input Switching Clauses** which stipulate that LSL and Connells would, within [X] of the date of the Supply Agreements, replace certain of the

⁶⁷³ See [Notice of possible remedies](#), dated 18 May 2022.

⁶⁷⁴ D&D's wholly owned UK subsidiary, D&D UK, acquired the entire allotted and issued share capital of TMG for approximately £91.5 million pursuant to a share purchase agreement dated and effective on 8 July 2021 (**SPA**) (Response to the Enquiry Letter, Annex 06.01 and Annex 03.01).

⁶⁷⁵ While TMG was founded by LSL, Connells and Countrywide, Connells acquired Countrywide before the Merger, see webpage here: [Connells Group completes acquisition of Countrywide](#), accessed by the CMA on 28 June 2022. This chapter therefore focuses on LSL and Connells only.

⁶⁷⁶ These agreements are referred to as the Exclusivity Agreements in the [Provisional Findings](#) and the [Notice of possible remedies](#). As Connells acquired Countrywide before the Merger, the Connells Agreement also applies to Countrywide.

reports offered to their panel firms with those supplied by D&D group companies. In practice, these products would be provided by TMG to LSL and Connells.⁶⁷⁷

- 10.15 We invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise. These included requirements relating to the scope of any divestiture package, the identification of suitable potential purchaser(s), and the divestiture process including the timing of divestiture. We also invited views on the treatment of the Supply Agreements.
- 10.16 In addition, we stated we would consider any other practicable structural remedies that the Parties, or any interested third parties, might propose that could be effective in addressing the SLC and/or any resulting adverse effects.
- 10.17 We have set out below an overview of our evidence gathering process and the exchanges we have had with the Parties following the publication of the RN:
- (a) D&D submitted a response to the RN on 1 June 2022. It subsequently withdrew this response and submitted a revised response on 10 June 2022. Following that, D&D made some further amendments to the 10 June response on 17 June 2022. The response of 17 June 2022 is published on the CMA website.⁶⁷⁸ References to D&D's response to the RN in this chapter refer to the response of 17 June 2022.
 - (b) TMG provided a response to the RN on 22 June 2022 which is also published on the CMA website.⁶⁷⁹
- 10.18 In its response to the RN, D&D put forward an alternative partial divestiture package (the **Partial Divestiture**). The proposed Partial Divestiture would comprise all of TMG's operations in E&W, namely tmConvey, tmConnect, Conveyancing Data Services ("CDS"), Mio, and all associated assets,⁶⁸⁰ but would exclude the PSS business which operates outside of E&W.⁶⁸¹ D&D

⁶⁷⁷ The Input Switching Clauses replace certain of the reports offered to LSL and Connell's' panel firms with those supplied by D&D group companies. [§].

⁶⁷⁸ [D&D's response to the notice of possible remedies](#), dated 17 June 2022.

⁶⁷⁹ [TMG's response to the notice of possible remedies](#), dated 22 June 2022.

⁶⁸⁰ D&D defined that the TMG assets that it would divest included 'all of TMG's existing tangible and intangible assets relating to its business in E&W, including the technology platform on which tmConvey operates its business (including the compilation and sale of PSRB, all of its production, back office, software, management, IT, product, commercial, marketing, finance, and customer support teams)' – see [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 2.1.1.

⁶⁸¹ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 2.1.1.

also stated that no action needed to be taken in relation to the Supply Agreements.

- 10.19 On 1 July 2022, D&D provided a further submission responding to TMG's submission of 22 June 2022.⁶⁸² In its submission D&D outlined two options for its Partial Divestiture. It submitted that PSS could be transitioned to D&D by either (i) [X] or, if this was considered to be particularly complex or disruptive to the TMG business, (ii) [X] D&D's existing technology platform and transitioning customers onto that platform.⁶⁸³ D&D further stated that the transition of PSS customers would not require any separation of TMG's assets, resources or staff and it would not be necessary to extract any existing technology from TMG.⁶⁸⁴
- 10.20 We held hearings with each of D&D and TMG on 14 June 2022 and sent follow up information requests to them. We also held calls with several third parties.⁶⁸⁵ We then shared a working paper with D&D and TMG (the **Remedies Working Paper**) on 1 July 2022 setting out our assessment of the evidence and our provisional view of remedies.
- 10.21 D&D submitted an initial response to the RWP on 8 July 2022⁶⁸⁶ which included its views on the Supply Agreements, the retention of TMG senior management, and the operation of the Initial Enforcement Order (**IEO**) during the divestiture period. D&D requested additional time to respond on the Partial Divestiture to allow it to commission a third-party report (the **Consultancy Report**) on the feasibility of transferring customers from the PSS operation of TMG to D&D.
- 10.22 On 8 July 2022 TMG submitted a response to the Remedies Working Paper together with comments on D&D's submission of 1 July 2022.⁶⁸⁷
- 10.23 On 14 July 2022, D&D provided a supplementary response to the Remedies Working Paper on the Partial Divestiture along with the Consultancy Report.⁶⁸⁸ These submissions did not state which of the options for the Partial Divestiture proposal outlined in D&D's submission of 1 July 2022 D&D would prefer to pursue. In addition, the remedy was not clearly specified, with a lack of detail about which assets would be included within the scope of the divestment business and how the assets that would be retained by D&D would be carved out from the TMG business. We have taken the Consultancy Report into account in our assessment, although we note that it was prepared

⁶⁸² D&D's supplementary response to the notice of possible remedies, dated 1 July 2022.

⁶⁸³ D&D's supplementary response to the notice of possible remedies, dated 1 July 2022, paragraph 4.

⁶⁸⁴ D&D's supplementary response to the notice of possible remedies, dated 1 July 2022, paragraph 5.

⁶⁸⁵ Calls were held with LSL, Connells, the Index Franchise Association, certain PSG franchisees and [X].

⁶⁸⁶ D&D's response to the Remedies Working Paper, dated 8 July 2022.

⁶⁸⁷ TMG's response to the Remedies Working Paper, dated 8 July 2022.

⁶⁸⁸ D&D's further response to the Remedies Working Paper, dated 14 July 2022.

for D&D⁶⁸⁹ and that we were unable to verify a number of its underlying assumptions in the time available which affects the weight we can place on it.

- 10.24 The CMA sent an RFI to D&D on 15 July 2022 seeking clarity over the scope of the Partial Divestiture. D&D provided a further clarification of its proposed remedy on 18 July 2022. D&D submitted that the Partial Divestiture would comprise: Divestiture of all of TMG's operations in E&W namely tmConvey, tmConnect, Conveyancing Data Services ("CDS"), Mio, and all associated assets, excluding certain parts of PSS which would be retained within D&D. These parts are certain PSS customer data which would be transferred to an adapted D&D platform, the PSS brand, all existing PSS staff, and any software to the extent that these are only currently being utilised by TMG to service the needs of PSS customers.⁶⁹⁰ D&D did not pursue option (i) for the transition of PSS customers (see paragraph 10.19). We look in detail at D&D's final proposal at paragraph 10.165.
- 10.25 On 18 July 2020, TMG submitted comments on D&D's response to the Remedies Working Paper and on 21 July 2022, TMG submitted comments on D&D's response to the CMA's RFI dated 15 July 2022.

Divestiture remedies - effectiveness

- 10.26 In this section, we look at the design issues we should consider in order to manage the effectiveness risks of a divestiture remedy (paragraphs 10.27 to paragraphs 10.31). Next, we present the views of D&D, TMG and third parties (paragraphs 10.32 to 10.72). We then assess the effectiveness of a full divestiture of TMG (paragraphs 10.73 to 10.163) including issues regarding the Supply Agreements. Finally, we assess the effectiveness of a partial divestiture of TMG (paragraphs 10.164 to 10.256).

Divestiture remedy design considerations

- 10.27 A successful divestiture will effectively address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.⁶⁹¹
- 10.28 In defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that

⁶⁸⁹ TMG raised a number of concerns about D&D's decision to use [X] to prepare the report, email from TMG, 12 July 2022.

⁶⁹⁰ D&D response to request for information of 15 July 2022 (RFI9), paragraph 3.1.

⁶⁹¹ [CMA87](#), paragraph 3.38.

includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.⁶⁹²

10.29 The CMA will generally prefer the divestiture of the whole of an existing business, which can compete effectively on a stand-alone basis, independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.⁶⁹³

10.30 There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk.⁶⁹⁴

- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

10.31 An effective divestiture remedy must give us sufficient confidence that these practical risks can be properly addressed in its design. We therefore consider the following design issues:

- (a) the appropriate scope of the divestiture package;
- (b) is sufficiently broad in scope to address all aspects of the SLC(s) and resulting adverse effects;
- (c) would enable the eventual purchaser to operate the divested business as an effective competitor;
- (d) is sufficiently attractive to potential purchasers;
- (e) the identification and availability of suitable purchasers; and

⁶⁹² CMA87, paragraph 5.7.

⁶⁹³ CMA87, paragraph 5.12.

⁶⁹⁴ CMA87, paragraph 5.3.

- (f) ensuring an effective divestiture process.

Views of the Parties and third parties

D&D

- 10.32 D&D considers that a full divestiture of TMG would be an effective remedy. However, D&D submitted that it considers that the imposition of such a remedy would be disproportionate and overly intrusive if it were to include TMG's business activities outside of E&W (namely the PSS business which solely operates in Scotland).⁶⁹⁵ D&D's views on the Partial Divestiture are set out separately at paragraphs 10.40 to 10.41 below.
- 10.33 D&D argued that no action was needed in regard to the Supply Agreements, and that these should remain in place post any divestiture.⁶⁹⁶
- 10.34 D&D confirmed that the Supply Agreements formed part of the Merger rationale for D&D: 'D&D's rationale for acquiring TMG was, in part, to realise opportunities to cross-sell D&D products to TMG's customers and LSL and Connells, including products from FCI, Terraforma, and Lawyer Checker which D&D had recently acquired. [...] Accordingly, effective from [X] ([X]), TMG entered into Supply Agreements with its former shareholders, LSL and Connells'.⁶⁹⁷
- 10.35 D&D further submitted that it is important that the Supply Agreements remain in place for the ongoing benefit of the TMG business.⁶⁹⁸
- 10.36 D&D stated that the Supply Agreements broadly replicated the pre-Merger supply arrangements that existed as between TMG and its (now former) Shareholders⁶⁹⁹ and that maintaining the Supply Agreements would therefore effectively preserve the pre-merger conditions in respect of their procurement behaviour.⁷⁰⁰ In addition, all aspects of the Supply Agreements were intended to operate together and are inextricably linked.⁷⁰¹

⁶⁹⁵ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.1.

⁶⁹⁶ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 2.1.2.

⁶⁹⁷ D&D response to the CMA's s.109 Notice (RF15) issued on 14 March 2022, paragraphs F to I. D&D's response to the CMA's s.109 Notice (RF15) issued on 14 March 2022, paragraphs F to I.

⁶⁹⁸ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 4.1.

⁶⁹⁹ Whilst D&D have referred to a shareholder agreement in this context, TMG have clarified that the obligation to purchase searches from TMG is evidenced in the Articles of Association (as to which, see paragraph 10.84 below) see TMG's email to the case team, dated 30 June 2022.

⁷⁰⁰ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 4.2.

⁷⁰¹ D&D's Initial response to remedies working paper, paragraph 2.3.

10.37 D&D argued that the Shareholders represent an important client base for TMG, making up £[REDACTED] of TMG sales in 2021.⁷⁰² D&D claimed that altering the terms of the agreement so as to weaken the purchasing commitment and certainty of supply [REDACTED]. D&D claimed this would not only be disproportionate and unnecessary but would also [REDACTED].⁷⁰³

10.38 D&D further argued that there is no need for the CMA to change the Supply Agreements for the remedy to be effective. This includes the Input Switching Clauses.⁷⁰⁴ D&D considers that all aspects of the Supply Agreements were intended to operate together and are inextricably linked. It would not be practicable to separate, for example, the Input Switching Clauses from the Exclusivity Purchasing Obligations without risking there being a significant impact on the operability of the retained provisions in the Supply Agreements.⁷⁰⁵ D&D submitted that there are [REDACTED].⁷⁰⁶

10.39 D&D further argued that the Supply Agreements are pro-competitive as:⁷⁰⁷

- (a) FCI is the smallest of the providers of environmental reports and the use of FCI would strengthen FCI's ability to compete in the market. Conversely, if the Supply Agreements were removed it would preserve or strengthen the market position of Groundsure and/or Landmark in relation to environmental reports and harm D&D's ability to compete effectively as a smaller market participant.⁷⁰⁸
- (b) The Supply Agreements are on arms-length commercial terms and D&D will not obtain any ability to influence the competitive behaviour of TMG.
- (c) All suppliers of environmental reports are vertically integrated. Therefore there is no difference in incentive, motivation, and competition risk from TMG using any of the three alternatives (Groundsure, FCI or Landmark).
- (d) [REDACTED], TMG, LSL and Connells will also lose the benefit of [REDACTED] efforts if the Supply Agreements are not honoured.

10.40 D&D submitted that maintaining the Supply Agreements in their entirety (including Schedule 1) is the least costly and intrusive action available to the CMA. It neither compromises the efficacy of any remedy in addressing the

⁷⁰² D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 4.3.

⁷⁰³ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 4.3.

⁷⁰⁴ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 4.4.

⁷⁰⁵ D&D's Initial response to remedies working paper, paragraph 2.3.

⁷⁰⁶ Transcript of the response hearing with D&D, page 13, line 15.

⁷⁰⁷ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 4.5.

⁷⁰⁸ D&D initial response to remedies working paper, paragraph 2.4.

