

Completed acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC

Provisional findings report

Notified: 15 September 2022



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The Competition and Markets Authority has excluded from this published version of the provisional findings 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 [X]. Some numbers have been replaced by a range. These are shown in square brackets.

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- B: Conduct of the inquiry
- C: Internal Documents
- D: Customer questionnaires

Glossary

Summary

Overview of our provisional findings

1. The Competition and Markets Authority (**CMA**) has provisionally found that the acquisition by NEC Software Solutions UK Limited (**NECSWS**) of SSS Public Safety Limited and Secure Solutions USA (together **SSS**), purchased from Capita plc (**Capita**) (the **Merger**), could result in a substantial lessening of competition (**SLC**) in Integrated Communication and Control Services software (**ICCS**), and Duties Management Systems software (**Duties**) in the UK. As a result, customers could experience higher prices or a deterioration in service.
2. We also looked at one other market, Records Management Systems software (**RMS**), where NECSWS and SSS (together the **Parties** and for references relating to the future the **Merged Entity**) overlap but have provisionally found no SLC in that market.
3. We welcome views on our provisional findings, which will be published shortly, by no later than **7 October 2022**.¹
4. In our notice of possible remedies published alongside our provisional findings, we have set out our initial view that the only effective way to address the competition issues would be for the SSS business to be sold by NECSWS to a suitable purchaser. We will also consider any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the SLCs and/or any resulting adverse effects. We invite submissions on these initial views by **30 September 2022**.

Who are the businesses and what services do they provide?

5. NECSWS supplies software and associated services primarily to UK public sector bodies. NECSWS is ultimately owned by NEC Corporation, a global technology business headquartered in Japan.
6. SSS supplies software solutions and managed services primarily to the emergency and justice sectors.
7. The three markets which we looked at in detail were:
 - (a) ICCS that enables control room personnel to make and receive phone calls (including 999 and 101) and to communicate with staff over radio networks and in the future the new emergency services network (**ESN**). This software is used by different emergency services agencies (such as police forces, fire

¹ See the Notice of provisional findings published on [our case page](#) for details.

and rescue services, and ambulance trusts) as well as certain transport customers (such as Transport for London).

- (b) RMS which is used by the police to record and manage case-related information for the processing of people in custody and case file management for prosecutions.
- (c) Duties which enables the planning, scheduling and shift management of emergency service staff.

What evidence have we looked at?

8. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional findings.
9. We received several submissions and responses to information requests from the Parties and held hearings with each of NECSWS, SSS and Capita. We gathered information about tenders and other types of procurement processes which had been run for ICCS systems by emergency services and transport services, and for RMS and Duties systems by police forces, including who bid for these tenders and who won. We also examined the Parties' own internal documents, which show how they run their businesses and how they view their rivals in the ordinary course of business. These internal documents were also helpful in understanding the Parties' plans for the future of their businesses.
10. We spoke to and gathered evidence from other companies and organisations to understand better the competitive landscape, and to get their views on the impact of the Merger. In particular, we received evidence from the following:
 - (a) Police forces and other emergency services and transport services, most of whom were customers of the Parties.
 - (b) Other suppliers of ICCS, RMS and Duties to the UK market.
 - (c) The Police Digital Service
 - (d) Organisations involved during the sale of SSS
 - (e) Participants in related markets (such as Enterprise Resource Planning) who potentially might consider entering the UK ICCS, RMS or Duties markets.
11. We also considered evidence from the Parties and third parties received during the CMA's phase 1 investigation into the Merger.

What did this evidence tell us...

...about what would have happened had the Merger not taken place?

12. In order to determine the impact that the Merger could have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
13. The Parties told us Capita had underinvested in SSS in recent years which would affect SSS's ability to compete effectively and that, if unable to sell the business, Capita is likely to have considered winding down and withdrawing SSS's products from the market in the long run.
14. We considered whether it was likely that SSS would continue to be operated as a going concern and provided with the necessary investment, or whether SSS would have been managed to generate cash and minimise investment.
15. Capita and SSS told us that Capita was not investing in the business and in the new technology that would be required to compete and had moved it into a division with other companies to be sold, which reduced the effectiveness of SSS as a competitor in the market.
16. We looked at the financial position of SSS and the incentives to invest in its products. The evidence shows that SSS is a profitable business and would likely remain so with its investment plans carried through. We consider that, under the ownership of either Capita or another owner, SSS would have remained a going concern that continued to compete, invested in its products and operated for profit. We do not consider it likely that the business would have been wound down.
17. We provisionally conclude that if the Merger had not happened, the most likely counterfactual is that SSS would have continued to operate in the relevant markets, including tendering for new contracts and being considered for extensions and direct awards. This could either have happened under Capita's ownership, as its financial situation progressively improved with sales of other businesses, or with SSS having been sold to an alternative buyer.

... about the effects of the Merger?

18. We have looked at whether the Merger would lead to a significant reduction in competition between the Parties by removing an important competitor and, in doing so, whether the Merged Entity would worsen its offering (such as in respect of price or service quality) compared to the situation if the Merger did not take place.
19. We looked at three markets where SSS and NECSWS competed against each other, and also looked at how these markets may change in the future, particularly with the expected transition to cloud-based software.

ICCS

20. We looked at the supply of ICCS to emergency services in the UK (police forces, ambulance and fire and rescue services) and transport customers. The UK market for ICCS is concentrated with only six suppliers competing in it. The evidence we have seen shows that the Parties are two of the three largest ICCS suppliers and are currently close competitors. Recently the Parties have only directly competed with each other a few times; however they refer to each other in recent internal documents as key competitors and customers also frequently mention the Parties as being competitors in this market.
21. Where the CMA finds evidence that competition mainly takes place among a few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. Our provisional view is that the Parties currently impose an important competitive constraint on one another in a concentrated market that would be lost as a result of the Merger.
22. We then looked at whether there are any expected developments in the market which might materially change the strength of the competitive constraint the Parties place on each other, and that other suppliers place on the Parties.
23. Many of the opportunities for the supply of ICCS in the next few years are likely to involve looking at whether the software can operate in the cloud. The evidence suggests that some forthcoming tenders will require a public-cloud solution but not all of these will require it to be implemented immediately from point of contract 'go-live'. Instead in some cases a credible roadmap to public-cloud or a privately-hosted solution will be sufficient and in certain cases an on-premise solution will meet the customer's requirements. These latter three options (a roadmap to public-cloud, privately hosted solution or on-premise solution) are likely to be enough to enable the Parties to compete for some opportunities such that they would be a competitive constraint on each other and other suppliers, particularly where they already supply the customer. In these cases they will also be well-placed to compete for direct awards and extensions.
24. We consider that NECSWS will be a strong competitor in the market going forward, given its investment plans, and we also consider that there is likely a case for investment in SSS's ICCS product to make it a better competitor in the future.
25. We therefore provisionally conclude that the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS in the UK.

Duties

26. The Parties overlap in the supply of Duties to police forces in the UK. There are only four main suppliers operating in this market, with SSS and Crown having most customers and NECSWS and Totalmobile having fewer customers. As explained above (see paragraph 21), a merger between two firms in a market with such concentration often raises competition concerns.
27. There have been very few opportunities in the Duties market over the last five years and very few tenders. Although the Parties have not directly competed against each other in any Duties tenders recently, given the small number of current suppliers, we consider the Parties are likely to compete directly in future.
28. We looked at the prospects for each of the Parties' products in future. [X]. As such, we consider that NECSWS's Duties product is likely to continue in the market serving its current customers, to be available as an option for new customers, and therefore to remain a constraint on SSS over at least the next few years.
29. SSS currently has a strong position in the Duties market, and we consider it is likely to remain a strong competitor in the market in future and will remain a constraint on NECSWS.
30. We have therefore provisionally found that the Merger has resulted, or may be expected to result, in an SLC in the supply of Duties in the UK.

RMS

31. The Parties also overlap in the supply of RMS to police forces in the UK. There are very few companies supplying RMS to police forces in the UK, with NECSWS and Niche having the majority of customers and SSS having fewer customers. There have been very few opportunities in this market in the last five years, but the Parties have directly competed against each other at times.
32. However, SSS currently has a weak position as a supplier in the RMS market [X]. As such, we consider that SSS's RMS products are unlikely to be in a position to compete strongly for future opportunities, and therefore would not be a constraint on NECSWS in the future. We consider that competition against NECSWS is more likely to come from other suppliers, not SSS. We therefore provisionally conclude that the Merger has not resulted, or may not be expected to result, in an SLC in the supply of RMS in the UK.

... about any countervailing factors?

33. We considered whether there are any actions which customers and/or potential entrants could take to mitigate the SLCs we provisionally found in the ICCS and Duties markets in the UK.

34. We looked at whether suppliers in adjacent UK markets (for example telecommunications) are likely to enter the ICCS market in the near future, but consider this is unlikely given this would require developing or modernising an ICCS product and we were told about the importance customers place on a suppliers' track-record. Further we have received no evidence of suppliers without an ICCS product planning to enter the ICCS market.
35. We then looked at whether international ICCS suppliers not currently in the UK market would be likely to enter as a result of the merger, noting that several non-UK suppliers had entered the market in the last few years (eg Motorola, Frequentis, Saab and Systel).
36. We looked at the barriers to entering the market, including the risk averse attitude of customers, given the critical nature of ICCS systems, leading to a reluctance to select a supplier not already active in the UK. We also took into account the technological barriers that an international supplier seeking to enter the UK market would have to overcome. We have provisionally concluded that barriers are high.
37. We have found no evidence that international suppliers intend to enter the UK in the near future in response to the Merger.
38. Further, businesses which were suggested to us as potential entrants have made clear to us that they are not interested in entering the UK ICCS market.
39. We then looked at the Duties market, and provisionally found that barriers to entry or expansion into the Duties market are high, although the evidence was some mixed evidence on this point.
40. We looked at the likelihood of entry and expansion in the Duties market from either international suppliers or those in adjacent or related markets (such as Duties supply to non-emergency services customers or entry by ERP suppliers).
41. The evidence we have seen suggests that the incentives to enter the UK Duties market may be weak, and we have not seen any evidence that any third party from outside the UK or from a related market has any intention to enter the market for supply of Duties in the UK.
42. Our provisional conclusion is therefore that entry or expansion, as a result of the Merger, would not be timely, likely and sufficient to prevent an SLC arising in the ICCS or Duties markets.
43. We also considered whether efficiencies arising from the Merger constitute a countervailing factor. We considered the efficiencies put forward by the Parties and our provisional conclusion is that these do not meet the criteria for efficiencies to constitute a countervailing factor.