SLC nor gives rise to any competition concerns.⁷⁰⁹ D&D also submitted that going forward, they should have the freedom and ability to [redacted].⁷¹⁰

10.41 D&D submitted in relation to its Partial Divestiture proposal of 17 June 2022 that it would comprehensively address the SLC⁷¹¹ as it would:

- (a) restore a similar market structure to pre-merger, with at least four large suppliers;
- (b) provide the potential purchaser with the means to compete effectively at a national level in E&W and replicate the rivalry that would have existed absent the merger; and
- (c) not result in any changes in the market structure in Scotland where D&D has no presence and has no plans to enter in the foreseeable future.⁷¹²

10.42 D&D further submitted that D&D's retention of PSS would not negatively impact on the effectiveness of the remedy as a presence in Scotland was not necessary in order for TMG to be competitive in E&W.⁷¹³ In addition, D&D said the integration of the PSS business within the wider D&D group would enhance the future capabilities of PSS.⁷¹⁴

TMG

10.43 TMG submitted that 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.⁷¹⁵

10.44 TMG also stated that it believed the market had changed in the period since September 2020 mainly through acquisition and consolidation, with the other large national PSRB suppliers having acquired various data supply businesses. This meant [redacted]. As such it believed it was 'crucial' that if TMG was sold it was sold in its entirety with 'anything other than a full divestiture' being 'too constrained' to [redacted].⁷¹⁶ TMG's views on the Partial Divestiture are set out at paragraphs 10.54 to 10.57 below.

⁷⁰⁹ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 4.5.

⁷¹⁰ Transcript of the response hearing with D&D, page 36, lines 6 to 9.

⁷¹¹ D&D did not make any further comments on its subsequent changes to its Partial Divestiture. However, given that these changes were limited to adjustments in the scope of its Partial Divestiture, we consider these comments refer equally to its final Partial Divestiture proposal of 15 July 2022.

⁷¹² [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.2.

⁷¹³ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.3.

⁷¹⁴ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.7.

⁷¹⁵ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.4.

⁷¹⁶ Transcript of the opening statement for the response hearing with TMG, 14 June 2022, paragraphs 5 to 7.

- 10.45 In relation to the Supply Agreements, TMG believed that it is important that they remain in place, subject to one exception: the Input Switching Clauses.⁷¹⁷
- 10.46 TMG agreed that the Supply Agreements replicated the arrangements that had existed between TMG and the Shareholders, with the exception of the Input Switching Clauses. TMG therefore considered that maintaining the Supply Agreements effectively preserves the pre-Merger conditions.⁷¹⁸ TMG also considered that the benefit of the Supply Agreements should remain with TMG as the Shareholders are an important part of its client base and TMG's [REDACTED].⁷¹⁹ Altering the terms of supply so as to weaken the purchasing commitment and certainty of supply would [REDACTED] than pre-Merger and [REDACTED].⁷²⁰
- 10.47 However, TMG considered that, in the event of a divestiture of TMG, the Input Switching Clauses should, [REDACTED], fall away. TMG submitted that if the Input Switching Clauses were to remain in place, it would leave TMG in a [REDACTED]. This would [REDACTED] (both in terms of its supplies to LSL and Connells and more broadly) and this, in turn, would [REDACTED].⁷²¹
- 10.48 TMG submitted that the Supply Agreements were negotiated and agreed in the specific context of the Merger and it is not correct to assert that they are on 'arms-length commercial terms'.⁷²² Furthermore, TMG stated that it would not have agreed to the Input Switching Clauses absent the merger.⁷²³
- 10.49 In TMG's view, [REDACTED] and if it were to remain in place post-divestiture this would restrict TMG's ability to choose freely between any third-party search provider. This would [REDACTED].⁷²⁴
- 10.50 TMG further submitted that retaining the Input Switching Clauses would have the potential to [REDACTED].⁷²⁵
- 10.51 Furthermore, TMG submitted that the protections in the Supply Agreements [REDACTED] do not necessarily cover all of the searches which are to be supplied by D&D. Further, [REDACTED].⁷²⁶ TMG also said that they would likely still buy D&D's

⁷¹⁷ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.1 and 4.5.

⁷¹⁸ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.2.

⁷¹⁹ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.3. See also, TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 2. TMG derived £[REDACTED] million of sales originating from LSL/Connells/Countrywide in the year ended 31 December 2021.

⁷²⁰ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.4.

⁷²¹ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.7.

⁷²² TMG's response to the notice of possible remedies, dated 22 June 2022, paragraphs 4.9-4.11.

⁷²³ TMG's response to remedies working paper, dated 8 July, paragraph 3.5.

⁷²⁴ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraphs 4.12-4.14.

⁷²⁵ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 4.17-4.20.

⁷²⁶ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraphs 4.21-4.24. TMG's response to remedies working paper, dated 8 July, paragraph 3.7.

products absent a contractual obligation, provided it made commercial sense to do so.⁷²⁷

10.52 TMG also submitted that the retention of the Input Switching Clauses in the Supply Agreements would likely [REDACTED].⁷²⁸

10.53 TMG raised the concern that [REDACTED] and did not consider that [REDACTED].⁷²⁹

10.54 TMG also submitted that any future trading relationship between TMG and any D&D business for the supply of search reports should be left to market forces and 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 divestiture package.⁷³⁰ The CMA should ensure that there is no ongoing influence over TMG's purchasing decisions by D&D and agreed that the CMA should obtain appropriate undertakings from D&D as well as enhancing the role of the Monitoring Trustee to include supervision of the divestiture process and the potential appointment of the Divestiture Trustee.⁷³¹

10.55 In relation to partial divestiture, TMG submitted that PSS is [REDACTED] of TMG. It stated it had focused significant energy on developing the business over the last ten years.⁷³²

10.56 TMG submitted that the Partial Divestiture would involve a much higher risk profile than divesting TMG in its entirety and would fail to comprehensively address the SLC and any resulting adverse effects. TMG said that the Partial Divestiture would [REDACTED] and would not restore competition to the level that prevailed pre-merger. Furthermore, the divestiture package would be too constrained to attract a suitable purchaser.⁷³³

10.57 In response to the final iteration of the Partial Divestiture, TMG said that it would [REDACTED] with the effect of: (a) [REDACTED].⁷³⁴

10.58 In addition, TMG said the remedy would 'give rise to serious and very real concerns' in relation to how its 'legitimate business interests and commercially sensitive information can be protected.'⁷³⁵

⁷²⁷ Transcript of the response hearing with TMG, 14 June 2022, page 29, lines 11 to 15.

⁷²⁸ TMG's response to remedies working paper, dated 8 July, paragraphs 3.7 and 3.8.

⁷²⁹ TMG's response to remedies working paper, dated 8 July, paragraph 3.3.

⁷³⁰ TMG's response to remedies working paper, dated 8 July, paragraph 3.10; [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 4.16.

⁷³¹ TMG's response to remedies working paper, paragraph 3.11.

⁷³² Transcript of the response hearing with TMG, 14 June 2022, page 9, lines 15 to 16.

⁷³³ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.10.

⁷³⁴ TMG's comments on D&D's response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 2.5.

⁷³⁵ TMG's comments on D&D's response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 2.7.

Third Parties – [X]

- 10.59 [X] stated that it agreed with the CMA that the only possible remedy is a structural one, that is to say the divestiture of the whole of the TM Group.⁷³⁶
- 10.60 In relation to the Supply Agreements, [X] submitted that there should be no agreements at all, or at the very least only short term and non-exclusive ones renegotiated between each Shareholder and TMG. [X] argued that the current Supply Agreements have been negotiated by D&D as part of the Merger and they should not automatically be retained for the benefit of a future purchaser of the divested TMG business. In particular, [X] argued, 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.⁷³⁷
- 10.61 [X] submitted that allowing or retaining any agreements pursuant to which TMG and the Shareholders are required to exclusively use FCI and/or other search reports from the D&D group would be wholly inappropriate and would not re-create the pre-merger competitive structure.⁷³⁸
- 10.62 [X] considered that the Supply Agreements would very likely have been entered into on very different commercial terms if they had been negotiated outside of the context of the Merger. It submitted that D&D should not be allowed to benefit commercially from its failed acquisition where the CMA has concluded it raises competition concerns.⁷³⁹
- 10.63 [X] submitted that the Supply Agreements should be terminated in order to allow TMG and the Shareholders to exercise a free choice over which reports to purchase thereby delivering the most beneficial and competitive result for consumers. If the Supply Agreements were terminated, D&D would still be able to compete for the supply to the Shareholders on its own merit. This would be a far more fair and pro-competitive outcome following the CMA's SLC findings in its merger investigation.⁷⁴⁰
- 10.64 Finally, [X] submitted that if D&D is allowed to retain a significant supply agreement with TMG, there is a risk that TMG effectively becomes a reseller

⁷³⁶ [Company A response to the notice of possible remedies](#), published on 1 July 2022.

⁷³⁷ [Company A response to the notice of possible remedies](#), published on 1 July 2022, paragraph 1.

⁷³⁸ [Company A response to the notice of possible remedies](#), published on 1 July 2022, paragraph 2.

⁷³⁹ [Company A response to the notice of possible remedies](#), published on 1 July 2022, paragraph 2(a).

⁷⁴⁰ [Company A response to the notice of possible remedies](#), published on 1 July 2022, paragraph 2(d)-(e).

for D&D and ceases to have an incentive to develop its own products thereby stifling competition from TMG in the market.⁷⁴¹

Third Parties – Landmark

10.65 Landmark submitted that if the Supply Agreements contained lengthy exclusivity provisions they should not be permitted to remain in place, as this would deprive D&D's rivals of the opportunity to compete for this customer base. Landmark considered that given D&D's track record and stated strategy of increasing prices, there could be a detrimental impact on consumers and a deterrent effect on possible purchasers as a result of an inflated cost base.

10.66 Landmark considered that the SLC brought about by the Merger would not be effectively remedied if D&D were allowed to preserve commercial arrangements that were drawn up and agreed to only in the context of the transaction.

10.67 Finally, if D&D were to facilitate a management buy-out or otherwise provide financial support to a prospective purchaser this would enable it to exert a continuing influence over TM Group.⁷⁴²

Third Parties - Index

10.68 Index raised a concern that the Supply Agreements would distort competition and that TMG's prices for the supply of the relevant services were inflated.⁷⁴³

Third Parties – Shareholders

10.69 We asked the Shareholders for their views on the Supply Agreements.

10.70 LSL told us the negotiations for the LSL Agreement took place [REDACTED]. Each of the Shareholders negotiated the terms of their respective agreements separately and the terms of the agreement entered into by each were not disclosed to the other shareholder. LSL was willing to continue to use TMG as it had provided a good service to date and it had a continuing need for a search provider.⁷⁴⁴

10.71 Connells explained that it believed that D&D would not have entered into the Merger without an ongoing commitment from LSL and Connells to purchase

⁷⁴¹ [Company A response to the notice of possible remedies](#), published on 1 July 2022., paragraph 3.

⁷⁴² [Landmark \(SearchFlow\)'s response to the notice of possible remedies](#), published on 1 July 2022, paragraph 2(iii).

⁷⁴³ Index Franchise Association call note, 23 June 2022, paragraph 14.

⁷⁴⁴ LSL Response to the request for information (RFI2) dated 9 June 2022.

searches from TMG for a certain period of time.⁷⁴⁵ LSL also stated that, following the acceptance of D&D's offer to purchase TMG, LSL and Connells/Countrywide were asked if they could enter into an agreement for the continued use of TMG services once the Merger had completed.

10.72 Connells indicated that they saw the benefit of keeping the Supply Agreements in place for themselves and TMG in terms of continuity of supply and revenue. [REDACTED].⁷⁴⁶

10.73 With regards to the Input Switching Clauses, Connells stated that they were 'agnostic' as to [REDACTED]. [REDACTED].⁷⁴⁷

10.74 Connells commented that they would be content for the Supply Agreements to continue on their current terms if TMG were divested. [REDACTED].⁷⁴⁸ We note that the [REDACTED] Agreement [REDACTED].⁷⁴⁹ We also note that the equivalent [REDACTED] provision in the [REDACTED] Supply Agreement would only apply upon expiry of the initial [REDACTED] term.⁷⁵⁰

Full divestiture of TMG

10.75 This remedy option would involve the unwinding of the Merger, with D&D divesting the entirety of its shareholding in TMG to a suitable purchaser. Given that this would be equivalent to prohibition of the Merger we consider that it would be sufficiently broad in scope to address all aspects of the SLC and the resulting effects.⁷⁵¹

10.76 In this section, we first look at the Supply Agreements between TMG and the Shareholders and their impact on the effectiveness of the divestiture remedy. We then look in turn at composition risks, the identification and availability of suitable purchasers, and ensuring an effective divestiture process. Finally, we conclude on the effectiveness of Full Divestiture as a remedy.

Supply Agreements

10.77 In this section, we consider whether the Supply Agreements should form part of the divestiture package or whether any action should be taken in relation to these agreements to ensure the effectiveness of the divestiture.

⁷⁴⁵ Connells stated: 'In order to justify the value of the TMG business being sold, D&D's requirement was [REDACTED].'
see Connells' response to the CMA's request for information dated 31 May 2022, question 5.

⁷⁴⁶ [REDACTED] call note, dated [REDACTED], paragraph 12. See also, Connells call note, 15 June 2022, paragraph 18.

⁷⁴⁷ [REDACTED] call note, dated [REDACTED], paragraph 12. See also, Connells call note, 15 June 2022, paragraph 19.

⁷⁴⁸ [REDACTED] call note, dated [REDACTED], paragraph 10. See also, Connells call note, 15 June 2022, paragraph 14. [REDACTED].

⁷⁴⁹ [REDACTED] Supply Agreement, Clause [REDACTED].

⁷⁵⁰ [REDACTED] Supply Agreement, Clause [REDACTED].

⁷⁵¹ [CMA87](#), paragraph 5.6 states 'In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business'.

Legal framework

- 10.78 Remedies are to be implemented pursuant to sections 41(2) and 41(4) of the Act in order to either (i) directly remedy the SLC, or (ii) to indirectly remedy the SLC. Indirect remedies are used to ensure that measures directly remedying the SLC are effective.
- 10.79 In accordance with section 41 of the Act, the CMA may make an order under section 84,⁷⁵² which may contain anything permitted by Schedule 8 to the Act⁷⁵³ and appropriate supplementary consequential or incidental provision. Paragraphs 2⁷⁵⁴ and 13⁷⁵⁵ of Schedule 8 to the Act both confer the power to require termination of an agreement, and paragraph 13 also permits the adjustment of contracts (whether by discharge, or reduction of any liability or obligation or otherwise). Accordingly, the CMA may terminate or vary aspects of the Supply Agreements if we consider they would impede the effectiveness of the divestiture in remedying the SLC.
- 10.80 Alternatively, the CMA may accept final undertakings pursuant to section 82 of the Act.
- 10.81 Any remedy must also be proportionate, in particular we must consider any costs to third parties who have no control over the merger (see further at paragraphs 10.266 to 10.272).
- 10.82 In ICE/Trayport,⁷⁵⁶ the CAT held that while, in principle, termination of an agreement may be an appropriate indirect remedy, it must be appropriately linked to the purpose of remedying the SLC for which all of the CMA's remedial powers are conferred.⁷⁵⁷ The CAT noted that the nature of that linkage can vary from case to case.⁷⁵⁸ For example, the CMA could consider that termination of an agreement is appropriate (within that context) to ensure an effective divestiture process or to eliminate any legacy effect of the control that gave rise to the SLC.⁷⁵⁹

⁷⁵² Section 84 of the Act provides that '[...] (2) An order under this section may contain – (a) anything permitted by Schedule 8; and (b) such supplementary, consequential or incidental provision as the [CMA] considers appropriate'.

⁷⁵³ The Act, Schedule 8.

⁷⁵⁴ Paragraph 2 of Schedule 8 provides that '(1) An order may a) prohibit the making or performance of an agreement; b) require any party to an agreement to terminate the agreement [...]'.

⁷⁵⁵ Paragraph 13 of Schedule 8 provides that 'An order may provide for- (a) the division of any business (whether by the sale of any part of the undertaking or assets or otherwise); (b) the division of any group of interconnected bodies corporate. [...] (3) An order made by virtue of this paragraph may contain such provision as the relevant authority considers appropriate to effect or take account of the division, including, in particular, provision as to [...] (d) the adjustment of contracts (whether by discharge or reduction of any liability or obligation or otherwise); [...]'.

⁷⁵⁶ ICE v CMA [2017] CAT 6 ('ICE/Trayport judgment'), dated 6 March 2017, paragraph 195.

⁷⁵⁷ ICE/Trayport judgment, dated 6 March 2017, paragraph 195.

⁷⁵⁸ ICE/Trayport judgment, dated 6 March 2017, paragraph 195.

⁷⁵⁹ ICE/Trayport judgment, dated 6 March 2017, paragraph 195.

10.83 The question that the CMA has to consider is whether, having regard to the risk that the relevant agreement poses to the effective remediation of the SLC, it is reasonable and practicable to take remedial action in relation to that agreement.

Context of the agreements

10.84 Before the Merger, LSL and Connells purchased nearly all of their PSRBs from TMG.⁷⁶⁰ The PSRBs that Connells and LSL purchased included the standard LAS and DWS reports, as well as a bespoke environmental report produced by [REDACTED] and other reports (eg ground stability, mining, etc) as appropriate.

10.85 TMG have said that the Supply Agreements simply codified the position that had existed for many years prior to the sale, with TMG having been initially set up to provide searches for its Shareholders, and that it was wholly reasonable for D&D to expect those agreements to be formally documented.⁷⁶¹ Connells similarly responded that the terms of its Supply Agreement with TMG broadly reflected the arrangements that were already in place.⁷⁶²

10.86 TMG's Articles of Association (**AoA**)⁷⁶³ also provide evidence that the intention was for TMG's Shareholders to procure their property searches from TMG. Articles 7.2.5, 7.15 and 7.19 of TMG's 2021 AoA relate to the purchase of searches by LSL and Connell from TMG. Whilst these articles do not expressly and unequivocally oblige LSL and Connell to purchase exclusively all their searches through TMG, the rationale behind them was to do exactly that and the chronology of events prior to the Merger clearly shows that the longstanding custom and practice was for the Shareholders to purchase all their searches from TMG.

Genesis of the Supply Agreements and key terms

10.87 As set out in paragraph 10.13 above, the Supply Agreements were negotiated in parallel with the sale of TMG and were signed on [REDACTED] by TMG and each of

⁷⁶⁰ Connells told us that in the 5 years before the Merger more than 95% of its searches were ordered through the TMG platform, although as TMG acts effectively as a "panel manager", the actual searches were provided by a variety of suppliers (Connells' response to the CMA's request for information issued on 10 February 2022, question 1(g)). LSL informed us that in the past 5 years it had obtained its property searches from TMG only (LSL response to the CMA's request for information of 10 February 2022, question 1(g)). LSL and Connells act as intermediaries to panels of conveyancing firms. Connells also owns certain conveyancing firms. LSL does not own or operate any conveyancing firms.

⁷⁶¹ Transcript of the response hearing with TMG, 14 June 2022, page 8, lines 11 to 17 and page 36, lines 11 to 14.

⁷⁶² Connells' response to RFI 2, issued on 31 May 2022, question 5a.

⁷⁶³ Provided to the CMA on 27 June 2022.

LSL and Connells. They provide for LSL and Connells to source certain search reports exclusively from TMG for a period of [REDACTED] from the date of signing. While D&D was involved in the negotiation of the Supply Agreements, it is not a contractual party to them.

- 10.88 The Exclusive Purchasing Obligations apply to Connells and any conveyancing firm within Connells' corporate group, and to LSL and any conveyancing firm within LSL's group (though, as noted above, there are currently no conveyancing firms within LSL's group).⁷⁶⁴
- 10.89 The Supply Agreements with each of LSL and Connells are broadly similar, although there are some minor differences that reflect (i) the slightly different working arrangements LSL and Connells had in place pre-Merger and (ii) the negotiations between D&D and LSL and Connells. We have indicated below where these differences have an impact on our assessment.
- 10.90 The Supply Agreements also include the Input Switching Clauses. Although the obligation resulting from these clauses is on LSL and Connells to replace the reports within their recommended PSRBs with reports provided by D&D, these products would be provided by TMG to LSL and Connells.
- 10.91 The obligations on LSL and Connells [REDACTED].⁷⁶⁵
- 10.92 The Supply Agreements were drawn up and entered into under the understanding that TMG would be part of the D&D group of companies for their duration. D&D,⁷⁶⁶ TMG,⁷⁶⁷ LSL⁷⁶⁸ and Connells⁷⁶⁹ have each separately confirmed that the Input Switching Clauses have not been implemented.

Our assessment of Supply Agreements

- 10.93 As set out in paragraphs 10.79 to 10.81, the CMA's remedy powers under the Act are limited to those required to remedy the SLC or its adverse effects in a way which is as comprehensive a solution as is reasonable and practicable to address the SLC.

⁷⁶⁴ The Supply Agreements acknowledge that where LSL and Connells [REDACTED].

⁷⁶⁵ Paragraph 5.1 of Schedule 1 to the Connells Agreement and Paragraph 5.1 of Schedule 1 to the LSL Agreement. [REDACTED].

⁷⁶⁶ See D&D and TMG's email to the case team dated 27 May 2022. See also page 3 of D&D response to the CMA's s.109 Notice (RFI5) issued on 14 March 2022: 'Following the imposition of the IEO, the Service Agreements were put on hold pending the outcome of the CMA's investigation. [REDACTED]'.

⁷⁶⁷ See D&D and TMG's email to the case team dated 27 May 2022. See also page 3 of D&D response to the CMA's s.109 Notice (RFI5) issued on 14 March 2022: 'Following the imposition of the IEO, the Service Agreements were put on hold pending the outcome of the CMA's investigation. [REDACTED]'.

⁷⁶⁸ See LSL's response to the CMA's request for information dated 31 May 2022, question 8.

⁷⁶⁹ See Connells' response to the CMA's request for information dated 31 May 2022, question 6.

10.94 In this case, we are considering divestiture of TMG as a direct measure to remedy the SLC. We are also considering whether any action needs to be taken in relation to the Supply Agreements, as an indirect remedy, in order to ensure the effectiveness of the divestiture in remedying the SLC.

10.95 The Parties and some third parties have identified certain benefits to TMG arising from the Supply Agreements which means that their removal could pose a risk to the effectiveness of the divestiture. However, some third parties have also submitted that the Supply Agreements should be terminated and therefore we have also examined whether there is any risk to the effectiveness of the divestiture as a comprehensive remedy to the SLC if the Supply Agreements remain in place.

10.96 When considering the evidence we have received on the Supply Agreements, we have been mindful that each of the Parties and the third parties that have commented have differing incentives in relation to the Supply Agreements and have taken this into account in considering the weight we can place on this evidence.

Risks from removing the Supply Agreements

10.97 We consider that the risks can be grouped into two categories: risks that could undermine a divestiture by impacting on TMG's ability to compete in the supply of PSRBs and risks that could undermine the divestiture process through their impact on purchaser availability.

10.98 It is evident that the existence of a guaranteed revenue stream in the form of the continued supply of PSRBs by TMG to its former Shareholders is beneficial to TMG. Moreover, the evidence shows that pre-Merger, the Shareholders purchased almost all of their PSRB requirements from TMG and, at least as far as the Exclusive Purchasing Obligations are concerned, the Supply Agreements are a codification of the pre-existing arrangements. We believe, therefore, that maintaining the Exclusive Purchasing Obligations would not alter the competitive situation that existed pre-Merger.

10.99 Removing the Supply Agreements could risk weakening TMG as a competitor in the market by removing a valuable and predictable income stream. This could reduce the attractiveness of TMG for potential purchasers and so also presents a risk to the divestiture process.

10.100 The Input Switching Clauses limit TMG's commercial freedom to choose the environmental and mining reports for inclusion in the PSRBs it sells to LSL and Connells. But, as both LSL and Connells are obliged to purchase these

PSRBs from TMG, retaining the Input Switching Clauses would have no impact on TMG's ability to make sales of PSRBs to LSL and Connells.

- 10.101 As noted above, there are certain protections in the Supply Agreements in terms of the price and quality of the reports to be included in the PSRBs, although we note that quality can be difficult to define accurately. [REDACTED] Connells have stated that they do not have a preference in relation to which upstream supplier TMG uses so long as these conditions are met.⁷⁷⁰
- 10.102 D&D submitted a third risk that the removal of the Supply Agreements would adversely affect competition in the upstream market by reinforcing Groundsure's market share at the expense of FCI. D&D argue this would, in effect, be an external cost of removing the Supply Agreements.⁷⁷¹ We do not consider this a risk or a cost that needs to be taken into account in our assessment, as without the Supply Agreements TMG could freely choose its upstream supplier of environmental and mining reports.

Risks from retaining the Supply Agreements

- 10.103 We consider the evidence available to us shows clearly that the Supply Agreements were negotiated and entered into as part of the Merger.⁷⁷² However, it is not clear whether their terms are similar to those that would have been reached on an arm's length basis. As the CAT noted in the ICE/Trayport judgment, the question as to whether an agreement is on commercial arm's length terms is not determinative but it is more likely that remedial measures will be appropriate in respect of an agreement that is not concluded on an arm's length basis.⁷⁷³
- 10.104 Whilst we note that D&D stated clearly that the Supply Agreements are on arm's length commercial terms,⁷⁷⁴ given the context of the negotiation of the Supply Agreements as part of the Merger, we consider it is likely that TMG would not have entered into agreements on the same terms absent the Merger, at least insofar as the Input Switching Clauses are concerned. In its response to the Remedies Working Paper, TMG agreed with this view.⁷⁷⁵
- 10.105 Evidence from TMG and [REDACTED] highlights a risk that if the Input Switching Clauses were retained in full, there could be a [REDACTED], in particular in terms of its ability to obtain volume discounts for inputs to its supplies to other customers,

⁷⁷⁰ Connells call note, 15 June 2022, paragraph 18. [REDACTED].

⁷⁷¹ D&D Initial response to remedies working paper, dated 8 July 2022 paragraph 2.4.

⁷⁷² See [Provisional Findings](#), dated 18 May 2022, paragraphs 2.10 and 2.11.

⁷⁷³ [ICE/Trayport judgement](#), dated 6 March 2017, at paragraph 201.

⁷⁷⁴ Transcript of the response hearing with D&D, page 12, lines 22 to 27.