What have we provisionally concluded?

44. For the reasons above, we provisionally conclude that the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS in the UK and an SLC in the supply of Duties in the UK. We have also provisionally concluded that the Merger would not result in an SLC in the supply of RMS in the UK. We have also provisionally concluded that the Merger would not result in an SLC in the supply of RMS in the UK.

Provisional findings

1. REFERENCE

- 1.1 On 12 May 2022, 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 (the **Merger**) by NEC Software Solutions UK Limited (**NECSWS**) of SSS Public Safety Limited and Secure Solutions USA LLC (together **SSS**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). In these provisional findings, NECSWS and SSS are together 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 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 any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 Our terms of reference are set out in Appendix A, and details of the conduct of the inquiry are set out in Appendix B. We are required to prepare and publish a final report by 26 October 2022.
- 1.4 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to NECSWS and SSS in line with the CMA's rules of procedure.² Further information relevant to this inquiry, including non-confidential versions of submissions from parties, can be found on the CMA case page.³

2. THE PRODUCTS, PARTIES, MERGER AND RATIONALE

Introduction

- 2.1 This chapter sets out the background to the completed acquisition by NECSWS of SSS. We provide an overview of:
- (a) The products in which the Parties overlap
 - (b) The Parties' operations and key financial information;

² CMA rules of procedure for merger, market and special reference groups (**CMA17**), November 2015.

³ See NEC/Capita Merger Case Page.

- (c) The Selling Capita Entities⁴ operations and key financial information;
- (d) The Merger; and
- (e) The Parties' rationale for the Merger.

The Products

- 2.2 NECSWS and SSS supply essential software solutions to emergency service providers as well as transport service providers (such as Transport for London (**TfL**) and Rail operators). These software solutions underpin key aspects of emergency services, including the services used to connect control rooms and police, fire and rescue and ambulance emergency responders, planning and managing resource (such as scheduling shifts), and managing records.
- 2.3 The Parties overlap in the supply of the following products (together the **Relevant Markets**):⁵
- (a) ICCS software (**ICCS**) that enables control room personnel to make and receive phone calls (including 999 and 101) and to communicate with staff over radio networks and in the future the new emergency services network (**ESN**).⁶ This software is used by different emergency services agencies (such as police forces, fire and rescue services and ambulance trusts) as well as certain transport customers (such as TfL).
 - (b) Duties Management Software (**Duties**) which enables the planning, scheduling and shift management of emergency service staff.
 - (c) Records Management System software (**RMS**) which is used by the police to record and manage case-related information for the processing of people in custody and case file management for prosecutions.
- 2.4 These products support critical operational processes for customers, which are the providers of emergency services in the UK, including entities such as police forces, fire and rescue services and ambulance trusts.

⁴ Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc., both ultimately 100% owned subsidiaries of Capita plc.

⁵ More details on market definition can be found in Chapters 6 to 8 (Competitive Assessment).

⁶ ESN is a new digital mobile communications network which will be used by the UK's emergency services (via their ICCS software) replacing the current radio-based Airwave system. Switch-over to ESN is due to commence in 2024 with completion by end 2026 (subject to any further impact on timelines).

The Parties

NECSWS

- 2.5 NECSWS supplies software and associated services primarily to UK public sector bodies.
- 2.6 NECSWS's ultimate parent company is NEC Corporation, which is headquartered in Japan. NEC Corporation is a global technology business, offering IT and network technologies for businesses and the public sector. NECSWS was acquired by NEC Corporation in 2018 (before this it was Northgate Public Services).⁷
- 2.7 NECSWS provides its services in the following sectors in the UK:
- (a) Public Safety;⁸
 - (b) Health & Document, Regulatory and Managed Services (DRMS);
 - (c) Housing; and
 - (d) Government.
- 2.8 NECSWS's turnover in 2021⁹ was approximately £[REDACTED] in the UK.¹⁰ For the same period NEC Corporation's turnover was approximately £22 billion worldwide of which approximately £[REDACTED] was generated in the UK.¹¹ As at March 2022, NECSWS had net assets totalling £[REDACTED].¹²
- 2.9 NECSWS's turnover by sector in 2021 was:
- (a) Public Safety (including the Relevant Markets): £[REDACTED].
 - (b) Health & DRMS: £[REDACTED].
 - (c) Housing: £[REDACTED].
 - (d) Government: £[REDACTED].¹³

⁷ Final Merger Notice, submitted by the Parties to the CMA on 1 March 2022 (**FMN**), paragraph 3.1.

⁸ Public Safety includes the Relevant Markets, as well as other services such as Computer Aided Dispatch (**CAD**) systems allow details of incidents to be recorded and the status and allocation of resources to be managed., Customer Records Management (**CRM**), facial recognition software, covert operations management software, police enforcement services, geographical information systems (**GIS**), biometrics software, and justice case management solutions. FMN, paragraphs 3.12 to 3.16.

⁹ This refers to the financial year ending on 31 March 2021.

¹⁰ FMN, paragraph 3.5.

¹¹ FMN, paragraph 3.3.

¹² NECSWS Internal Document, Annex 008-A to the CMA's request for information (**RFI**) 1, '[REDACTED]', undated.

¹³ FMN, paragraph 3.5.

2.10 The revenue of NECSWS in the Relevant Markets from 2019 to 2021 is shown in Table 2-1.

Table 2-1 NECSWS's revenue in the Relevant Markets, 2019 – 2021 (£m)¹⁴

	2021	2020	2019
ICCS	[REDACTED]	[REDACTED]	[REDACTED]
RMS	[REDACTED]	[REDACTED]	[REDACTED]
Duties	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

SSS

2.11 SSS constitutes two businesses:

- (a) SSS Public Safety Limited (formerly Capita (SSS) Limited); and
- (b) Secure Solutions USA LLC (formerly Capita Software (US) LLC).

2.12 SSS supplies software solutions and managed services primarily to the emergency and justice sectors. SSS provides ICCS, Duties and RMS software in the UK that overlap with NECSWS and form the Relevant Markets:

2.13 SSS also overlaps with NECSWS in the supply of live video streaming products, which enable callers with smartphones to stream live footage to a call centre ([REDACTED]).

2.14 SSS also supplies the following services that do not overlap with NECSWS:

- (a) Computer Aided Dispatch (**CAD**) systems to customers in the police and fire segments and miscellaneous customers in the public sector. CAD systems allow details of incidents to be recorded and the status and allocation of resources (such as staff, vehicles and equipment) to be managed;
- (b) A Digital Interview Recording (**DIR**) product, EvidenceWorks IRS. DIR products enable the capturing and storage of an audio, and in many cases video, record of police interviews;
- (c) A Digital Evidence Management (**DEM**) product, EvidenceWorks DEM. DEM products are designed to index and store a wide range of files and formats of digital evidence/assets collected from different data sources (including potentially digital interview recordings); and

¹⁴ Parties' updated response to the CMA's RFI 1, 20 January 2022, question 21. Note that the revenues for ICCS in 2020 and 2021 here include additional revenues from certain contracts concerning upgrading ICCS software in anticipation of the new emergency services network.

- (d) Radio Managed Services, which are an administered service by which police radio devices (handheld and fixed within vehicles) are maintained, issued, and serviced.¹⁵

2.15 The turnover of SSS was £[<] in 2021.¹⁶ In 2020 turnover was £[<], with [<]% of this in the UK.¹⁷

2.16 The revenue of SSS in the Relevant Markets from 2019 to 2021 is shown in Table 2-2.

Table 2-2 SSS's revenue in the Relevant Markets, 2019 – 2021 (£m)¹⁸

	2021	2020	2019
ICCS	[<]	[<]	[<]
RMS	[<]	[<]	[<]
Duties	[<]	[<]	[<]
Total	[<]	[<]	[<]

2.17 SSS Public Safety Limited (formerly Capita (SSS) Limited and before that Capita Siren Limited) was incorporated in late 2020 in connection with the proposed sale of the SSS business and, prior to completion of the Business Transfer Agreement (**BTA**), was a non-trading shell company.¹⁹

2.18 Before the Merger, SSS was part of Capita plc (**Capita**) (see below). This came about through Capita's acquisition of SunGard in 2010, which has subsequently expanded through investment and acquisition.²⁰ A timeline of this is shown below:²¹

- (a) 2010: Capita acquires SunGard, a provider of ICCS
- (b) 2012: Capita acquires Cedar HR, a provider of Duties
- (c) 2012: Capita acquires Fortek, a provider of CAD solutions
- (d) 2013: Capita acquires STL, a provider of RMS
- (e) 2017: Capita acquires Call Vision Technology, a telephony and wallboard solutions provider.

¹⁵ FMN, paragraph 1.8 of the Executive Summary.

¹⁶ SSS Internal Document, Annex 036 to the CMA's RFI 1, '[<]', 26 May 2022.

¹⁷ FMN, Table 6.2.

¹⁸ Parties' response to the CMA's RFI of 23 December 2021, question 21.

¹⁹ FMN, paragraph 2.7.2. The BTA provided for the transfer to SSS Public Safety Limited by Capita Secure Information Solutions Limited, of its Secure Solutions and Services business and undertaking including goodwill and assets (the 'SSS business'). The BTA was required to extract the SSS business to make it a standalone company that could be sold, because Capita Secure Information Solutions Limited included businesses other than the SSS business.

²⁰ FMN, paragraph 3.28.

²¹ SSS's Site Visit presentation, 13 June 2022, page 9.

The Selling Capita Entities

Capita

- 2.19 Capita plc is listed on the London Stock Exchange and delivers a variety of consulting, transformation and digital business services in the UK and internationally.²² Capita is the ultimate parent company of the Selling Capita Entities and, prior to completion, of SSS.²³
- 2.20 In 2021 Capita completed a process of transformation and restructuring that had been ongoing since 2017 to achieve reduced debts, long-term revenue growth and sustainable free cash flow.²⁴ This transformation, known as 'Future Capita', was carried out with the intention of allowing Capita to focus on its core products where it believes it will succeed in attractive market opportunities. [X].²⁵
- 2.21 Following Future Capita, Capita is structured with two core divisions and a third non-core division as follows:²⁶
- (a) Public Service (Core): supply of business process services (BPS) and technology services to the UK Government;
 - (b) Experience (Core): a customer experience business with a blue-chip client base;
 - (c) Portfolio (Non-core): A portfolio of non-core businesses across sectors including human resources, property, technology, software, business solutions, travel and scientific testing.
 - (i) Capita plans to reduce debt through disposal of the businesses of the Portfolio division.²⁷
- 2.22 For 2021, Capita's turnover was £3.2 billion worldwide of which £2.9 billion was generated in the UK.²⁸
- 2.23 As of 24 June 2022, Capita had a market capitalisation of £405 million.²⁹

²² FMN, paragraph 1.3 of the Executive Summary.

²³ FMN, paragraph 2.1.3.

²⁴ [Capita plc Annual Report 2021](#), pages 9-10 & page 15.

²⁵ Capita Internal Document, Annex 49 to the s109(2) at Phase 1, '[X]', 22 April 2021, pages 3-5.

²⁶ [Capita plc Annual Report 2021](#), page 149.

²⁷ [Capita plc Annual Report 2021](#), page 15.

²⁸ [Capita plc Annual Report 2021](#), page 3.

²⁹ 'Capita plc', [CAPITA PLC CPI Stock | London Stock Exchange](#), last accessed 14 September 2022.

The Merger

- 2.24 On 3 January 2022, NECSWS purchased the entire issued share capital of SSS from Capita.³⁰
- 2.25 The Selling Capita Entities and NECSWS entered into the Merger on 30 September 2021 pursuant to a Put and Call Option Agreement and a Sale and Purchase Agreement (**SPA**) and the Merger was publicly announced on 1 October 2021.³¹
- 2.26 The consideration was approximately £62 million,³² comprising:
- (a) cash consideration for all of the issued shares of SSS Public Safety Limited of:
 - (i) base consideration of £[X];
 - (ii) £[X] referable to certain forecast cash flow in respect of the radio managed services business of SSS Public Safety Limited; and
 - (b) cash consideration in respect of all of the equity interests of Secure Solutions USA LLC of £[X].
 - (c) the condition that NECSWS procures, on completion, the repayment by SSS Public Safety Limited of:
 - (i) the amount owed in cash under the BTA (referred to in footnote 28 below); and
 - (ii) any amount owed to Capita plc (or another member of its group) pursuant to a working capital facility made available to SSS Public Safety Limited during the period commencing on exchange and ending on completion of the Merger.

Timeline

- 2.27 A timeline of the Merger is set out in Table 2-3.

³⁰ References to the entire issued share capital with respect to the Merger are to 100% of the issued ordinary shares of SSS Public Safety Limited and 100% of the equity interests of Secure Solutions USA LLC.

³¹ FMN, paragraph 2.4.

³² FMN, paragraph 2.5. Note that the consideration was reduced by approximately £[X], to account for the amount owed by SSS to Capita Secure Information Solutions Limited as a result of the Business Transfer Agreement that made SSS a stand-alone entity.

Table 2-3 Timeline of the Merger

Date	Event
June 2020	[REDACTED] ³³
Jul 2020	Capita begins to prepare for a sale ³⁴
Jan 2021	PwC approaches NECSWS to inform it of Capita's sales process for SSS ³⁵
Jan 2021	Information Memorandum produced ³⁶
1 Feb 2021	Following entry into an NDA, PwC shares with NECSWS a copy of the Information Memorandum for the sale of SSS ³⁷
Feb/Mar 2021	Bids received ³⁸
5 Mar 2021	NECSWS submits a first offer to Capita, of [REDACTED] ³⁹
Mar-Sep 2021	[REDACTED] ⁴⁰
26 May 2021	PwC informs NECSWS that Capita wishes to explore the Merger with another bidder ⁴¹
Jun 2021	NECSWS prepare a second offer for SSS based on feedback from Capita that the Merger should not be conditional on CMA approval ⁴²
5 Jul 2021	NECSWS submits a second offer to Capita, of [REDACTED] ⁴³
7 Jul 2021	Capita informs NECSWS that it wishes to proceed with the second offer and engage exclusively with NECSWS ⁴⁴
12 Jul 2021	Capita and NECSWS enter into exclusivity agreement ⁴⁵
10 Sep 2021	NEC Board approve the Merger ⁴⁶
Oct 2021	Merger announced ⁴⁷
Jan 2022	Merger completed ⁴⁸

Rationale

NECSWS

2.28 NECSWS stated that [REDACTED]. The acquisition [REDACTED].⁴⁹

³³ NECSWS' Site Visit presentation, 16 June 2022, page 10 and NECSWS response to the CMA's RFI 3, 13 June 2022, page 5.

³⁴ SSS's Site Visit presentation, 13 June 2022, page 21

³⁵ NECSWS' Site Visit presentation, 16 June 2022, page 10.

³⁶ SSS's Site Visit presentation, 13 June 2022, page 21.

³⁷ NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

³⁸ SSS's Site Visit presentation, 13 June 2022, page 21.

³⁹ NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

⁴⁰ SSS's Site Visit presentation, 13 June 2022, page 21.

⁴¹ NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

⁴² NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

⁴³ NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

⁴⁴ NECSWS response to the CMA's RFI 3 of 13 June 2022, pages 5-6.

⁴⁵ NECSWS response to the CMA's RFI 3 of 13 June 2022, page 7.

⁴⁶ NECSWS response to the CMA's RFI 3, 13 June 2022, question 51.

2.29 NECSWS submitted that the strategic reasons for the acquisition are:⁵⁰

- (a) The addition of complementary products [REDACTED];
 - (i) [REDACTED];⁵¹
 - (ii) [REDACTED];
 - (iii) [REDACTED].
- (b) Scope to invest in the Parties' products [REDACTED];
 - (i) [REDACTED];
 - (ii) [REDACTED].
- (c) The opportunity for NECSWS to accelerate its international growth strategy, [REDACTED];
 - (i) [REDACTED];
 - (ii) [REDACTED];
 - (iii) [REDACTED].
- (d) Cost synergies [REDACTED].
 - (i) [REDACTED].

2.30 On synergies, [REDACTED]:⁵²

- (a) [REDACTED].
- (b) [REDACTED].

Capita

2.31 The Parties stated that, [REDACTED].⁵³

2.32 Capita announced in March 2021 that it was targeting £700 million from disposals of non-core businesses in its Portfolio division in 2021 and the first half of 2022, with the proceeds used to strengthen its balance sheet and address upcoming

⁴⁷ SSS's Site Visit presentation, 13 June 2022, page 21.

⁴⁸ SSS's Site Visit presentation, 13 June 2022, page 21.

⁴⁹ FMN, paragraph 1.5 of the Executive Summary.

⁵⁰ FMN, paragraphs 2.10-2.26.

⁵¹ At the NECSWS' Site Visit presentation, 16 June 2022, (page 9), NECSWS told us that [REDACTED].

⁵² NECSWS response to the CMA's RFI 2, 30 May 2022, question 23.

⁵³ FMN, paragraph 11.7.

maturities. The proceeds of the Merger are intended to contribute towards this £700 million disposal target.⁵⁴

- 2.33 Capita's reasons and intentions towards disposal are explored further in the Counterfactual chapter.

3. RELEVANT MERGER SITUATION

Introduction

- 3.1 In accordance with the Act,⁵⁵ and pursuant to our terms of reference (see Appendix A), we are required to decide whether the Merger has created a relevant merger situation.
- 3.2 A relevant merger situation has been created if: (i) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and (ii) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test) or the share of supply test is satisfied.⁵⁶
- 3.3 For the following reasons we have provisionally concluded that the Merger has resulted in the creation of a relevant merger situation.

Two or more enterprises

- 3.4 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'.⁵⁷
- 3.5 NECSWS is a company registered in the UK. SSS consists of a company registered in the UK and a company registered in the USA. Both NECSWS and SSS operated as going concerns before the Merger with the necessary assets, employees and customer contracts.

⁵⁴ 'Capita plc announces 2020 Full Year Results', [Capita plc announces 2020 Full Year Results | Capita](#), last accessed 24 August 2022; 'Capita agrees to sell Secure Solutions and Services', [Capita agrees to sell Secure Solutions and Services | Capita](#), last accessed 24 August 2022, 'Capita plc (Capita) remains on track to deliver growth and strengthen its balance sheet', [Capita plc \(Capita\) remains on track to deliver growth and strengthen its balance sheet](#), last accessed 24 August 2022.

⁵⁵ Section 35(1)(a) of the Act.

⁵⁶ Sections 23(1)(b) and 23(2)(b) of the Act.

⁵⁷ Sections 129(1) and 129(3) of the Act.

- 3.6 We consider that the activities of NECSWS and SSS are carried on for gain or reward, and that each of NECSWS and SSS is an undertaking, in the course of which goods or services are supplied otherwise than free of charge.
- 3.7 Therefore, our provisional view is that each of NECSWS and SSS is an enterprise.

Ceased to be distinct

- 3.8 The concept of ‘ceasing to be distinct’ is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.
- 3.9 Through the Merger, NECSWS has acquired 100% of the issued ordinary shares of SSS Public Safety Limited and 100% of the equity interests of Secure Solutions USA LLC (the two entities making up SSS). Therefore, NECSWS has acquired legal control over SSS.
- 3.10 Therefore, our provisional view is that the enterprises of NECSWS and SSS have ‘ceased to be distinct’.