⁷⁷⁵ TMG's response to remedies working paper, dated 8 July, paragraph 3.5.

and its broader ability to incentivise other input suppliers to compete for its business. It is difficult to assess the magnitude of this risk and whether the impact on TMG's business would be such that it would reduce the ability of TMG to be able to compete in the market as effectively as it did pre-Merger, thereby undermining the effectiveness of the divestiture as a remedy to the SLC. We note that sales under the Supply Agreement represent around [10-20%] of TMG's total sales.⁷⁷⁶

- 10.106 TMG also highlighted a risk that the Input Switching Clauses could extend more broadly to cover [X].⁷⁷⁷ As regards TMG's submission that the ambiguity of the Supply Agreements could give rise to disruption and potential litigation risk, both TMG and D&D confirmed in the response hearings that the intended scope of the Input Switching Clauses [X].⁷⁷⁸ This was also the understanding of LSL.⁷⁷⁹ We therefore did not consider it a significant risk that the scope of the Input Switching Clauses [X], taking into account the fact that TMG will be supplying the products to LSL and Connells. To the extent that this was considered to be a risk by a future purchaser, it could be included as part of any renegotiation. We also note that D&D would not itself be able to enforce any particular interpretation of the Supply Agreements due to the express exclusion of third-party rights in both of the agreements.⁷⁸⁰
- 10.107 We considered that a risk could arise from the fact that D&D is not a party to the Supply Agreements and there is no written agreement (or no agreement at all) between D&D and TMG relating to the purchase of environmental and other input reports for supply to the Shareholders (given that the Supply Agreements were concluded at a point in time when it was envisaged that TMG and D&D would be part of the same corporate group), other than the standard reseller agreements.
- 10.108 We note that the Supply Agreements cannot impose any contractual obligations on D&D. If D&D were to seek to raise price and /or degrade the quality of its environmental reports during the lifetime of the Supply Agreements when TMG is obliged to purchase them, this could disadvantage TMG in its sales of PSRBs to the Shareholders.

⁷⁷⁶ See [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 4.3 for details of the sales to former Shareholders. See TMG response to the CMA's s.109 Notice (RFI8) issued on 16 June 2022, question 2 for details of total TMG sales.

⁷⁷⁷ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 4.13.

⁷⁷⁸ Transcript of the response hearing with TMG, 14 June 2022, page 27, lines 5 to 8. In response to a question as to whether [X].” Transcript of the response hearing with D&D, 14 June 2022, page 22, lines 12 to 13. In response to a similar question, TMG replied “[X]” Transcript of the response hearing with TMG, 14 June 2022, page 27, lines 16 and 17.

⁷⁷⁹ LSL Call Note, 16 June 2022, paragraph 8.

⁷⁸⁰ Clause 28 of the LSL Agreement and the Connells Agreement.

- 10.109 D&D submitted that there was [REDACTED].⁷⁸¹ We note that TMG stated that there was no separate agreement between TMG and D&D covering supply of the input reports for LSL and Connells but that this supply would be covered by the standard reseller agreements.
- 10.110 The evidence available to us shows that there are protections in place in the Supply Agreements which mean that the Input Switching Clauses [REDACTED]. D&D described the protections in the Supply Agreements as '[REDACTED]'.⁷⁸² D&D's view was that [REDACTED].⁷⁸³
- 10.111 We therefore considered that the risk of D&D raising price or degrading quality contrary to the terms of the Supply Agreements was low, irrespective of [REDACTED]. We also considered whether such a contract, if it existed, could create a risk that TMG would be subject to ongoing obligations to purchase reports from D&D in circumstances in which TMG and a future purchaser wished to renegotiate the Supply Agreements. We also considered this risk to be low given the limited evidence supporting the existence of such an agreement.

Our view

- 10.112 In light of the above assessment, the options available to us are to require termination of the Supply Agreements, to adjust the Supply Agreements to remove the Input Switching Clauses, or to leave it to a purchaser to make its own assessment of the Supply Agreements (including the Input Switching Clauses).
- 10.113 As noted above, we consider that potential buyers may be attracted to the Exclusive Purchasing Obligations in the Supply Agreements, which we believe provide an important degree of certainty for the Divestiture Business, but they may be concerned about the Input Switching Clauses [REDACTED]. We consider that this could affect the willingness of potential buyers to participate in the divestiture process. Alternatively, potential purchasers may participate in the divestiture process but wish to renegotiate the Supply Agreements and/or enter into a new agreement with D&D in relation to the upstream supply of the relevant inputs.
- 10.114 We are mindful of the risk that if the Supply Agreements were to be terminated, [REDACTED].⁷⁸⁴ At the same time, the Supply Agreements appear to have

⁷⁸¹ Transcript of the response hearing with D&D, page 30, lines 1 to 3 and page 31, lines 14 to 21. See also D&D's response to RFI8 issued on 16 June 2022, paragraphs 2.2 and 2.3.

⁷⁸² Transcript of the response hearing with D&D, page 15, line 12.

⁷⁸³ Transcript of the response hearing with D&D, page 32, lines 2 to 11.

⁷⁸⁴ As the CMA has noted previously "transferring contracts with employees, customers and suppliers will in most cases require consent of the counterparty. As a result, the Parties are not fully in control of the outcome of this process". See [Cargotec/Konecranes Final Report](#), paragraph 3.467.

been agreed as part of the Merger (and may not otherwise have been entered into) and there is some uncertainty about the impact of the Input Switching Clauses on the [✂].

- 10.115 As explained at paragraph 10.45 above, the Input Switching Clauses have been suspended since the CMA's imposition of an IEO. Therefore, whilst [✂], this was at its own risk and we would not take these costs into account in assessing the proportionality of any proposed remedies.⁷⁸⁵
- 10.116 Given the interrelationship between the clauses in the Supply Agreements and the importance of the Exclusive Purchasing Obligations for TMG's ability to compete, we consider that a future purchaser would be best placed to conduct the necessary commercial assessment of the benefits and obligations in the Supply Agreements. We consider that there may be risks to adjusting one element of the Supply Agreements in a scenario where it is difficult for the CMA to appreciate the potential impact on the remainder of the agreement and the Shareholders. A better outcome is likely to be achieved if the future purchaser is able to negotiate the necessary changes to the agreements for themselves. We have taken into account that whilst TMG stated that its preference would be to remove the Input Switching Clauses, it was most concerned to retain the benefit of the Exclusive Purchasing Obligations even if that meant keeping the Input Switching Clauses.⁷⁸⁶
- 10.117 We note that D&D is not a party to the Supply Agreements and we do not consider it likely that D&D can either enforce any of the terms of those agreements nor can those agreements impose obligations on D&D. As to whether there is a separate agreement between D&D and TMG for supply of the input reports for LSL and Connells, a point on which the Parties disagreed, we consider that the evidence supporting the existence of such an agreement is limited. Therefore the risk that such an agreement could create obligations for TMG in a scenario in which the Supply Agreements have been renegotiated is also limited and would not lead us to require termination or adjustment of the Supply Agreements.
- 10.118 The fact that the supply from TMG to the Shareholders is exclusive means that it may fall outside of what is typically considered necessary for the implementation of a Merger. However, in this divestiture, taking into account our duty to achieve as comprehensive a remedy as is reasonable and practicable to the SLC, we consider that maintaining the exclusivity would be justified given the advantages to TMG in restoring its position as an independent competitor and the fact that it effectively replicates the pre-

⁷⁸⁵ [ICE/Trayport judgement](#), dated 6 March 2017, paragraph 205.

⁷⁸⁶ Transcript of the response hearing with TMG, 14 June 2022, page 36, lines 3 to 8.

merger situation. We have also noted that the remaining term of the Supply Agreements is around [X] and the exclusivity is limited to the former Shareholders.

10.119 Therefore, we have concluded that a future purchaser should be free to decide for itself whether to implement the Supply Agreements or renegotiate them with the Shareholders. We have taken into account the risk, also highlighted by TMG, that a future purchaser would not be able to unilaterally alter the agreements and therefore the default position would be to retain the status quo. We note, however, that each of the Shareholders expressed a view that they would be willing to discuss the Supply Agreements with any future purchaser of TMG in good faith. Whilst there is a right for [X], [X] has no equivalent right. However, if each of the Shareholders and TMG are willing to renegotiate, they could do so outside of this process. As we consider, on balance, that if the Supply Agreements were to remain in place, this would not be likely to undermine an effective divestiture, we do not consider it necessary to take any action to alter this situation.

10.120 However, in order to ensure a purchaser is free to make its own assessment, we consider that the Input Switching Clauses should remain suspended until completion of the divestiture, and that D&D should not make the sale of TMG either legally or de facto conditional on the purchaser retaining the Supply Agreements or on the purchaser concluding any other arrangements for the supply of inputs with D&D. The CMA will put in place arrangements to ensure that D&D has complied with the requirement during the divestiture process. The inclusion or not of supply agreements will be looked at in the round in the context of a purchaser's plans for the divestiture business. Further details of the purchaser approval process are set out in paragraphs 10.132 to 10.138.

Composition risks associated with full divestiture of TMG

10.121 We now look at whether the divestiture of TMG would enable the eventual purchaser to operate the divested business as an effective competitor, whether it is sufficiently attractive to potential purchasers, and the extent of composition risk associated with this option.

10.122 In identifying a suitable divestiture package, we look to identify a business which is likely to be able to compete effectively under a variety of possible owners, rather than a business that risks being a structurally weaker competitor or that will only be an effective competitor with an 'ideal' purchaser.

10.123 The Merger completed on 8 July 2021. The CMA imposed an IEO on 27 August 2021 (varied by the Variation Order dated 30 September 2021) requiring D&D and TMG to remain independent during the inquiry to ensure

that no action is taken pending final determination of the Reference,⁷⁸⁷ which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.⁷⁸⁸ In accordance with the IEO the CMA directed D&D to appoint a Monitoring Trustee (MT). A MT was appointed on 21 February 2022.⁷⁸⁹

10.124 As a result, TMG has been effectively held separate from and operated independently of D&D since 27 August 2021. Prior to this date there had been no substantive integration or transfer of data that would impede TMG's independent operation or its ability to compete effectively against D&D and other PSRB suppliers.

10.125 TMG has also retained its pre-Merger core management team. Two derogations from the IEO have been granted to TMG with regard to its management team composition.⁷⁹⁰ We do not consider either of these have a negative effect on the core management team of TMG. TMG confirmed to us that the core management was in place and that there were no gaps at senior management level.⁷⁹¹ However, TMG stated that [REDACTED] salary and general bonus schemes in place for senior management.⁷⁹² In addition, we note that the non-compete clauses applicable to [REDACTED] are due to expire in [REDACTED].⁷⁹³

10.126 TMG is a profitable, standalone business. In the period 2016 to 2020 prior to the Merger it had revenue of between £[REDACTED] and £[REDACTED] million, returning profits in each year. TMG provided its year-to-date figures to May 2022. Although this showed [REDACTED] TMG reported sales of around £[REDACTED]million and EBITDA of £[REDACTED] million.⁷⁹⁴

10.127 TMG funds its operations from [REDACTED]. TMG had cash balances at the end of April 2022 of £[REDACTED] million. TMG management has confirmed that [REDACTED].⁷⁹⁵

Our view on composition risks of full divestiture

10.128 Divestiture of TMG is equivalent to prohibition of the merger and as such would largely restore the pre-merger competitive conditions in the PSRB market.

⁷⁸⁷ See the [Issues Statement](#), dated 21 January 2022, paragraphs 1 to 3.

⁷⁸⁸ See [Interim Enforcement Order](#), dated 1 September 2021 and [Variation Order](#), dated 4 October 2021.

⁷⁸⁹ See [Directions to appoint a MT](#), dated 21 February 2022.

⁷⁹⁰ On 26 January 2022 a [derogation was granted](#) to integrate the CDS' senior management team into TMG's senior management structure. On 19 April 2022 a [derogation was granted](#) to TMG to [REDACTED].

⁷⁹¹ Transcript of the response hearing with TMG, 14 June 2022, page 12, lines 6 to 7.

⁷⁹² Transcript of the response hearing with TMG, 14 June 2022, page 12, lines 11 to 17.

⁷⁹³ See RSM email of 15 June 2022.

⁷⁹⁴ TMG response to the CMA's s.109 Notice (RFI8) issued on 16 June 2022, question 3.

⁷⁹⁵ RSM Fifth report, dated 1 June 2022, paragraph 2.10.2.

- 10.129 We consider, based on the evidence above, that TMG is appropriately configured to enable it to form the basis of an effective solution to the SLC. We note in particular that it is operating independently, profitable, and the core management team and business structures have been maintained. We consider issues relating to retention of TMG's management in the section on ensuring an effective divestiture process starting at paragraph 10.142 below.
- 10.130 In view of the risk assessment set out above and taking all the evidence in the round, we do not currently consider that termination or adjustment of the Supply Agreements would be necessary or proportionate. This would risk undermining the divestiture by removing a valuable contract from TMG thereby potentially rendering TMG less attractive to future purchasers.
- 10.131 However, as set out in paragraph 10.120 above, we concluded that the Input Switching Clauses should remain suspended until completion of a divestiture and that a future purchaser should be free to renegotiate the Supply Agreements with the Shareholders. This would give future purchasers the opportunities to identify the right inputs to enable them to compete effectively, which may or may not coincide with those specified in the Input Switching Clauses.

Identification and availability of suitable purchasers

- 10.132 In this section, we set out the criteria to which the CMA should pay particular regard in assessing purchaser suitability, and whether there are risks that a suitable purchaser is not available.⁷⁹⁶

Criteria for purchaser suitability in the current case

- 10.133 In general, the CMA will wish to satisfy itself that a prospective purchaser:
- (a) is independent of the merger parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant market; and
 - (d) that divestiture to the purchaser will not create further competition concerns.⁷⁹⁷

⁷⁹⁶ Notice of possible remedies, 18 May 2022, paragraphs 22 and 23.

⁷⁹⁷ CMA87, paragraph 5.21.