At a time or in circumstances falling within section 24 of the Act

- 3.11 Section 24 of the Act requires that the completed merger must have taken place not more than four months before the reference is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time the merger was made public or the time the CMA was told about it).⁵⁸
- 3.12 The Merger completed on 3 January 2022 and NECSWS informed the CMA of completion on 4 January 2022. The four-month deadline for a reference under section 24 of the Act was therefore 4 May 2022.
- 3.13 The CMA issued its decision whether to refer the Merger on 29 April 2022. At the same time, the four-month period under section 24(1) of the Act was extended by notice pursuant to section 25(4) of the Act to 23 May 2022 to allow NECSWS the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act. On 9 May 2022, NECSWS informed the CMA that it would not offer such undertakings to the CMA.
- 3.14 The phase 2 reference was made on 12 May 2022. Accordingly, the time period for making a reference under section 24 of the Act had not expired by the time the reference was made.

⁵⁸ Section 24 of the Act.

- 3.15 Therefore, our provisional view is that the applicable statutory time limit in relation to this reference has been complied with.

Share of supply test – nexus with the UK

- 3.16 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.
- 3.17 The Act confers on us a broad discretion to identify, for the purposes of applying the share of supply test, a specific category of goods or services supplied or acquired by the merger parties.⁵⁹ The description of goods or services identified for the purposes of the share of supply test does not have to correspond with the economic market definition adopted for the purposes of determining the SLC question.⁶⁰ We will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.⁶¹
- 3.18 In applying the share of supply test, we may under section 23(5) of the Act have regard to the value, cost, price, quantity, capacity, number of workers employed or any other criterion, or combination of criteria, in determining whether the 25% threshold is met.⁶²
- 3.19 In line with the Parties' submissions,⁶³ we considered the shares of supply for ICCS on a volume basis, calculated by reference to the number of calls handled by each emergency services customer (consisting of police customers, ambulance customers, and fire customers) to be an appropriate criterion for determining whether the 25% threshold is met. In addition, we also considered the shares of supply for ICCS by overall revenues and total number of customers served by the Parties to be appropriate criteria for determining whether the 25% threshold is met.
- 3.20 We note that there is no publicly available information on the shares of supply for the supply of ICCS in the UK to emergency services. Our estimates are based on information supplied by the Parties reflecting their own data and market intelligence, as well as information received from third parties.
- 3.21 On the basis of these estimates, if the CMA were to take into account any won and lost contracts that have not yet gone live, the Parties would have a combined

⁵⁹ Mergers: Guidance on the CMA's jurisdiction and procedure (2020 – revised guidance) ([CMA2](#)), paragraph 4.59.

⁶⁰ [CMA2](#), paragraph 4.59(a).

⁶¹ [CMA2](#), paragraph 4.59(b).

⁶² [CMA2](#), paragraph 4.66.

⁶³ FMN, paragraphs 14.17.1-14.17.5 and Table 14.1A.

share in the supply of ICCS in the UK on a call volume basis in 2021 of [20-30%] with an increment of [10-20%] brought about by the Merger.^{64,65}

- 3.22 The combined share of supply of the Parties based on revenues in 2021 would be [60-70%] with an increment of [20-30%]⁶⁶ brought about by the Merger. The combined share of supply of the Parties based on number of customers served in 2021 would be [50-60%] with an increment of [10-20%] brought about by the Merger.⁶⁷
- 3.23 Therefore, our provisional view is that the share of supply test in section 23(2)(b) of the Act is met.

Parties' submissions

- 3.24 The Parties did not contest that the Merger resulted in the creation of a relevant merger situation for the purposes of the Act.⁶⁸

Provisional conclusion on the relevant merger situation

- 3.25 For the reasons set out above we provisionally conclude that the conditions of section 23 of the Act are met and that the Merger has resulted in the creation of a relevant merger situation.

4. COUNTERFACTUAL

Introduction

- 4.1 To assess the effects of the Merger, we have considered the prospects for competition with the Merger against what would have been the competitive situation without the Merger. This is called the counterfactual.
- 4.2 In this chapter, we set out:
- (a) the framework for assessing the counterfactual;
 - (b) the views of the Parties and Capita on the appropriate counterfactual;

⁶⁴ See Table 6-1 of chapter 6 (Competitive assessment - ICCS) of the Provisional Findings.

⁶⁵ For completeness, the CMA notes that the share of supply test would also be met for the supply in the UK of (i) Duties to police customers where the Parties had a current combined share in the supply of Duties in the UK in 2021 of [50-60%] with an increment of [20-30%] (calculated on a volume basis based on the number of police officers per police customer), see Table 7-1 of chapter 9 (Competitive assessment - Duties) of the Provisional Findings and (ii) RMS to police customers where the Parties had a current combined share in the supply of Duties in the UK in 2021 of [40-50%] with an increment of [10-20%] (based on the number of recorded crimes reported by each police customer in 2021 according to ONS data).

⁶⁶ See Table 6-2.

⁶⁷ See Table 6-2.

⁶⁸ FMN, paragraph 5.2.3.

- (c) our assessment of the counterfactual; and
- (d) our provisional conclusion on the counterfactual.

Framework for our assessment

- 4.3 At phase 2, the CMA has to make an overall judgement as to whether or not an SLC has occurred or is likely to occur.⁶⁹ Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger: the counterfactual.⁷⁰ The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether the merger gives rise to an SLC.⁷¹ Only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual.⁷²
- 4.4 To help make the overall SLC assessment required at phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.⁷³ In some instances, the CMA may need to consider multiple possible scenarios before identifying the relevant counterfactual (eg a merger firm being purchased by alternative acquirers).⁷⁴ In doing this, the CMA will consider whether any of the possible scenarios make a significant difference to the conditions of competition and, if any do, the CMA will find the most likely conditions of competition absent the merger as the counterfactual.⁷⁵
- 4.5 The counterfactual may consist of the pre-merger conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the pre-merger conditions of competition.⁷⁶ The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.⁷⁷
- 4.6 A ‘pre-merger conditions of competition’ counterfactual is not static and can take into account anticipated dynamic changes in the market, such that future competition is not expected to remain exactly the same as in the situation prior to the merger.⁷⁸ Instead, the ‘pre-merger conditions of competition’ refers to the scenario where the firms exert a competitive constraint in broadly the same

⁶⁹ [Merger Assessment Guidelines \(CMA129\)](#), paragraph 3.13.

⁷⁰ [CMA129](#), paragraph 3.1.

⁷¹ [CMA129](#), paragraph 3.1.

⁷² [CMA129](#), paragraph 3.4.

⁷³ [CMA129](#), paragraph 3.13.

⁷⁴ [CMA129](#), paragraph 3.13.

⁷⁵ [CMA129](#), paragraph 3.13.

⁷⁶ The conditions of competition before a merger in anticipated acquisitions are generally referred to as the ‘prevailing conditions of competition’ and in completed acquisitions as the ‘pre-merger conditions of competition’.

⁷⁷ [CMA129](#), paragraph 3.2.

⁷⁸ As the CMA’s guidance, states: ‘[t]he CMA’s conclusion on the counterfactual does not seek to ossify the market at a particular point in time’ ([CMA129](#), paragraph 3.3).

manner that they had been pre-merger, such that similar conditions of competition persist.

- 4.7 The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent a merger. Those conditions are better considered in the competitive assessment.⁷⁹ The counterfactual assessment will often focus on significant changes affecting competition between the parties.⁸⁰
- 4.8 The CMA is likely to only focus on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁸¹ The example cited in the CMA's guidance involves a firm that is being acquired which could, in the counterfactual, have remained an independent competitor by raising external funding, or alternatively could have remained an independent competitor by being acquired by a firm with no current or potential activities in the relevant sector.⁸² The guidance indicates that the CMA would be unlikely to seek to consider the relative likelihood of those scenarios arising since both lead to the same conditions of competition.⁸³ The same principle applies in this case to different transaction structures and different transaction counterparties that might ultimately lead to broadly the same conditions of competition.
- 4.9 Accordingly, the CMA will generally conclude on the counterfactual conditions of competition broadly – that is, pre-merger conditions of competition, conditions of stronger competition, or conditions of weaker competition.⁸⁴ 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.⁸⁵
- 4.10 Establishing the appropriate counterfactual against which to assess a merger is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain.⁸⁶ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual.⁸⁷
- 4.11 As part of its assessment, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merger parties to pursue

⁷⁹ CMA129, paragraph 3.7.

⁸⁰ CMA129, paragraph 3.8.

⁸¹ CMA129, paragraph 3.9.

⁸² CMA129, paragraph 3.9.

⁸³ CMA129, paragraph 3.9.

⁸⁴ CMA129, paragraph 3.9.

⁸⁵ CMA129, paragraph 3.9. For an application of this principle (albeit under the previous Merger Assessment Guidelines) see [Final Report, Completed acquisition by PayPal Holdings, Inc. of iZettle AB](#), 12 June 2019 at paragraphs 7.32-7.35 and [Final report, Anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo \(Amazon/Deliveroo\)](#), 4 August 2020 at paragraph 6.169.

⁸⁶ CMA129, paragraph 3.14.

⁸⁷ CMA129, paragraph 3.14.

alternatives to the merger, which may include reviewing evidence of specific plans where available.⁸⁸

- 4.12 The time horizon that the CMA considers when describing the counterfactual will be consistent with the time horizon used in the CMA's competitive assessment and depend on the context (chapter 5 - Nature of competition).⁸⁹ In some markets, relevant developments may not take place for some years.⁹⁰ This means that while there is a need for overall consistency between the time horizon for assessing the counterfactual and the competitive effects of a merger, the CMA is not limited to considering alternative scenarios that would have occurred at exactly the same time as the developments that give rise to the merger under review.⁹¹

The Parties' and Capita's views on the counterfactual

- 4.13 The Parties told us that they do not consider it appropriate to use the pre-merger conditions of competition as the counterfactual, and that the appropriate counterfactual is that SSS would continue in the market in a different role as a significantly weakened competitor.⁹²
- 4.14 The Parties told us that this would be due to two reasons:
- (a) underinvestment in SSS by Capita in recent years would materially impair SSS's ability to compete effectively on an ongoing basis; and
 - (b) [REDACTED].⁹³
- 4.15 Submissions from the Parties and Capita on specific points are covered in the relevant sections below.

Our approach

- 4.16 We have assessed whether absent the Merger:
- (a) SSS would have been operated as a going concern with sufficient investment to remain a competitive constraint on NECSWS and, as such, maintain pre-merger conditions of competition; or
 - (b) conversely, SSS would have received no further investment and would have ceased to actively compete for contracts.

⁸⁸ CMA129, paragraph 3.14. In appropriate circumstances, evidence of ability and incentive may be sufficient to establish a counterfactual even if explicit documentary evidence is not available. See, eg, [Amazon/Deliveroo](#) at paragraph 6.201.

⁸⁹ CMA129, paragraph 3.15.

⁹⁰ CMA129, paragraph 3.15.

⁹¹ See, eg, [Amazon/Deliveroo](#), paragraph 6.202.

⁹² Parties' response to the Phase 1 Issues Letter, Counterfactual follow-up paper, 8 April 2022, paragraph 2.

⁹³ FMN, paragraph 11.2.

- 4.17 Our assessment in this chapter concerns what would have happened to SSS, considering all of its operations, including those within and outside the Relevant Markets. We consider the distinct operations within SSS in relation to ICCS, Duties and RMS as part of our assessment of competitive effects in each of the Relevant Markets in chapters 6 to 8.
- 4.18 The pre-merger conditions of competition relate to the competitive constraint exerted by SSS when it competed actively for contracts and thereby exercised competitive pressure on competitors for new contracts, upgrades and renewals. Prior to the Merger, Capita had identified SSS as a target for divestment, begun a sale process, [X]. The CMA considers that competitive conditions during that time period do not accurately represent pre-merger conditions of competition. The CMA considers instead that pre-merger conditions of competition are those broad conditions that prevailed when Capita was operating SSS as a going concern [X] to provide a competitive constraint.
- 4.19 As set out in paragraph 4.14 above, the Parties have submitted that, absent the Merger, SSS would have faced a materially impaired ability to compete for contracts due to continued underinvestment. Realisation of this scenario would be considered weaker conditions of competition.
- 4.20 Our assessment of the counterfactual does not seek to ossify the operation of the market at a particular point in time. For example, an assessment based on the pre-merger conditions of competition might reflect that, absent the merger under review, a firm would have continued making investments in improvements, innovations or new products.⁹⁴ Therefore an assessment based on the pre-merger conditions of competition would not necessarily assume a static offering in the quality or range of products and/or services from a merger firm.
- 4.21 Accordingly, our analysis of the counterfactual does not require us to specify the exact route Capita and SSS would have taken absent the Merger. Rather, we consider the credibility of the alternative options available in order to inform which is the most likely counterfactual scenario.
- 4.22 We first set out background information on the rationale for Capita's sale of SSS, before considering the two scenarios described at paragraph 4.16 above.

Capita's rationale for the Merger

- 4.23 Capita told us that it had '[X]',⁹⁵ and NECSWS told us that Capita had a [X].⁹⁶ This strategy is set out below.

⁹⁴ CMA129, paragraphs 3.3 and 3.4.

⁹⁵ Capita response to the CMA's RFI 2, 13 June 2022, question 43.

⁹⁶ NECSWS response to the CMA's RFI 3, 13 June 2022, question 36(e).

- 4.24 Capita implemented a programme of restructuring with a ‘drive for simplification of the business and strengthening the balance sheet’.⁹⁷ This restructuring completed in 2021 and resulted in a new structure of three divisions being:⁹⁸
- (a) Public Service (Core): supply of business process services (BPS) and technology services to the UK Government;
 - (b) Experience (Core): a customer experience business with a blue-chip client base; and
 - (c) Portfolio (Non-core): A portfolio of non-core businesses across sectors including human resources, property, technology, software, business solutions, travel and scientific testing.
- 4.25 Capita planned to reduce debt through disposal of the businesses of the Portfolio division.⁹⁹ The Capita Board announced in March 2021 its business disposal programme with a target to raise £700 million in order to meet significant additional cash commitments in 2021 relating to deferred VAT, restructuring and pension deficit payments, and debt maturities.¹⁰⁰ These disposals were to be from its ‘Portfolio’ division, which included SSS.

SSS as a going concern

- 4.26 In this section, we consider whether SSS would have been operated as a going concern with sufficient investment to remain a competitive constraint on NECSWS and, as such, maintain pre-merger conditions of competition or, conversely, whether SSS would have received no further investment and would have ceased to actively compete for contracts.

Parties’ and Capita’s views

- 4.27 Capita told us if the NECSWS deal had failed to complete, Capita would have had to analyse the financial benefits of and possible reputational/operational risks of running down the business against selling to a potentially heavily discounted offer.¹⁰¹
- 4.28 Capita highlighted that in 2019 it ‘had identified SSS as [X]’.¹⁰²

⁹⁷ Capita plc Full Year Results 2021, page 12.

⁹⁸ Capita plc Annual Report 2021, pages 3 and 149.

⁹⁹ Capita plc Annual Report 2021, page 15.

¹⁰⁰ Capita response to the CMA’s RFI 2, 13 June 2022, question 37.

¹⁰¹ Capita response to the Counterfactual Working Paper (WP), 4 August 2022, paragraph 5.4.

¹⁰² Capita response to the Counterfactual WP, 4 August 2022, paragraph 5.5.

SSS's financial position

4.29 An overview of SSS's financial position is set out below:

- (a) Total revenue for SSS (for all products including but not limited to the relevant markets) was £[X] million in 2021,¹⁰³ and £[X] million in 2020;¹⁰⁴
- (b) Reported EBIT for SSS was £[X] million in 2021,¹⁰⁵ and £[X] million in 2020;¹⁰⁶ and
- (c) As at January 2021, SSS's customer portfolio included:
 - (i) [X] UK Home Office police forces;
 - (ii) [X] ambulance trusts;
 - (iii) [X] UK fire services; and
 - (iv) 15 countries of operation.¹⁰⁷

4.30 SSS had put in place in 2018 plans to invest in SSS's products to '[X]' as part of its 'Public Safety Platform'.¹⁰⁸ This was costed [X] and was considered the key contribution to maintaining SSS's competitive position, being described as '[X]'.¹⁰⁹

4.31 When Capita restructured its business as described at paragraph 4.24, [X]. While SSS had developed its 'Public Safety Platform' plans, including approval to spend [X] on its initiation, design and market research¹¹⁰, [X].¹¹¹ [X].¹¹²

4.32 Despite [X], Capita considered that SSS had 'candidate growth opportunities' that could be realised through capital expenditure of approximately £[X] over the five year period of 2019 to 2024. This included the targeting of new markets vertically and internationally, as well as improvements to existing products (including the Public Safety Platform set out above).¹¹³

¹⁰³ SSS Internal Document, Annex 036 to RFI 1 '[X]', 26 May 2022, page 2.

¹⁰⁴ FMN, Table 6.2.

¹⁰⁵ SSS Internal Document, Annex 036 to RFI 1 '[X]', 26 May 2022, page 2.

¹⁰⁶ SSS Internal Document, Annex 024 to RFI 1 '[X]', 26 May 2022.

¹⁰⁷ SSS Internal Document, Annex 137 to CMA RFI 3 '[X]', 13 June 2022, slide 6.

¹⁰⁸ SSS Site Visit Presentation, 13 June 2022, slide 17.

¹⁰⁹ SSS Site Visit Presentation, 13 June 2022, slide 17 and Parties' Issues Meeting Presentation to the CMA, 6 April 2022, slide 10.

¹¹⁰ Parties' Issues Meeting Presentation to the CMA, 6 April 2022, slide 10.

¹¹¹ SSS Site Visit Presentation, 13 June 2022, slide 17.

¹¹² Capita response to the CMA's RFI 2, 13 June 2022, question 63.

¹¹³ Capita response to the CMA's RFI 2, 13 June 2022, question 41, and Capita Internal Document, Annex 6.2 002 to RFI 2 '[X]', 13 June 2022, slide 29.

Our assessment

- 4.33 We note that SSS is profitable and has a wide customer base. It is therefore apparent that SSS is a going concern. We note that the Parties have not argued otherwise, but rather that it would need investment in order to continue to compete effectively (see chapters 6 to 8 for details on this in our competitive assessment of each of the Relevant Markets). The evidence received by us indicates that the reported EBIT of SSS at the time of the Merger was £[X] million per year, and the investment described as '[X]' was £[X] million over a multi-year project. The evidence also indicates that at the point in time that Capita was deciding whether to proceed with the sale to NECSWS, the recommended alternative to proceeding with the sale was to [X].¹¹⁴
- 4.34 We understand that the reference to '[X]' means moving SSS within Capita's group structure [X].¹¹⁵
- 4.35 We consider that the reference to '[X]' meant that the existing strategy of [X] would be revised. SSS would no longer be identified, or prepared, for sale and instead an optimal investment strategy would be developed for it.
- 4.36 In light of the above evidence, and in the absence of evidence to the contrary, our provisional view is that, absent the Merger, SSS would have been operated as a going concern and that there appears to have been a rationale for further investment in SSS in order to maintain the competitive position of a profitable business.

Potential alternative ownership

- 4.37 Capita agreed the sale of SSS to NECSWS following a sale process where it contacted entities it (Capita) deemed to be potential purchasers. In this section, we consider this process and its relevance for the counterfactual.