- 10.134 We asked D&D and TMG whether there were any specific factors a purchaser would need to have in order to be able to operate the divested business as an effective competitor.
- 10.135 D&D submitted that there were no special characteristics a potential purchaser would need to have to be a suitable purchaser.⁷⁹⁸ TMG similarly did not set out any specific characteristics although provided additional information in regard to the CMA's general requirements.⁷⁹⁹
- 10.136 TMG submitted that the market has changed substantially over the last two years. There are now three large groups, with vertical integration in particular of the environmental data and reporting companies. The room for a fourth player in that market is limited by a lack of independent suppliers of such reports, and this will create a competitive challenge for a party with access to those reports at prices likely to be higher than that of any search company in the same group. TMG said it is important that any alternative investor understands the challenge that creates and has a coherent long-term investment strategy to manage the associated risk.⁸⁰⁰
- 10.137 We consider that there are no specific requirements outside of the general criteria used by CMA for a suitable purchaser to meet. However, within our general criteria we wish to highlight two specific areas where additional attention will be focused:
- (a) Commitment to the market: We note the comments made by TMG in regard to the change in the market as a result of M&A activity. As such we will be paying particular attention to the assessment of the longer-term investment plans of potential acquirers as part of our purchaser suitability assessment.
 - (b) Independence: Given our assessment of the Supply Agreements at paragraphs 10.77 to 10.120 above, the proposed arrangements in regard to these agreements between a potential purchaser and D&D will be assessed as part of our review. Specifically, we will look at potential purchasers' plans with respect to the Supply Agreements, and in particular whether they would plan to retain or renegotiate the Input Switching Clauses.
- 10.138 One of the general conditions regarding suitable purchasers is that a divestiture to the purchaser should not create further competition concerns. We note in this regard that we found both ATI and Landmark were large retail

⁷⁹⁸ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, section 5.

⁷⁹⁹ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 12.

⁸⁰⁰ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 12.

suppliers of PSRBs and together with the Parties accounted for over 80% of the market. ATI has a market share of [20-30%], while Landmark has a market share of [10-20%].⁸⁰¹ Given the market shares of ATI and Landmark we consider it unlikely that either of these two entities would be suitable purchasers as, in our view, they would raise further competition concerns.

Likely availability of suitable purchasers

10.139 We set out in the counterfactual that when TMG had been put up for sale in 2016,⁸⁰² it attracted interest from private equity firms and a number of offers were received.⁸⁰³ We also considered that absent the Merger, one scenario was that there would have been interest from potential alternative purchasers for TMG and that TMG would have been sold and continue to compete with D&D.⁸⁰⁴ Furthermore, [REDACTED] TMG told us that they have already received approaches from parties who are potentially interested in acquiring TMG.⁸⁰⁵ The CMA has also received one approach from a potential acquirer.

10.140 TMG submitted that the retention of the Input Switching Clauses in the Supply Agreements would likely [REDACTED].⁸⁰⁶ In addition, the clauses would reduce the scope for a purchaser to choose its suppliers, [REDACTED]. We consider that our position on the Supply Agreements, as set out in paragraphs 10.112 to 10.120, means that if this were important to a purchaser, they would be free to renegotiate the Supply Agreements. In any case, we have not concluded that having [REDACTED] is essential for being an effective competitor in this market. As such, the existence of the Supply Agreements should not in our view [REDACTED] and therefore reduce the likely availability of suitable purchasers.

Conclusion on identification and availability of suitable purchasers

10.141 Based on the information currently available, we consider it likely that a suitable purchaser will be found for the divestiture package and that there is no need for additional criteria beyond those normally identified in the CMA's Mergers Remedies Guidance.

⁸⁰¹ See [Appendices and Glossary to the Provisional Findings](#), dated 18 May 2022, Appendix B, Table 1.

⁸⁰² Connells' response to Request for Information (RFI) of 10 February 2022, question 2(c). That auction did not result in a sale as it coincided with the UK EU Exit vote which the Shareholders told us 'had an adverse impact on the UK housing market and the appetite for such deals generally at a time of potential economic and political uncertainty'.

⁸⁰³ See [Provisional Findings](#), dated 18 May 2022, paragraph 5.17.

⁸⁰⁴ See [Provisional Findings](#), dated 18 May 2022, paragraph 5.23.

⁸⁰⁵ Transcript of the response hearing with TMG, 14 June 2022, page 44. [REDACTED].

⁸⁰⁶ TMG's response to the remedies working paper, dated 8 July, paragraph 3.8.

Ensuring an effective divestiture process

10.142 We have specific concerns in this case in regard to [REDACTED] and the Supply Agreements. We discuss these in the following sections on Asset Risk and the Role of the Monitoring Trustee. We then cover the provision for appointment of a Divestiture Trustee, the timescale allowed for divestiture, and the role of interim measures during the divestiture process.

Asset Risk

10.143 We set out in paragraphs 10.123 and 10.124 that TMG had been held separate from D&D as a result of the imposition of an IEO. As a result TMG has been maintained in its pre-merger position. We consider maintaining the separation of D&D and TMG through the continuation of the IEO (and its incorporation in the undertakings) will mean the risk of asset deterioration during the period up to divestiture will be minimised.

10.144 We have though one main concern around asset risk being [REDACTED]. We note that TMG has salary and general bonus schemes in place for senior management [REDACTED]⁸⁰⁷ In addition, we note that the non-compete clauses applicable to [REDACTED] are due to expire in [REDACTED].⁸⁰⁸

10.145 D&D submitted that it considered the core management team comprised of [REDACTED] people; [REDACTED].⁸⁰⁹ D&D submitted that any [REDACTED] must be reflective and wholly proportionate [REDACTED].⁸¹⁰ It did not believe there was a realistic risk of departure of the core management team prior to any divestiture given [REDACTED] and the lack of any specific evidence of any of the core management team wishing to leave.⁸¹¹

10.146 We consider that, [REDACTED]. While the key consideration may be in regard to the senior management team of [REDACTED], it does not mean that during the course of a divestiture other personnel will not become part of core management and therefore need to be included within a [REDACTED].

10.147 In regard to risk, while we note that no specific risks of the core management team departing have been brought to our attention it does not mean that the risk is not realistic. The Merger was completed on 8 July 2021, since then TMG has continued to operate as an independent business but with the uncertainty of the outcome of the Merger inquiry. A divestiture would add an

⁸⁰⁷ Transcript of the opening statement for the response hearing with TMG, 14 June 2022, paragraph 11.

⁸⁰⁸ See RSM email of 15 June 2022.

⁸⁰⁹ D&D's view was based on it only receiving a derogation from the IEO for the purposes of assessing a [REDACTED] to [REDACTED]. D&D Initial response to remedies working paper, dated 8 July, paragraph 3.5

⁸¹⁰ D&D Initial response to remedies working paper, dated 8 July, paragraphs 3.3 and 3.4.

⁸¹¹ D&D Initial response to remedies working paper, dated 8 July, paragraph 3.4.

additional element of uncertainty (in regard to the purchaser) as well as to the time period since the Merger completed. In our experience this uncertainty, especially in regard to the identity of the purchaser, increases the likelihood of staff departures. In addition, our experience shows that it is better to have [X] in place to mitigate the risk rather than having to try and implement one to address a specific risk that arises during a divestiture.

10.148 We therefore consider [X].

Timescale allowed for divestiture

10.149 We considered what would be an appropriate timescale to allow D&D to implement the required divestiture (the “Initial Divestiture Period”). The Initial Divestiture Period would normally run from the acceptance of final undertakings or the making of a final order (for which the statute provides a period of up to 12 weeks after the final report) until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA).

10.150 In considering an appropriate Initial Divestiture Period, our Mergers Remedies Guidance states that we ‘will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence’.⁸¹² Our Mergers Remedies Guidance also states that the Initial Divestiture Period will normally not exceed six months.⁸¹³

10.151 D&D considers that it should be able to agree a sale agreement with a potential purchaser within a divestiture period of around [X].⁸¹⁴ We received no other submission on the divestiture timescale.

10.152 In this case we do not consider there are reasons to depart from our published guidance. As such we consider a [X] divestiture period from the acceptance of final undertakings or making an order.

Role of the Monitoring Trustee

10.153 We intend to require a high degree of oversight in the divestiture process. This includes oversight around selection of potential purchasers, the information provided to them, discussions with them, the negotiation process, and the identification of potentially suitable purchasers for the CMA to assess.

⁸¹² CMA87, paragraph 5.41.

⁸¹³ CMA87, paragraph 5.41.

⁸¹⁴ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 6.1.

- 10.154 The MT will assist the CMA in ensuring oversight and compliance with this aspect of the remedy. We will ensure that D&D:
- (a) provides the MT with direct access to potential purchasers;
 - (b) provides copies of key transaction documents for the MT to review; and
 - (c) provides the MT on request with any other information, correspondence, materials, and key documents relating to the divestiture.
- 10.155 We will also ensure that potential purchasers are made aware of the aspects of the remedy in relation to the Supply Agreements (as set out in paragraph 10.120 above) and are able to contact the MT directly if they consider D&D may not be complying with its obligations.
- 10.156 Specifically in regard to the Supply Agreements, we will also require the MT to be copied in on all communications between D&D (or its representatives) and prospective purchasers where the Supply Agreements are discussed and be present on all calls and meetings where the Supply Agreements are to be discussed or where decisions on shortlisting bidders are taking place. In addition, we will require D&D to confirm as part of its compliance reporting that no discussions or communication in relation to the Supply Agreements have been conducted without the MT either being present or copied in.

Provision for appointment of a divestiture trustee

- 10.157 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if the vendor fails to achieve an effective disposal within the Initial Divestiture period, or if the CMA has reason to be concerned that the vendor will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that the vendor has a sufficient incentive to implement the divestiture promptly and effectively.
- 10.158 In our RN, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.⁸¹⁵ We received no submissions relating to this issue.
- 10.159 At this stage, we therefore see no reason why the CMA should appoint a Divestiture Trustee at the outset of the divestiture process. We note, however, that the sale of TMG should not be legally or de facto conditional on retaining the Supply Agreements and that D&D will, in turn, be subject to additional requirements (on top of those typically used in CMA merger investigations) in

⁸¹⁵ [Notice of possible remedies](#), 18 May 2022, paragraphs 24 to 28.

relation to how the divestiture process will be run. Accordingly, the CMA reserves its right to appoint a Divestiture Trustee if:

- (a) D&D fails to complete the divestiture process within the Initial Divestiture Period;
- (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
- (c) the CMA reasonably believes that D&D is not engaging constructively with the divestiture process, including if it is not complying with the requirements set out in paragraph 10.157; or
- (d) there is a material deterioration in the divestiture package during the divestiture process.

10.160 In line with the CMA's standard practice,⁸¹⁶ if appointed, a Divestiture Trustee should be tasked with completing the divestiture of TMG to a potential purchaser approved by the CMA and at no minimum price.

The role of interim measures during the divestiture process

10.161 We have put in place interim measures to govern the conduct of D&D and TMG during the investigation⁸¹⁷ though these will expire upon final determination (ie when the CMA accepts final undertakings or makes a final order). D&D submitted that the IEO should not remain in place unamended during the divestiture period.⁸¹⁸ While it accepted that it may be necessary to maintain the separation of D&D and TMG as well as appropriate restrictions on disposal of assets and key staff, it did not believe it was necessary to maintain the restrictions on the D&D business.⁸¹⁹ It submitted that the IEO had caused significant disruption to the D&D business by restricting its ability to operate freely and flexibly.⁸²⁰

10.162 We consider that the IEO should remain in place until acceptance of final undertakings or imposition of an order and then its provisions will be included in the undertakings or order. The IEO acts to mitigate asset risk and as such remains valid up until the remedy has been fully implemented. However, the

⁸¹⁶ CMA87, paragraph 5.43.

⁸¹⁷ See amendments and consents granted on the CMA case page [here](#), accessed by the CMA on 8 July 2022.

⁸¹⁸ D&D Initial response to Remedies Working Paper, paragraph 4.1

⁸¹⁹ D&D Initial response to Remedies Working Paper, paragraph 4.3

⁸²⁰ D&D Initial response to Remedies Working Paper, paragraph 4.2

CMA takes a proportionate approach to the scope of the IEO and any derogations from it and will continue to review these throughout the process.

Our view on ensuring an effective divestiture process

- 10.163 We do not consider there are reasons to depart from the position set out in our Mergers Remedies Guidance with regards to the divestiture process. As such we consider a [X] divestiture period from the acceptance of final undertakings or making an order will be sufficient. We also do not consider that a divestiture trustee needs to be put in place at the start of process, but we will retain the right to appoint one if circumstances require it. We will also ensure that the MT's remit is sufficient to monitor D&D's compliance with the requirements set out in paragraphs 10.154 to 10.156 above.
- 10.164 The IEO will remain in place and its provisions will be included in the undertakings or order subject to any derogations given during the period post Final Report and before signing of the undertakings or making of an order.

Conclusion on effectiveness of full divestiture of TMG

- 10.165 Full divestiture of TMG would result in D&D and TMG continuing to compete as they did pre-merger. Therefore, it would represent a comprehensive solution to all aspects of the SLC we have identified (and consequently any resulting adverse effects). We do not consider that any action is required to be taken with regard to the Supply Agreements to ensure the effectiveness of the divestiture, however we consider that the Input Switching Clauses should remain suspended until completion of the divestiture and any sale of TMG should not be legally or de facto conditional on retaining the Supply Agreements.

Partial Divestiture of TMG

- 10.166 In addition to considering full divestiture of TMG, we also considered the Partial Divestiture remedy proposed by D&D.