Parties' and Capita's views

- 4.38 Capita told us that it ran a 'wide-reaching sales process, proactively contacting all parties [X], Capita broadened the search to include potential [X] buyers. Capita also publicly referred to the sales process for SSS in its FY2020 Annual Report presentation in an attempt to make third parties aware of the sales process.'¹¹⁶

¹¹⁴ Capita Internal Document, Annex 167 to RFI 2 '[X]', 13 June 2022, slide 8.

¹¹⁵ [Capita plc Annual Report 2021](#), page 3 and 'Capita Executive Committee', [Executive committee | Capita](#), last accessed 14 September 2022.

¹¹⁶ Capita response to the Counterfactual WP, 4 August 2022, paragraph 1.2.

4.39 Capita stated that it ‘does not consider it credible that any party involved in the industry at all would not have been aware of the fact that SSS was available for sale’.¹¹⁷

Capita’s sale process

4.40 Capita’s sale process resulted in two bids for SSS being received:

- (a) An offer from NECSWS (accepted); and
- (b) An indicative bid from [X] (rejected).

4.41 Capita (through its advisors PwC) contacted a selection of potential purchasers¹¹⁸ directly rather than launching a public invitation for bids. The initial sale process involved [X] entities being contacted by PwC and produced NECSWS’s bid.¹¹⁹

4.42 In March 2021, as part of its announcement of FY2020 results, Capita published that disposal of SSS was in process.¹²⁰ As a result of this, [X], a private equity firm, became aware of the sale.¹²¹ The disposal plans in general were picked up in the press,¹²² but SSS was not mentioned specifically in the press as one of the entities up for sale.

4.43 In April 2021, [X] submitted a first bid for SSS of [X] and followed this up with what it called ‘[X]’.¹²³ It then sent to Capita’s advisors PwC an indicative second offer of [X] on 2 July 2021, with the [X] due to its assessment of [X] uncovered during due diligence.¹²⁴

4.44 PwC told [X] on 7 July 2021¹²⁵ that it would not be chosen as the preferred bidder by Capita, stating that there was a ‘material gap’ between [X] offer and their other option (NECSWS’s bid).¹²⁶ At the time it was turned down by Capita, [X] considered that it would be able to complete its remaining due diligence within 30 days.¹²⁷

¹¹⁷ Capita response to the Counterfactual WP, 4 August 2022, paragraph 1.3.

¹¹⁸ The CMA spoke to the Cabinet Office who noted that customers would want a purchasing entity to be acceptable from a UK security perspective, and to have experience in the emergency services or software technology industries. Note of a call with [X], September 2022, paragraph 5.

¹¹⁹ Capita response to the Counterfactual WP, 4 August 2022, paragraph 2.7.

¹²⁰ [Capita Full year results 2020](#), slide 22.

¹²¹ Note of a call with [X], July 2022, paragraph 4.

¹²² For example, see ‘[Capita takes disposals to £800m with sale of two more businesses](#)’, Proactive Investors, ‘[Capita chief to unveil restructuring and £400m disposal plan](#)’, 16 March 2021, Sky News and ‘[Capita to split itself in two under £400m asset disposal plan](#)’, 18 March 2021, The Times.

¹²³ Capita Internal Document, Annex 158 to RFI 2 ‘[X]’, 13 June 2022, page 1.

¹²⁴ Capita Internal Document, Annex 158 to RFI 2 ‘[X]’, 13 June 2022, pages 1-2.

¹²⁵ 7 July 2021 is the same day Capita informed NECSWS that it would proceed with its offer and enter exclusivity. See NECSWS response to the CMA’s RFI 3 of 13 June 2022, pages 5-6.

¹²⁶ Capita Internal Document, Annex 6.98 044 to RFI 2, ‘[X]’, July 2021.

¹²⁷ Capita Internal Document, Annex 158 to RFI 2 ‘[X]’, 13 June 2022, page 1.

Our assessment

- 4.45 In the course of its investigation, the CMA identified two additional potential purchasers who told the CMA that they were unaware of the opportunity to purchase SSS, but may have been interested in that opportunity if it had arisen: [X]¹²⁸ and [X].¹²⁹ These suppliers told us that they were not made aware of the sale of SSS by Capita and instead became aware of the sale through customer contacts or the CMA's own investigation.¹³⁰
- 4.46 We consider that the evidence above indicates that alternative interest in purchasing SSS existed, including potential interest beyond those contacted in PwC's sale process. Considering this and the analysis set out in the 'SSS as a going concern' section above, our provisional view is that the options for SSS in the absence of the Merger were i) Capita retains SSS as part of its 'Public Service' division, or ii) an alternative entity purchases SSS. It is our provisional view that neither of these options would have entailed SSS receiving no further investment or ceasing to actively compete for contracts.

Provisional conclusion on the counterfactual

- 4.47 In assessing the most likely counterfactual, the CMA has considered whether (a) SSS would have been operated as a going concern with sufficient investment to remain a competitive constraint on NECSWS and, as such, maintain pre-merger conditions of competition; or (b) conversely, SSS would have received no further investment and would have ceased to actively compete for contracts.
- 4.48 The evidence indicates that SSS is a profitable business and there appears to have been a rationale for further investment in SSS in order to maintain its overall competitive position. In light of SSS's commercial performance and potential, we consider it likely that, under the ownership of either Capita or another owner, SSS would have remained a going concern that continued to compete and have its products invested in. Given this, we do not consider it necessary to conclude which entity would own SSS in the counterfactual.
- 4.49 On this basis our provisional conclusion is that, regardless of ownership, the appropriate counterfactual is pre-merger conditions of competition where SSS maintains competitive strength in the relevant markets, exerting a constraint on NECSWS.

¹²⁸ Note of a call with [X], June 2022, paragraph 18.

¹²⁹ Note of a call with [X], June 2022, paragraph 15.

¹³⁰ Note of a call with [X], June 2022, paragraph 19 and Note of a call with [X], June 2022, paragraph 15.

5. NATURE OF COMPETITION

- 5.1 This chapter sets out our provisional views on the nature of competition between the Parties and their competitors, including in the Relevant Markets. In particular, we have considered and assessed:
- (a) what opportunities exist for competition between the Parties and their competitors;
 - (b) the parameters of that competition;
 - (c) in particular, the importance of cloud-based solutions to that competition; and
 - (d) the timeframe for our assessment of the effects of the Merger.
- 5.2 The provisional views set out in this chapter are important context for our provisional assessments set out in chapters 6, 7 and 8 of whether the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS, Duties and RMS respectively.

Opportunities for competition

- 5.3 This section considers what opportunities exist for competition between the Parties and their competitors, including in the Relevant Markets. In particular, we have considered the characteristics of the procurement processes typically undertaken by customers.

Procurement processes

- 5.4 The Parties provide software and support services to customers. Typically, each customer will only appoint one supplier at a time for each software type, aside from overlaps during the implementation of new software. As such, our starting point for examining competition in the Relevant Markets has been to look at the processes customers use for appointing suppliers.
- 5.5 Customers of the Parties and their competitors are predominantly public sector organisations. These customers generally qualify as ‘contracting authorities’ and therefore must comply with public procurement rules when choosing and appointing a supplier.¹³¹ These rules are designed to encourage competition in procurement processes. They constrain customers’ ability to award contracts

¹³¹ [The Public Contracts Regulations 2015 \(the Regulations\)](#); section 2 of the Regulations defines contracting authorities as the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.

directly to suppliers, without a formal competitive tender process governed by the Regulations, by limiting their ability to do so to specific situations.¹³²

5.6 Accordingly, and recognising that customers must comply with the Regulations, we have identified three types of situations where a form of competition for customers can occur:

- (a) **Competitive tenders.** Competitive tenders can take different forms, such as being single-stage or using two stages, but all involve inviting a range of providers to compete to win a contract. Tenders can either be for a one-off contract for the supply of specific goods and/or services to a customer or they may be used to establish the price and other terms upon which multiple contracts may be awarded during a given period to a supplier or suppliers by one or more customers (generally known as a framework agreement).¹³³ NECSWS submitted that framework agreements typically only last up to four years in length.¹³⁴
- (b) **Direct awards.** A direct award is when a contract is awarded directly to a supplier by a customer without a competitive tender process (although they can involve a market-test as an earlier part of the process). There are two types of direct awards that we have observed are commonly used:
 - (i) The first is when a contract is awarded to a supplier via a framework agreement, where the supplier has already been through a competitive tender to be appointed to the framework. In these situations the terms of the contract typically cannot involve substantial modification of those set out in the established framework.¹³⁵ The terms of the framework are typically established by the previous competitive tender but may permit a choice of suppliers from those appointed to the framework. Some frameworks are awarded by a particular public authority but permit, specified, other public authorities to access the framework and procure goods and/or services from the suppliers appointed to the framework.¹³⁶ Accordingly, some customers may have access to multiple frameworks.

¹³² For example, the Regulations (except for Chapter 8) do not apply for procurement below a threshold of £138,760 incl. VAT for central government bodies and £213,477 incl. VAT for all other bodies, where a procurement process was undertaken for a framework and the framework permits a direct award, or where there are other exceptions. The Regulations also allow for a simplified process (a negotiated procedure without notice) to be used in certain circumstances, eg where no suitable response is received to an open procedure and time limits for procurement cannot be met due to extreme urgency (see section 32 of the Regulations).

¹³³ We have seen examples of frameworks with single or multiple suppliers. For example, NECSWS, response to CMA RFI 3, 24 March 2022, Annex 2.

¹³⁴ NECSWS, main party hearing transcript, 27 July 2022, page 19. See also [section 33 of the Regulations](#) which stipulate that the 'term of a framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement'.

¹³⁵ [Section 33\(6\) of the Regulations](#).

¹³⁶ [Section 33\(5\) and \(8\)\(a\) of the Regulations](#).

(ii) The second is when a contract is awarded to a supplier on which the terms can be negotiated. This occurs, for example, when the contract is either outside the scope of the Regulations or falls within an exception that permits direct negotiation.