Divestiture of TMG excluding PSS

- 10.167 We set out at paragraphs 10.19 to 10.24 that D&D had put forward a number of iterations of its Partial Divestiture proposal. In the following section we look at the final proposal of 15 July 2022.
- 10.168 D&D said that the scope of the remedy was 'the divestiture of all of TMG's operations in E&W, namely tmConvey, tmConnect, Conveyancing Data

Services ("CDS"), Mio, and all associated assets,⁸²¹ excluding certain parts of PSS which would be retained within D&D. The retained parts of PSS in D&D would be as follows:

- (a) certain PSS customer data⁸²² which would be transferred onto [REDACTED] D&D platform;
- (b) the PSS brand;
- (c) all existing PSS staff;⁸²³ and
- (d) any software to the extent that these are only currently being utilised by TMG to service the needs of PSS customers.^{824,825}

Our assessment

10.169 In this section we assess whether following a Partial Divestiture, the divested business would be able to operate as an effective competitor in E&W, thereby comprehensively remedying the SLC we have found. To do this we look:

- (a) at whether the Partial Divestiture would be sufficiently configured in principle in terms of the product and geographic scope of its operations to comprehensively address all aspects of the SLC (paragraphs 10.170 to 10.171); and
- (b) at the effectiveness of the Partial Divestiture in terms of any risks that may arise from the separation of PSS from TMG relating to the design, composition, and implementation of the remedy (paragraphs 10.174 to 10.194).

10.170 When considering the evidence we have received on the Partial Divestiture, we have been mindful that each of the Parties and the third parties that have

⁸²¹ D&D defined that the TMG assets that it would divest included 'all of TMG's existing tangible and intangible assets relating to its business in E&W, including the technology platform on which tmConvey operates its business (including the compilation and sale of PSRB, all of its production, back office, software, management, IT, product, commercial, marketing, finance, and customer support teams)'. [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 2.1.1.

⁸²² PSS customer data would include: [REDACTED]. Such data would be backdated for a period of up to two years (or longer if necessary to comply with any applicable regulations). D&D would only require customer data which relates to purchases made in the Scottish market through PSS and would not require any customer data relating to purchases made through TMG's business in E&W. See D&D response to the CMA's s.109 Notice (RFI5) issued on 15 July 2022, paragraphs 3.1 to 3.3.

⁸²³ [REDACTED].

⁸²⁴ Software would include [REDACTED]. See D&D response to request for information of 15 July 2022 (RFI9), paragraph 1.2.

⁸²⁵ D&D response to request for information of 15 July 2022 (RFI9), paragraph 1.2.

made submissions to us have differing incentives which may have affected how their evidence is presented.

10.171 D&D alleged that we had accepted TMG's submissions at face value and without any adequate assessment of the facts and had disregarded D&D's submissions without proper consideration.⁸²⁶ We do not accept this allegation. Where appropriate we have asked for further information and data from each of the Parties and have sought comments on statements made by one party with the other. We consider that we have adequately assessed and cross-checked submissions as far as possible in the time available to us within the constraints of our statutory timeframe.

Sufficiency of the scope of Partial Divestiture

10.172 We have defined the relevant geographic market as E&W and have found a SLC in this market. The Parties overlap in the supply of PSRBs in E&W only.⁸²⁷ PSS only operates in Scotland and D&D does not operate in Scotland.

10.173 We consider therefore, in principle, the Partial Divestiture is sufficient in scope to remedy the SLC and its adverse effects.

Assessment of the effectiveness of the Partial Divestiture

10.174 This section is structured as follows:

- (a) first, we provide context for our assessments, setting out the evolution of D&D's remedy proposal and its specification of the divestiture package;
- (b) second, we assess the specification and general design of the remedy;
- (c) third, we look at specific risks relating to the composition of the remedy;
- (d) fourth, we consider some of the risks relating to implementation of the remedy; and
- (e) finally, we assess the Parties' submissions in relation to customer benefits.

⁸²⁶ D&D further response to Remedies Working Paper, 14 July 2022, paragraph 2.1.

⁸²⁷ D&D also supplies PSRBs in Northern Ireland, but TMG does not. TMG supplies PSRBs in Scotland, but D&D does not. Response to the Enquiry Letter, paragraph 17.1.

Evolution of D&D's remedy proposal

- 10.175 The various iterations and refinements of D&D's proposal for a partial divestiture of TMG are set out in detail in the 'Our remedy consideration process' section at paragraphs 10.11 to 10.26 above. CMA Merger Remedies Guidance states that in evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.⁸²⁸
- 10.176 As D&D has already acquired the whole of the TMG business, in order for a Partial Divestiture to take place, we understand that D&D would propose to sell all of TMG's operations in E&W excluding certain parts of PSS that would be retained in D&D. This therefore raises the question as to which parts of PSS would be retained and how it would be separated from the rest of TMG.
- 10.177 We note that D&D's first proposal, set out in its response to the RN, said 'PSS is a separate business from the business of TMG in E&W' and that 'separating PSS from the rest of the TMG business will not be particularly difficult.'⁸²⁹
- 10.178 There have been a number of clarifications of the proposal, with several submissions from D&D and responses to information requests from D&D and TMG. These are set out in paragraphs 10.17 to 10.25 above. As a result of further information on the PSS business that has been shared with D&D by TMG, including in the Consultancy Report, the remedy proposal has changed. The current remedy proposal put forward by D&D and set out in paragraph 10.168 above is that the PSS customer data, staff with exclusive responsibilities for PSS, the PSS brand, and a limited amount of software should be transferred to D&D before TMG is sold.
- 10.179 We acknowledge that there is an asymmetry of information between D&D and TMG in relation to the issues raised by the Partial Divestiture. We have therefore sought to ensure within the limits of our time and process that D&D has had adequate opportunity to refine its proposals (including through multiple submissions, responses to specific questions we have sent the Parties and also the Consultancy Report). However, D&D has still failed to clarify certain aspects such as what software would be included and whether the lease of the PSS office in Glasgow would be retained. Although we take into account D&D's experience in previous business transfers and customer migrations and we recognise that some issues might be resolved through further negotiation, we consider this lack of clarity on the evidence as to the

⁸²⁸ See our Merger Remedies Guidance [CMA87](#), paragraph 3.5.

⁸²⁹ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraphs 3.4 and 3.5.

specification of the remedy by D&D is a matter which we are entitled to take into account.⁸³⁰

10.180 Notwithstanding these issues, on the basis of the information we have been able to gather, we have assessed the effectiveness risks relating to the design, composition, and implementation of the Partial Divestiture.

Risks relating to specification and design of the remedy

10.181 Whilst D&D submitted that PSS was a separate business, TMG told us that PSS is not run as a standalone business within TMG. TMG stated that PSS should be considered a division of TMG with 'back-office' support from E&W rather than a business capable of operating in a sustainable manner in the Scottish market.⁸³¹

10.182 PSS is not a separate company. It operates as a 'brand' of TM Property Searches, part of the TM Group of companies.⁸³² It had sales of around £[REDACTED] million for the year ended 31 December 2021 producing a profit of £[REDACTED] million.

10.183 PSS is managed on a day-to-day basis by the Managing Director, [REDACTED]. [REDACTED] is supported by an [REDACTED], who is responsible for the successful running of the production teams. The Managing Director is also supported by a sales team, all of whom report to the Managing Director.⁸³³

10.184 TMG submitted that [REDACTED] title was changed from that of a Commercial Director to Managing Director in 2021. TMG stated that [REDACTED].⁸³⁴

10.185 PSS currently has [REDACTED] staff, covering both Operational and Sales, who work exclusively on its activities.⁸³⁵ The employment contracts of these staff are with TMG. However, TMG submitted that its activities in all geographic areas are delivered through shared functions based in England. As a result, while PSS orders are fulfilled by TMG employees based in Scotland, all support for PSS operations is provided by TMG in Swindon, including all functions relating to IT, finance, marketing, CRM, HR, and senior management support.

10.186 PSS currently has approximately [REDACTED] customers who purchase PSRBs from it. TMG submitted that there are no contracts which can be transferred to D&D

⁸³⁰ Ecolab v CMA [2020] CAT 12 ('[Ecolab/Holchem judgment](#)'), dated 21 April 2020, paragraph 85.

⁸³¹ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸³² TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸³³ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸³⁴ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸³⁵ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

as part of a remedy⁸³⁶. TMG submitted that there are [REDACTED] customers of TMG in E&W that are also customers of PSS. While sales to these customers in Scotland (through PSS) are small (£[REDACTED] in the year ended 31 December 2021), these customers account for around £[REDACTED] million of sales for TMG in E&W.⁸³⁷

10.187 TMG submitted that PSS uses TMG's platform and software systems to provide its services. PSS operates a white-label version of TMG's online ordering platform tmConvey.⁸³⁸ PSS also produces the property searches required by Scottish customers using TMG's ATOMIC workflow application.⁸³⁹ TMG said that these reports are unique to the Scottish market. The only products that PSS sources from third parties are coal mining reports which are sourced from The Coal Authority and environmental reports which are obtained from [REDACTED].⁸⁴⁰

10.188 TMG submitted that its online ordering platform, tmConvey, has several unique features, [REDACTED].⁸⁴¹

10.189 TMG told us that the ATOMIC system is used to produce search reports which are then ordered via the tmConvey platform. It stated that ATOMIC enables significant elements of the property search products to be automatically populated with data and that it has been developed over a number of years and is a key part of the service differentiator in E&W as well as Scotland.⁸⁴²

10.190 TMG told us that the value of the ATOMIC system was not just derived from the technology that delivers the manufacturing (ie report compilation capability) but also from its ability to deliver an operational, skills based, workflow distribution system, [REDACTED]. ATOMIC's distinct and unique characteristics also enable the business to measure operational efficiency and customer service levels. This information is reviewed and fed into operational improvement programmes, where further IT investment in ATOMIC delivers increased levels of customer service.⁸⁴³

10.191 The ATOMIC and tmConvey systems that PSS uses are run and managed out of TMG's office in Swindon through a shared IT resource.⁸⁴⁴

⁸³⁶ TMG response to the CMA's Remedies Working Paper dated 8 July paragraph 2.12.

⁸³⁷ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

⁸³⁸ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸³⁹ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴⁰ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴¹ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴² TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴³ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴⁴ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

10.192 From the evidence summarised above, it is apparent to us that PSS is closely integrated within TMG. There are several areas where the boundary between PSS and TMG's E&W operations remains unclear, as well as some key common functions, processes, and policies.

10.193 For instance, the Partial Divestiture proposed by D&D includes 'any software modules ([X]) to the extent that these are only currently being utilised by TMG to service the needs of PSS customers.'⁸⁴⁵ However, TMG told us that there were 'quite simply no Scotland-specific "modules" which are capable of being either extracted or transferred and [X].'

10.194 In summary, we consider that the current integration between PSS and the rest of TMG mean there are material uncertainties over the specification and design of the Partial Divestiture. In the next two sections we set out how these uncertainties create risks to the effectiveness of the remedy in addressing the SLC we have found in E&W; and how they increase the risk that the remedy cannot be implemented successfully.

Risks relating to composition of the remedy

10.195 In this section we set out composition risks in the following areas:

- (a) transfer or disclosure of TMG proprietary information and know-how; and
- (b) the financial impact of partial divestiture on TMG.

Transfer or disclosure of TMG proprietary information and know-how

10.196 D&D's initial proposal involved the transfer of the whole of PSS including the IT platform and software (see paragraph 10.18). In response to this proposal, TMG stated that tmConvey and ATOMIC are key elements of TMG's unique service proposition in the market in both E&W and Scotland and are the fundamental driver of TMG's competitiveness in both E&W and Scotland.⁸⁴⁶

10.197 TMG submitted that the intellectual property (IP) contained within both the PSS version of tmConvey and the ATOMIC workflow application is unique to TMG, representing 'a distillation of TMG's knowledge, experience and expertise gained over decades.'⁸⁴⁷

10.198 TMG further submitted that, in the event of a partial divestiture of TMG (in which PSS was transferred to D&D), granting access to or allowing use of the

⁸⁴⁵ D&D response to the CMA's s. 109 Notice (RFI 9) issued on 15 July 2022, paragraph 1.2(d).

⁸⁴⁶ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴⁷ TMG response to the CMA's s109 Notice (RFI8) issued on 16 June 2022, question 1.

IP contained within these two applications to a key competitor on the market for the supply of PSRBs would allow access by D&D to highly commercially sensitive information and know-how belonging to TMG.⁸⁴⁸

- 10.199 TMG argued that if it were required to grant such access to D&D, it would [REDACTED]. As a result, TMG argued, this would undermine the fundamental objective of the divestiture remedy by failing to comprehensively address the SLC. Furthermore, TMG submitted that there was no form of licensing framework which would allow D&D to access tmConvey and ATOMIC and which would adequately protect TMG's business in E&W.⁸⁴⁹
- 10.200 D&D's final proposal would require the transfer of certain PSS customer data and any software only to the extent that it is currently being utilised by TMG to service the needs of PSS customers.
- 10.201 We understand 'customer data' would in this context include for example: [REDACTED]; 'software' would include [REDACTED]. To the extent that any transfer of customer data includes personal data, we note that such transfer would need to comply with the terms of the UK General Data Protection Regulation (GDPR).⁸⁵⁰
- 10.202 D&D said that it would be possible to transfer PSS customers onto [REDACTED] D&D technology platform with limited disruption. It gave recent examples from [REDACTED] where it had transferred customers onto its own technology platform in less than six months.⁸⁵¹
- 10.203 The Consultancy Report did not identify any 'technical blockers' to the customer transfer approach to a Partial Divestiture. It said that D&D's [REDACTED].⁸⁵²
- 10.204 D&D submitted that the Consultancy Report showed that access to TMG's proprietary software was not required in order to transfer PSS customers to D&D, and therefore the process of transfer of PSS customers could be undertaken in such a way to avoid any issues relating to TMG's IP.⁸⁵³ TMG fundamentally disagreed with this conclusion.⁸⁵⁴
- 10.205 D&D further submitted that it would be willing to appoint an appropriate third-party [REDACTED]. This would ensure that no TMG proprietary information, code or

⁸⁴⁸ TMG response to the CMA's s109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁴⁹ TMG response to the CMA's s109 Notice (RFI8) issued on 16 June 2022, question 1.