(c) **Extensions to an existing contract.** Some contracts allow for optional extensions to the term of the contract after the original contract term has been completed. These extension options are typically explicitly built into a contract at the point of its creation; for example, a contract may be described as a 'three + two' contract where the contract is for an initial term of three years with an additional optional two-year extension.

5.7 In the markets in which the Parties operate, including the Relevant Markets, we have observed that some procurement occurs through competitive tenders (see paragraph 5.9). Indeed, as noted at paragraph 5.5 above, the Regulations require certain procurements to be undertaken via competitive tender process. We have also observed that there are a large number of direct awards, mostly, but not exclusively, made via framework agreements (themselves typically the product of competitive tenders). Some direct awards are, however, allowed under the Regulations without a competitive tender process. We have also seen evidence of a large number of extensions being exercised when the initial term of a contract expired.

5.8 We acknowledge that differences between customers such as their size, budget and capacity, may influence how they procure services in the markets in which the Parties operate (including the Relevant Markets). For example, procuring via a competitive tender can be a lengthy process requiring significant customer resources. Accordingly, many smaller police forces collaborate with other police forces in nearby regions to procure goods and/or services on a joint basis or to utilise frameworks arranged by other organisations. For example, Bedfordshire Constabulary, Hertfordshire Constabulary and Cambridgeshire Constabulary all procured an ICCS solution together via a tender in 2017.

5.9 Each of the three scenarios/forms of procurement described above involve some form of competition, as described below:

(a) **Competitive tenders.** Competitive tenders involve direct competition between suppliers as they submit bids to the customer who then evaluates the different potential suppliers against the relevant evaluation criteria.

(b) **Direct awards.** Direct awards must have a legitimate procurement route, whether this is via a framework arrangement or an exemption to the Regulations.¹³⁷ Customers will assess the options available to them to

¹³⁷ NECSWS, main party hearing transcript, 27 July 2022, page 17.

determine the best way to achieve value for money before deciding that a direct award meets their needs.¹³⁸ For example, some customers may request quotations in the form of market tests or 'mini tenders' from potential suppliers before deciding whether to begin a competitive tender process or, alternatively, award a contract directly. Direct awards that are awarded under the terms of a framework agreement can be seen as the result of an earlier competitive tender process. This is because the establishment of the framework was the result of a supplier winning a previous competitive tender, which as noted at paragraph 5.9(a) above allows customers to evaluate different potential suppliers against each other before deciding who to appoint to the framework.

- (c) **Contract extensions.** Customers may choose to extend contracts for a variety of reasons, but if they choose to do so it is implicit that they prefer the extension with their existing customer to seeking an alternative solution.¹³⁹ If the incumbent supplier is providing a poor service and there are stronger alternative suppliers in the market, the customer is more likely to switch to another competitor. Therefore, when the initial contract term is coming to an end, the incumbent supplier faces pressure to either maintain or improve the quality of its product or service to prevent losing its customer. We have seen evidence that not all extensions are exercised,¹⁴⁰ indicating that some competitive pressure can be exercised on incumbent suppliers at these points. The extent of this pressure will depend on the availability of alternative suppliers. As such, while an extension does not necessarily suggest a full competitive tender process has been followed, it still reflects a degree of potential competitive pressure from alternative suppliers to the incumbent supplier. An extension may also provide an incumbent supplier with extra time to make improvements to their products or service if they believe that a customer may consider switching.

Our provisional assessment

- 5.10 Our provisional view is that the Regulations are important context for customers' procurement decisions and set the legal framework in which these decisions are made. Further, our provisional view is that the effectiveness of customers' procurement is determined primarily by the number and strength of effective competitors in the market.

¹³⁸ NECSWS submitted that 'organisations evaluate their existing supply. They compare that to market offerings' NECSWS, main party hearing transcript, 27 July 2022, page 21.

¹³⁹ NECSWS submitted that customers have an 'obligation to test value for money on every one of those contract extensions', NECSWS, main party hearing transcript, 27 July 2022, page 21.

¹⁴⁰ NECSWS, Response to CMA queries of 28 July 2022 following NECSWS's main party hearing, 3 August 2022, question 2.

- 5.11 We recognise that while direct competition is primarily manifested through competitive tenders (either for individual contracts or for frameworks), indirect competition (eg the threat from available alternatives at the point of a customer choosing to extend, and pressure from ongoing innovation by competing suppliers) also plays an important role in these markets. By indirect competition, we refer to competitors improving or maintaining their offer, such that they are well-positioned when a competitive tender arises. In this context, customers may use information on what is available in the market to extract better terms or products from their incumbent supplier, particularly at the point of extension or competitive award, but also on an ongoing basis to ensure the supplier maintains a good relationship ahead of a future procurement decision point. This form of competitive pressure may impact on:
- (a) Ongoing service quality – suppliers’ products and services are not provided statically, but rather suppliers provide ongoing support, product fixes and upgrades. The greater the future competitive threat to the supplier the stronger its incentive to deliver on these aspects.
 - (b) Ongoing innovation, investing and developing of products – suppliers undertake ongoing product development and innovation. In this sense, they compete with each other outside of specific opportunities (eg they roadshow their products to a wide pool of customers).
- 5.12 Where competitive pressure from limited alternatives is weak this can lead to concerns about the above factors. For example, [X].

Parties’ views

- 5.13 The Parties submitted that they agree with the CMA’s views as set out in our Annotated Issues Statement (**AIS**) that direct competition takes place across all forms of procurement, including tenders, direct awards and extensions, which reflects the Parties’ experience in the Relevant Markets.¹⁴¹ The Parties also submitted that they agree that indirect competition is a key element of the competitive process.

Parameters of competition

- 5.14 This section considers what the relevant parameters of competition between the Parties and their competitors are, including in the Relevant Markets.
- 5.15 Our provisional view is that competition takes place across several aspects of suppliers’ offerings:

¹⁴¹ Parties, response to the AIS, 4 August 2022, paragraph 3.1.

- (a) Price – competition over price occurs directly during competitive tenders. We have seen evidence of the Parties considering the pricing likely to be offered by competitors when considering their own bids.¹⁴² Bid price usually makes up 30-40% of the evaluation marks by a customer running a competitive tender.¹⁴³ Direct awards and extensions are often awarded on the same terms and conditions as the original contract or the framework arrangement, so direct competition over price is typically less evident. However, we have also seen some evidence that, on occasion, customers negotiate better prices for contract extensions.¹⁴⁴
- (b) Quality – competition over quality occurs over the features and functionality of the software itself. The technical capability of a solution typically accounts for 40-70% of the evaluation marks of a customer running a competitive tender.
- (c) Service – competition over service levels arises through suppliers' ability to commit staff to support a customer. We have seen evidence that where service levels have been poor a customer has sought an alternative solution.¹⁴⁵
- (d) Innovation – suppliers compete by developing their products, including through their features and functionality, as well as the manner in which they are deployed. One recent trend has been towards suppliers developing cloud-based solutions (discussed at paragraphs 5.16 - 5.30 below).

Cloud-based solutions

5.16 This section considers whether the ability of a supplier to offer cloud-based solutions is increasing in importance for the customers of the Parties and their competitors, including in the Relevant Markets. A trend towards customers being increasingly attracted to cloud-based solutions would mean that an ability to offer such solutions will be increasingly important for competition between the Parties and their competitors (ie competitors who are best placed to offer cloud-based solutions will be stronger competitors than those who are not).

On-premise solutions versus cloud-based solutions

5.17 The Parties' products and services are software solutions. Software solutions can be deployed to customers in a number of different ways and the terminology used

¹⁴² See Appendix C.

¹⁴³ Evaluation criteria vary by tender but typically involve a price and quality/technical component. They can also include criteria for presentation or sustainability.

¹⁴⁴ [§<].

¹⁴⁵ Note of call with [§<], July 2022, paragraph 3.

to describe these options is sometimes inconsistent. We understand that a main distinction relates to how the service is hosted.

5.18 How the service is hosted refers to the location and ownership of the infrastructure used to deploy the service. This can be a non-cloud solution (ie locally deployed on-premise) or one of three types of cloud solution (ie private cloud, public cloud or hybrid cloud). We further explain these options below:

- (a) On-premise solution – An on-premise solution is where the data and software is hosted on hardware/servers that are owned by the customer and located at the customer's premises. This is the traditional form of deploying software solutions. This form of deployment is considered by some customers to have the advantage of being secure and allowing data to be hosted within the UK (although some consider it creates a risk of a single-point of failure). However, some customers consider that it has disadvantages in that software is less easy to upgrade, less easy to access from off-site and the customer incurs hosting costs such as electricity, storage and on-site IT support.
- (b) Private cloud (hosted solution)¹⁴⁶ – A hosted solution is one where the supplier hosts the solution on its own premises (or at a data centre) rather than at the customer's premises. The infrastructure is private and the resources are not shared with any other customers or organisations. Upgrades can be deployed by the supplier directly. One disadvantage of this approach is that it is more costly than a public cloud solution since it does not realise cost savings from shared resources.
- (c) Public cloud¹⁴⁷ – A public-cloud solution is where the supplier hosts and owns the infrastructure on its own site(s) which is not dedicated to a specific customer. The software and data is therefore hosted on the supplier's infrastructure. Access is available to anyone (with appropriate access credentials) over the public internet. Software-as-a-Service (**SaaS**) solutions are typically public-cloud solutions. A public-cloud solution scales quickly and can be upgraded with little disruption to individual customers. It also permits easier incremental upgrades rather than more disruptive major upgrades for on-premise solutions. Because resources are shared between customers, this solution can permit cost savings. One disadvantage is that holding data off-site may raise security concerns.
- (d) Hybrid cloud – A hybrid-cloud solution is a combination of the public and private-cloud solutions described above. It usually encompasses a

¹⁴⁶ CMA assessment informed by NECSWS's, Site Visit presentation, 16 June 2022, slide 23.