⁸⁵⁰ See [Data Protection Act 2018](#).

⁸⁵¹ D&D's comments on TMG's response to the CMA's Notice of possible remedies, dated 1 July 2022, paragraphs 5-6.

⁸⁵² Consultancy Report, dated 14 July 2022, slide 2.

⁸⁵³ D&D's further response to Remedies Working Paper, 14 July 2022, paragraphs 2.6 and 3.7.

⁸⁵⁴ TMG response to D&D's further response on the Remedies working paper of July 2022, dated 18 July, paragraph 4.2.

other confidential information would be shared with or otherwise visible to D&D during the design and implementation of the transition.⁸⁵⁵

- 10.206 TMG submitted that the service that PSS customers currently receive is wholly reliant on the TMG IT platform and is delivered through the experience of the people working within the PSS team.⁸⁵⁶ The transfer of PSS staff is therefore important to the success of any transfer of PSS. TMG argued that such a transfer would ‘expose’ TMG’s know how and intellectual property to D&D such that D&D could, irrespective of whatever contractual or other protections were put in place, benefit from this when competing with TMG in E&W.⁸⁵⁷ TMG said that there were ‘no adequate legal or other safeguards that could be put in place to prevent D&D from using information in relation to E&W that was obtained from transferred PSS employees.’⁸⁵⁸
- 10.207 In response to the Consultancy Report, TMG stated that there were no Scotland-specific ‘modules’ which were capable of being extracted or transferred. It also stated ‘the fact that TMG’s IT platform is both [✂], any attempt to replicate its functionality for Scotland would require extensive and deep level access to shared E&W and Scottish functionality.’⁸⁵⁹
- 10.208 TMG also said that its IT platform lies ‘at the heart of its competitive offering and any access, whether by D&D or by a ‘supposedly independent third-party’, would risk the exposure of TMG’s commercially sensitive information and know-how. TMG does not consider that there are any legal or other protections that could be put in place which would allow it to be comfortable with such an approach.’⁸⁶⁰

Our view

- 10.209 TMG uses tmConvey and ATOMIC and associated systems across the entirety of its operations. We understand that this IT platform forms the basis of TMG’s service proposition across E&W as well as Scotland. We agree with TMG that maintaining the integrity of this proposition is essential to the competitiveness of TMG in E&W and as such to the effectiveness of the remedy. Any access by D&D to this software would in our view carry significant risk that TMG would be a less effective competitor than it is today in E&W.

⁸⁵⁵ D&D response to request for information of 15 July 2022 (RFI9), paragraph 1.3.

⁸⁵⁶ TMG response to request for information of 15 July 2022 (RFI9), paragraph 3.4.

⁸⁵⁷ TMG response to the remedies working paper, dated 1 July 2022, paragraph 2.8.

⁸⁵⁸ TMG’s comments on D&D’s response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 3.14.

⁸⁵⁹ TMG’s comments on D&D’s response to the RFI of 15 July 2022, dated 21 July 2022, paragraphs 3.17–3.19.

⁸⁶⁰ TMG’s comments on D&D’s response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 3.21.

- 10.210 TMG and D&D have differing views on whether extracting PSS customer data would require access to TMG's proprietary software. We note there is significant asymmetry of information in this regard and that the two Parties have different incentives in relation to the potential separation of PSS. This makes it difficult for the CMA to assess competing claims. D&D has had very limited access to PSS to ascertain the detail of any transfer process although we note that D&D has significant experience of such transfer processes in the past. Beyond the use of third parties to oversee the transfer process, D&D has provided limited detail as to how it would address the risks that proprietary and commercially sensitive information and knowledge may be shared.
- 10.211 The data to be transferred includes [REDACTED].⁸⁶¹ Given the closely integrated nature of PSS within TMG and TMG's evidence that there has been no separate commercial strategy for PSS, which has largely been run as an integrated part of the UK business, it is possible that these commercial terms have features in common with the terms offered by TMG to its customers in E&W. We therefore consider that the degree of detail within this information risks providing D&D with commercially sensitive information, either directly within the data or by inference from its structure, on how TMG in E&W interacts with its customers, in particular, its commercial strategy around pricing and discounts.
- 10.212 The integrated nature of PSS within TMG also gives us concern about the transfer of PSS employees. When employees move jobs in the normal course of business, there is inevitably some transfer of knowledge. However, the Partial Divestiture involves the transfer of a significant number of employees, which increases the risk that D&D will be able to make use of these employees' knowledge to understand TMG's operations and areas of competitive difference.
- 10.213 Whilst there may be actions that could be taken to mitigate against some of the risk that a Partial Divestiture would provide D&D with access to TMG's IP and know-how, D&D has provided only limited details in its submissions. It remains unclear the extent to which some of the data to which D&D seeks access would or would not reveal information to D&D that would inhibit TMG's ability to compete with it in E&W. We consider that on the basis of the submissions that have been made to us and the information we have gathered, we are not in a position to be able to specify a Partial Divestiture remedy with sufficient precision and in sufficient detail to address with

⁸⁶¹ D&D response to the CMA's s109 Notice (RFI 9) issued on 15 July 2022, paragraph 3.1(c).

certainly our various concerns about the risk of disclosure of proprietary IP and know-how.

Financial impact of Partial Divestiture on TMG

10.214 We now consider the potential financial impact of:

- (a) the direct loss of PSS revenue and profits on the competitive capability of TMG in E&W, and
- (b) the loss of customers who currently purchase from both TMG in E&W and from PSS.

10.215 TMG submitted that PSS is a core driver of TMG's overall financial performance, enabling TMG to spread central costs over a greater revenue-generating base.⁸⁶² It said separating PSS from TMG would put TMG on a [X] relative to the pre-Merger situation and that [X].⁸⁶³

10.216 TMG argued that, as a consequence, TMG would become [X] on the market in E&W than pre-Merger and would be significantly [X]. This scenario would also lead to further [X].⁸⁶⁴

10.217 TMG submitted that there are [X] customers of TMG in E&W that are also customers of PSS⁸⁶⁵. TMG submitted that whilst the turnover generated within PSS from these customers is very modest,⁸⁶⁶ there is a risk that, after the Partial Divestiture, these customers could switch away from TMG to a provider, such as D&D, which would be able to offer them an integrated service across Scotland and E&W. TMG told us that it is important to note that there would be an increased risk of loss in respect to approximately £[X] million of TMG E&W revenue.⁸⁶⁷

10.218 Additionally, TMG told us that one of the largest PSS customers is also now owned by a firm in E&W which has private equity investment through [X]. TMG anticipates there will be further consolidation in the legal services market over the coming years, which will in turn drive demands for economies of scale in supplies to law firms.⁸⁶⁸ This will, TMG submits, inevitably extend to searches and will place businesses, such as TMG as it currently exists with

⁸⁶² [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.11 (c).

⁸⁶³ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.11 (c).

⁸⁶⁴ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.11 (c).

⁸⁶⁵ [X].

⁸⁶⁶ Revenue from the three customers was £[X], £[X] and £[X] respectively for the three years ended 31 December 2021. TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

⁸⁶⁷ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

⁸⁶⁸ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

both an E&W and a Scottish offering in PSS, at an advantage.⁸⁶⁹ TMG stated that the loss of the PSS activities would materially harm TMG's prospects given it believed this was a clear market trend.⁸⁷⁰

- 10.219 D&D submitted that PSS generates relatively modest revenues which represent only around [X]% of the TMG business. As such D&D's view was that it was not credible to suggest that PSS is a core driver of TMG's overall financial performance or that it would be adversely affected financially by its loss.⁸⁷¹
- 10.220 D&D further submitted that E&W and Scotland are very different markets with little by way of synergies achieved through servicing both areas. Accordingly, D&D would not expect the costs for TMG of supplying PSRBs in E&W to materially increase as a result of not having revenues from PSS on the understanding that the majority of the costs associated with the provision of services by PSS relate to the [X].⁸⁷² D&D also said that 'given that the TMG's E&W business contributes common staff, for example, TMG's central overheads would be lower without PSS'.⁸⁷³
- 10.221 D&D also stated that it strongly disagreed that a divestiture package involving the separation of the PSS business from the wider TMG business would be too constrained to attract a suitable purchaser. D&D said that [X].⁸⁷⁴
- 10.222 D&D submitted that investments in serving Scottish customers would not have to be made in the event that PSS is divested and these could instead be re-directed to TMG's E&W business.⁸⁷⁵
- 10.223 D&D submitted that given the very limited number of common customers that use both TMG in E&W and PSS, the suggestion that the loss of these customers would have any material impact on TMG's financial position is very weak.⁸⁷⁶

⁸⁶⁹ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

⁸⁷⁰ TMG response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 4.

⁸⁷¹ D&D Further response to remedies working paper, 14 July 2022, paragraph 3.15.

⁸⁷² [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.6.

⁸⁷³ D&D Further response to remedies working paper, 14 July 2022, paragraph 3.16.

⁸⁷⁴ D&D's supplementary response to the Notice of possible remedies, 1 July 2022, paragraph 10.

⁸⁷⁵ D&D Further response to remedies working paper, 14 July 2022, paragraph 3.17.

⁸⁷⁶ D&D Further response to remedies working paper, 14 July 2022, paragraph 3.15.

Loss of PSS revenue

- 10.224 We looked in detail at TMG's costs and margins and analysed the costs and margins of PSS in relation to those of TMG. The gross margin of the PSS business ([X]%) is materially higher than the gross margin for the whole of TMG ([X]%). This means that while PSS only accounts for [X]% of TMG's revenue, it accounts for [X]% of its gross profits. TMG only allocates overhead costs to PSS where these have been directly procured by PSS (eg office rental) or are related to PSS staff. Shared and common costs (eg IT and professional services) are reported in the TMG business as a whole. As a result, in the year ended 31 December 2021 the EBITDA⁸⁷⁷ of PSS was £[X] million, or approximately [X] per cent of TMG's total EBITDA.⁸⁷⁸
- 10.225 We have found that there are economies of scale in the PSRB market (see paragraphs 6.93 to 6.106). In this regard we note that TMG's IT platform currently underpins its operations in both E&W and Scotland. Any investments it makes to improve that platform currently are recouped from sales in both Scotland and E&W. A Partial Divestiture would reduce the returns on future investments in its platform and other common functions, potentially reducing TMG's ability to recoup future investments in improving its platform or deterring TMG from making them at all. This could adversely impact TMG's longer-term competitiveness in E&W.

Loss of shared customers

- 10.226 We note that the Partial Divestiture would remove TMG's ability to service customers present in both E&W and Scotland while at the same time giving D&D the opportunity to supply these customers.
- 10.227 The number and value of customers who use PSS as well as TMG in E&W is small. The joint customers make up less than [X]% of TMG's E&W revenue.⁸⁷⁹ PSS's sales to these customers are less than £[X] per annum.
- 10.228 To the extent that these customers value using a single PSRB supplier across E&W and Scotland, the separation of PSS from TMG may lead them to consider an alternative supplier such as D&D. However, given the small number of these customers, we do not consider that this, on its own, is likely

⁸⁷⁷ Earnings before interest, tax, depreciation, and amortisation.

⁸⁷⁸ All figures in this paragraph are from TMG's response to RF18, 20 June 2022.

⁸⁷⁹ Based on TMG total revenue (including PSS) in 2021 of £[X]m and PSS revenue of £[X] million (see TMG response to the CMA's s. 109 Notice (RF18) issued on 16 June 2022, question 2).

to have a substantial adverse effect on TMG's ability to compete effectively. We note TMG's submission that more customers may wish to have a single supplier in future.

10.229 We also give limited weight to views that [REDACTED] had been expressed by potential purchasers at this point in the process. Any discussions with purchasers will have been subject to confirmation of the scope and detail of the remedy and the financial position of PSS and TMG may not have been clear to the purchaser.

Risks relating to implementation

10.230 Having considered the extent and implications of integration between PSS and TMG's E&W operations, we now consider risks associated with implementation of the Partial Divestiture, for example that the process of separation would itself compromise TMG's competitive capability and thus the effectiveness of the remedy.

10.231 D&D expected that it would be relatively straightforward to integrate PSS into D&D.⁸⁸⁰ It stated that while a Transitional Services Agreement (TSA) was likely to be required for an initial period to facilitate the transfer of PSS onto the D&D technology and operating systems, D&D believed that separating PSS from the rest of the TMG business would not be particularly difficult.⁸⁸¹

10.232 D&D set out that it expected to migrate PSS customers [REDACTED]. It stated that it would '[REDACTED]' and that it would look to liaise with TMG to start the process as soon as possible so that it can be done within the divestiture period.⁸⁸² This would either happen at the point of divestiture of the rest of the business or later (in which case customers would be supported by the TMG/PSS platform in the meantime). In terms of process D&D stated that it would look at the appropriate approach to migrating customers based on the [REDACTED].⁸⁸³

10.233 D&D submitted that it has significant experience in migrating customers and has undertaken this process in a number of countries.⁸⁸⁴

10.234 In its response to the RN, TMG said that it would have to commit to 'inevitable' TSAs for 'years to come', which would [REDACTED].⁸⁸⁵ D&D disagreed with this position, saying that, based on its experience of other transactions, any

⁸⁸⁰ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 3.3.

⁸⁸¹ D&D's response to the notice of possible remedies, dated 17 June 2022, paragraph 3.5.

⁸⁸² Transcript of the response hearing with D&D, 14 June 2022, page 47, lines 18 to 25.

⁸⁸³ D&D's response to the CMA's s. 109 Notice (RFI8) issued on 16 June 2022, question 6.

⁸⁸⁴ D&D's supplementary response to the Notice of possible remedies, paragraph 6.

⁸⁸⁵ TMG's response to the notice of possible remedies, dated 22 June 2022, paragraph 3.11 (b) (vi).

cooperation and assistance that would be required from TMG during the customer migration process would be limited.⁸⁸⁶

- 10.235 TMG submitted that the practicalities of attempting to separate PSS, 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 ability to [REDACTED].⁸⁸⁷
- 10.236 TMG initially estimated that it would take between [REDACTED] days of management time to transfer PSS customer information to D&D.⁸⁸⁸ Having seen further details of the information that was to be transferred, TMG said that the time required would '[REDACTED]'.⁸⁸⁹
- 10.237 TMG also said that the transfer of employees under Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)⁸⁹⁰ would require a significant amount of support from TMG. TMG's experience of the TUPE process was that it was 'time consuming and disruptive'.⁸⁹¹
- 10.238 D&D said that it was not necessary for TMG's management to have any material role in the customer migration process. D&D would be responsible for implementing all aspects of this process using its significant experience. D&D had provided a summary example of possible steps that might be required, none of which envisaged significant input from TMG management. The Consultancy Report also set out alternative steps that would not require input from TMG.⁸⁹²

Our view

- 10.239 The information provided by the Parties about the separation process and transfer of PSS operations to D&D presents, on the face of it, potentially material effectiveness risks.
- 10.240 We note that the Parties had very different perspectives on the implementation risks associated with separating PSS from the rest of TMG, with D&D taking a more positive view of the risk profile. The different perspectives may arise as a result of the knowledge asymmetry between D&D

⁸⁸⁶ D&D's supplementary response to the notice of possible remedies, dated 1 July 2022, paragraph 9.

⁸⁸⁷ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.11 (b) (v).

⁸⁸⁸ D&D response to request for information of 15 July 2022 (RFI9), paragraph 1.4.

⁸⁸⁹ TMG's comments on D&D's response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 3.5.

⁸⁹⁰ See [acas TUPE Transfers webpage](#), accessed by the CMA on 1 August 2022.

⁸⁹¹ TMG's comments on D&D's response to the RFI of 15 July 2022, dated 21 July 2022, paragraph 3.15.

⁸⁹² D&D's further response to the Remedies Working Paper, dated 14 July 2022, paragraph 3.11.

and TMG of how separate PSS is from TMG, although as noted above at paragraph 10.179 we consider that D&D has had opportunities to seek this information. This included an extension to the deadline to respond to the remedies working paper which D&D used to commission the Consultancy Report. These differences may also arise from the different incentives of the Parties in representing the complexity of the separation.

- 10.241 The transfer of staff, which would take place under TUPE, would likely be reasonably straightforward, notwithstanding the issues around management time referred to in paragraphs 10.235 to 10.236. Any risk of staff not transferring or not staying with the PSS business post-transfer would largely fall with D&D, and would not directly affect TMG's ability to compete in E&W. Similarly, risks relating to the successful transfer of customers would be largely borne by D&D or the customers themselves apart from in relation to the timing of transfer, where a prolonged transfer period would also have some impact on TMG and a potential reputational risk for TMG if the transfer gives rise to any disruption or reduction in service levels.
- 10.242 To successfully transfer PSS customers, D&D would [REDACTED]. [REDACTED] during the remedy implementation period so that the customers could be transferred on completion of the Partial Divestiture.
- 10.243 While we note D&D's experience in migrating customers onto its existing systems, we would also note that it is not present in, and has limited experience of, the particular features of the Scottish market. TMG told us that these features included, for example, [REDACTED] turnaround times, provision of a [REDACTED] on the day prior or the day of completion, more limited integration with data providers, and a different 'land registry'.
- 10.244 TMG is a relatively small business with limited management capacity and the divestiture of TMG (with or without PSS) will lead to significant demands on its management and staff time as they will be responsible for compiling financial and other information and speaking with potential purchasers.
- 10.245 Although we acknowledge D&D's submission that it would take the lead in any customer migration process and that it has significant experience in this area, we consider that there would inevitably still need to be some involvement of TMG management and staff. The management and staff time that will be needed to assist D&D (and/or its third-party consultant) with any separation of PSS including a transfer of customers and the statutory processes involved in transferring employees is likely to represent a further demand on their time. Not only would this risk undermining TMG's competitive position in E&W during the divestiture period, but it would also increase the risk that the TMG divestiture is not implemented effectively.

10.246 In summary, we have found several risks relating to the implementation of the remedy. We consider that there is a risk that D&D will not be able to build a satisfactory version of its platform within the relatively short divestiture period. If this were to happen, either the divestiture period would need to be extended, or the TMG divestiture would complete with PSS still being part of TMG with a further transfer of PSS from TMG to D&D occurring at a later date. Both of these options present risks to the practical effectiveness of the Partial Divestiture and also potentially to the attractiveness of TMG to potential purchasers. In addition, while the direct risks of effective transfer of customers and staff fall on D&D, the demands on the time of TMG's management and staff in assisting D&D with these transfers is likely, in our view, to risk diverting attention and resources from TMG's business operations and the divestiture process. This would risk undermining both its competitiveness and the effective implementation of the remedy.

Conclusion on effectiveness of Partial Divestiture

10.247 Since the publication of the RN, and following several iterations and clarifications in response to our information requests, D&D's proposal for the Partial Divestiture has changed significantly but remained unclear and lacking in detail in various respects.

10.248 In principle, a Partial Divestiture of TMG excluding PSS has the potential to represent a comprehensive solution to the SLC, which only relates to E&W given that the PSS business only operates in Scotland where D&D is not present.

10.249 However, we have identified several risks associated with the design, composition and implementation of this remedy, arising in large part from the current degree of integration between PSS and TMG.

10.250 A particular source of risk is the fact that TMG's core and proprietary systems operate across E&W and Scotland. The transfer of customers and associated information from these systems to those being developed by D&D risks revealing TMG's confidential proprietary information to D&D, which in turn may affect TMG's ability to compete effectively with D&D in E&W. While we place some weight on D&D's claims that these risks can be managed to some degree, we consider that there will remain a risk that this proprietary information is revealed, whether inadvertently or as a necessary part of the transfer process and that it is very difficult for us to specify measures that would provide us with a high degree of certainty that such risks would be fully eliminated.

- 10.251 The transfer of PSS staff, who have experience of working with IT systems that TMG uses in E&W also presents similar risks which appear more difficult to mitigate. Unlike with the customer data, we do not consider that the risk of disclosure of proprietary information about TMG could be significantly mitigated, as it is inherent to the design of the remedy.
- 10.252 The transfer of the PSS business will also, in our view, have an adverse financial impact on TMG's profits, causing it to lose the scale benefits it currently enjoys and reducing its ability to invest in order to compete in E&W.
- 10.253 The transfer of PSS customers and staff will also require resources to be diverted from other activities to complete, which will influence TMG's ability to compete in E&W. The divestiture of TMG from D&D will already impose significant demands upon TMG's limited management and staff resources. The additional demands arising from the separation and transfer of PSS will divert management from the important task of delivering an effective sale of TMG, potentially further threatening TMG's ability to compete in E&W and creating a risk for the effective divestiture of the rest of TMG.
- 10.254 In addition, we consider that there may be a risk that D&D is not able to build suitable IT systems to which to migrate Scottish customers during the divestiture implementation period, giving rise to a risk of delays to the divestiture or additional complexity, both of which will place further demands on TMG's limited resources.
- 10.255 In deciding on an appropriate remedy, the CMA must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects.⁸⁹³ The Merger Remedies Guidance says 'in evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.'⁸⁹⁴ As outlined above, we have identified a number of risks relating to the design, composition and implementation of the Partial Divestiture which, taken together and in the round, mean we cannot have the high degree of certainty we require that a Partial Divestiture would achieve its intended effect.
- 10.256 We therefore consider that the Partial Divestiture would not represent an effective remedy to the SLC we have found.

⁸⁹³ Section 35(4), the Act.

⁸⁹⁴ See our Merger Remedies Guidance [CMA87](#), paragraph 3.5.

Conclusion on remedy effectiveness

10.257 We conclude that:

- (a) Full divestiture of TMG, including retaining the Supply Agreements but with the conditions set out in paragraph 10.120, would be an effective remedy; and
- (b) Partial divestiture of TMG excluding PSS would not be an effective remedy.

10.258 As we do not consider that a Partial Divestiture would be effective, we do not need to assess whether any action should be taken in relation to the Supply Agreements under the scenario of a Partial Divestiture. We did not identify any other remedies, whether structural or behavioural, that would be effective.

Proportionality

Framework for assessment of proportionality of merger remedies

10.259 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. In addition, the CMA will seek to ensure that no remedy is more onerous than necessary or disproportionate in relation to the SLC and its adverse effects.⁸⁹⁵

10.260 To fulfil this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):⁸⁹⁶

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

10.261 With respect to costs of the remedy, CMA Mergers Remedies Guidance states that '[as] the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the

⁸⁹⁵ CMA87, paragraph 3.6.

⁸⁹⁶ CMA87, paragraph 3.10.

costs that will be imposed by a remedy on third parties'.⁸⁹⁷ 'In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy', as it is 'for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price'.⁸⁹⁸

10.262 Neither the merger parties, nor any third party identified any potential RCBs in relation to the full divestiture of TMG to which we should have regard under the Act. Nor did we identify any RCBs ourselves. Consequently, we have not modified our view of the appropriate remedy in light of RCBs.

10.263 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.⁸⁹⁹

Views of the Parties

10.264 D&D submitted that a TMG divestiture which included PSS would be disproportionate and overly intrusive given that the CMA did not find an SLC outside of E&W.⁹⁰⁰

10.265 TMG submitted that '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.' Furthermore, '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'.⁹⁰¹

10.266 TMG's view was as a result that Full Divestiture would not be disproportionate.⁹⁰²

10.267 In respect of Partial Divestiture, TMG submitted that the effect of separating PSS from TMG would be to remove the unique selling proposition and key service differentiator that PSS has resulting from its use of TMG's operational

⁸⁹⁷ [CMA87](#), paragraph 3.8.

⁸⁹⁸ [CMA87](#), paragraph 3.9.

⁸⁹⁹ [CMA87](#), paragraph 3.6.

⁹⁰⁰ [D&D's response to the notice of possible remedies](#), dated 17 June 2022, paragraph 3.1.

⁹⁰¹ [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.20.

⁹⁰² [TMG's response to the notice of possible remedies](#), dated 22 June 2022, paragraph 3.21.

systems.⁹⁰³ In addition, the transfer of customers would lead to [X] as TMG resources would be needed to aid the transition.⁹⁰⁴ TMG also argued that Partial Divestiture would be harmful to the Scottish market for PSRBs. It believed the remedy would be perceived poorly in Scotland being viewed as discounting the value of a stable PSRB market in Scotland. Furthermore, if D&D were ultimately to fail to establish a new version of PSS, then competition in the Scottish market would be reduced to only 2 main competitors.⁹⁰⁵

Our assessment of proportionality

Identification of the least onerous, effective remedy

- 10.268 We identified Full Divestiture as being the only effective solution to the SLC that we have found. It is therefore also the least onerous effective remedy.
- 10.269 We then considered whether Full Divestiture was disproportionate to the SLC and its adverse effects.
- 10.270 As set out in paragraph 10.260 we consider that the parties have a choice as to whether to proceed with a merger or not and as such we do not take into consideration any costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.
- 10.271 The remedy restores the pre-merger conditions and as such should not have any costs in relation to market distortion, effectively being prohibition of the merger. We have not found any RCBs and given the remedy is Full Divestiture there are no costs in relation to compliance or monitoring.
- 10.272 The SLC we have found eliminates a major national PSRB supplier from the market. This may lead to adverse effects, including increased prices and/or reduced product quality. We have found no relevant market distortions, remedy costs or RCBs foregone.
- 10.273 Given our conclusion that Partial Divestiture would not be effective we have not needed to come to a view in relation to TMG's arguments in regard to Partial Divestiture and the effect on the Scottish market.

⁹⁰³ TMG's response to remedies working paper, paragraph 2.4.

⁹⁰⁴ TMG's response to remedies working paper, paragraph 2.9.

⁹⁰⁵ TMG's response to remedies working paper, paragraph 2.15.

Conclusion on proportionality

10.274 We conclude that Full Divestiture is a proportionate as well as an effective remedy to the SLC that would also deal comprehensively with its adverse effects.

Remedy implementation

10.275 Having identified our preferred remedy, we now consider how it should be implemented.

10.276 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to section 82 of the Act if the Parties wish to offer them, or by making a final order under section 84 of the Act. Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (or extended once by up to six weeks under exceptional circumstances),⁹⁰⁶ including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

10.277 In line with our Mergers Remedies Guidance once this remedy has been fully implemented in line with the conclusions set out in this decision (see paragraph 10.278), we have decided that D&D should be prohibited from subsequently acquiring the assets or shares of TMG or acquiring any material influence over them. Our Mergers Remedies Guidance states that the CMA will normally limit this prohibition to a period of ten years.⁹⁰⁷ We find no compelling reason to depart from the Mergers Remedies Guidance in this case by seeking a shorter or longer prohibition period.

Decision on remedies

10.278 We have decided that Full Divestiture of TMG, including retaining the Supply Agreements but with the conditions set out in paragraph 10.120, would be an effective and proportionate remedy to address the SLC and the resulting adverse effects we have found.

⁹⁰⁶ The Act, [section 82](#) and The Act, [section 84](#).

⁹⁰⁷ [CMA87](#), paragraph 5.10.