¹⁴⁷ CMA assessment informed by NECSWS's, Site Visit presentation, 16 June 2022, slide 23.

connection of private IT services with the public cloud. It may permit tighter controls over sensitive data and processes.¹⁴⁸

National strategy and future trends

- 5.19** Historically the software solutions supplied by the Parties and their competitors have been on-premise solutions.
- 5.20 The UK Government has set out a national 'Cloud First' policy which states that public sector organisations should consider and fully evaluate potential cloud solutions before considering any other option.¹⁴⁹ The policy is mandatory for central government and strongly recommended for the wider public sector. Many emergency services organisations have organisational cloud-first policies (see customer views on cloud in our Competitive assessment - ICCS)
- 5.21 In addition, in relation to police services, the National Policing Digital Strategy (**NPDS**) from January 2020 recommended that police forces '[d]evelop and execute a nationally coordinated transition to the cloud' and 'adopt a 'cloud first' principle for applications and data, where economical.'¹⁵⁰
- 5.22 However, we understand that there is no requirement for police forces (or other emergency service agencies) to purchase cloud-based software solutions and that it is ultimately up to individual customers whether and when to transition to cloud-based solutions.

Parties' general view on cloud

- 5.23 The Parties have made several submissions in relation to the role of cloud, including referring to national strategies, such as that referred to above. The submission quoted below sets out the Parties' general view:

A key factor driving current competitive dynamics in public sector software markets is customers' movement towards digital, mobile and cloud-based solutions that allow modern and agile ways of working, which opens the market up to new entrants with contemporary product offerings. This movement towards more innovative technology is mandated by UK public policy, including the UK Government's 'Cloud First' policy and the NPDS, and is increasingly impacting customers' procurement decisions. The National Policing Digital Strategy is a seminal document which sets out an ambition of digital transformation of UK policing in the period to 2030, identifying a set of specific digital priorities for policing and

¹⁴⁸ NECSWS, Site Visit Presentation, 16 June 2022, slide 23.

¹⁴⁹ Government Cloud First policy.

¹⁵⁰ [National Policing Digital Strategy](#), Digital, Data and Technology Strategy 2020-2030, NPCC, page 11.

outlining the key data and technology building blocks required to deliver them. For example, it sets out an aim that c. 80% of police technology will be hosted on the public cloud within the first five years of the plan.

In the time since the NPDS has been published in 2020, customers have increasingly been specifying cloud-based capability as a requirement for prospective suppliers. Cloud-based solutions are particularly attractive because, they 'require little or no specialist physical computer equipment to be located on site.'¹⁵¹

- 5.24 In addition to the above, the Parties have made submissions in relation to each of the Relevant Markets about their own cloud-capabilities, the cloud-capabilities of competitors and customers' requirements, as set out in tender documents. We address the Parties' specific submissions regarding the importance of cloud-based solutions in each specific Relevant Market in the relevant chapter of these provisional findings.

Police Digital Service

- 5.25 The NPDS referred to by the Parties was co-authored by the PDS and the National Police Technology Council. PDS is the delivery vehicle for the National Policing Digital Strategy. It was formed in 2020, replacing the Police ICT Company.
- 5.26 We asked PDS whether the NPDS's ambition for cloud applies to ICCS, RMS and Duties. It said that the Government's cloud strategy would apply to all three of the services. It told us that there is an expectation that procurement considers cloud solutions for these markets.¹⁵² PDS told us that the strategy is promoted to police forces through multiple channels and engagement ranging from social media, in person meetings, briefings and decision-making forums plus the annual PDS Summit.¹⁵³
- 5.27 PDS also told us that the NPDS was signed on behalf of all police forces, so there is an expectation that police forces will take it into account. However, they are not obliged to, and the PDS cannot mandate police forces to consider or apply the strategy.¹⁵⁴
- 5.28 PDS also submitted that the NPDS is a high-level statement matched against government direction/principle/policy.¹⁵⁵ Services are procured locally (by individual forces) under local decision making and it is for them to make a risk

¹⁵¹ Parties, Phase 2 Initial Submission, 31 May 2022, paragraphs 2.6 and 2.7.

¹⁵² Response to the CMA questionnaire from [§<], 4 July 2022, question 5.

¹⁵³ Response to the CMA questionnaire from [§<], 4 July 2022, question 2.

¹⁵⁴ Response to the CMA questionnaire from [§<], 4 July 2022, question 2.

¹⁵⁵ Note of a call with [§<], April 2022, paragraph 13.

assessment while utilising the cloud. Moving to cloud is a large financial change and some organisations are not cloud ready. PDS expects that many forces will take a hybrid approach; some will say private cloud hosted in secure off-premises environment would be good enough.¹⁵⁶

- 5.29 We asked PDS how long it expects it will take for police customers to shift 80% of services to cloud-based services and it indicated it will take until 2030, although it expected the pace to increase as work is undertaken to provide centralised design services and common standards documents.¹⁵⁷ We asked PDS if it could anticipate the timeframes over which ICCS, RMS and Duties products for police customers, specifically, will shift to cloud-based services. It said the strategy does not set out which specific services it expects to be cloud based.¹⁵⁸

Our provisional assessment

- 5.30 Our provisional view is that there is a clear national strategy encouraging the adoption of cloud-based solutions, in particular for police forces. However, our provisional view is that this trend is not necessarily determinative of customers' procurement strategies and decisions and that it leaves scope for customers to choose whether or not to adopt a cloud-based solution, and if so what type, depending on their individual requirements at the point of decision.

Timeframe for assessment

- 5.31 Having considered how competition occurs in this market and the scope for a change in competitive dynamics as a result of a trend towards cloud-based solutions, we have next considered the period over which we should consider the effects of the Merger. This is relevant for our competitive assessments (chapters 6, 7 and 8) as well as our assessment of the counterfactual (chapter 4).
- 5.32 The CMA's guidance does not specify a period over which it should assess the effects of a merger. This is because the CMA's ability to foresee future developments depends on the specific facts and circumstances of the case and the evidence available to it.
- 5.33 In this case, and given the nature of these markets, we consider that the relevant period over which we should conduct our competitive assessments is in particular the next few years.¹⁵⁹

¹⁵⁶ Note of a call with [§<], April 2022, paragraphs 14-15.

¹⁵⁷ Response to the CMA questionnaire from [§<], 4 July 2022, question 4.

¹⁵⁸ Response to the CMA questionnaire from [§<], 4 July 2022, question 4.

¹⁵⁹ The period over which we conduct our competitive assessments focus on in particular, but is not limited to, the next few years. We consider that this period encompasses the timeframe over which identified forthcoming opportunities will occur (see the Market Developments section of each competitive assessment chapter (chapters 6, 7 and 8)) and over which investment in product development can be realised.

- 5.34 Our competitive assessment captures both direct and indirect competition. In relation to direct competition, we consider our assessment period to cover both the specific opportunities we have identified over the next few years (see market developments sections of each of chapters 6, 7 and 8). In relation to indirect competition, we consider our assessment to capture the ongoing competitive pressure that is exerted by the presence of suppliers who are active in the Relevant Markets and is influenced by the strength of their offerings.

6. COMPETITIVE ASSESSMENT - ICCS

- 6.1 In this chapter, we assess whether the loss of competition between NECSWS and SSS has resulted, or may be expected to result, in an SLC in the supply of ICCS to emergency services and transport customers in the UK.
- 6.2 The Parties currently overlap in the supply of ICCS to emergency services and transport customers in the UK. The Merger combines the two Parties and removes any competitive constraint they place on each other. We have considered whether the Merged Entity would be likely to worsen its offering (for example, by removing available product lines, reducing service quality or investment, or increasing bid prices) compared to the situation if the Merger did not take place. This is a horizontal unilateral effects theory of harm.
- 6.3 This chapter sets out details of our investigation and provisional findings in relation to this theory of harm, covering: (a) details of the Parties' and competitors' offerings; (b) market definition; (c) the key evidence we have reviewed in our competitive assessment, including: market shares; our assessment of the Parties' internal documents; analysis of recent opportunities; evidence from third parties; and our assessment of future market developments; and (d) our provisional conclusions.

Suppliers' offerings

- 6.4 The Parties are two of six companies currently supplying ICCS in the UK. There is some differentiation between suppliers in terms of product offering and the customer type that each serve. We briefly outline some of the features of these suppliers' offerings below.
- (a) SSS offers both a standalone ICCS and an integrated ICCS and CAD solution¹⁶⁰ to fire and rescue, police and transport customers.¹⁶¹ It currently

¹⁶⁰ NECSWS does not offer a CAD system and so the Parties do not overlap in the provision of CAD. FMN, paragraph 1.8.1.

¹⁶¹ FMN, Table 13.1.

does not have a [X]cloud ICCS solution but can offer a [X] and is exploring the potential to develop a [X]cloud ICCS solution.¹⁶²

- (b) NECSWS offers a standalone ICCS solution to ambulance, fire and rescue, police and transport customers.¹⁶³ Its ICCS solution is not a public-cloud offering but NECSWS is in the process of developing its cloud-enabled ICCS solution.¹⁶⁴
- (c) Motorola offers a standalone ICCS solution to fire and rescue, police and transport customers.¹⁶⁵ Its ICCS solution is a public-cloud offering.¹⁶⁶
- (d) Frequentis offers a standalone ICCS solution to ambulance, fire and rescue, police and transport customers.¹⁶⁷ One version of its ICCS solution is a public-cloud offering.¹⁶⁸
- (e) Saab offers an integrated ICCS and CAD solution to fire and rescue and police customers.¹⁶⁹ Its solution [X].¹⁷⁰
- (f) Systel offers an integrated ICCS and CAD solution but could offer a standalone ICCS solution to fire and rescue customers only.¹⁷¹ Its ICCS solution is a private cloud offering.

Market definition

- 6.5 This section sets out our provisional views on the relevant market. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.¹⁷² An SLC can affect the whole or part of a market or markets.¹⁷³
- 6.6 While market definition can sometimes be a useful tool, it is not an end in itself.¹⁷⁴ The outcome of any market definition exercise does not determine the outcome of the CMA’s analysis of the competitive effects of the merger in any mechanistic way.¹⁷⁵ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the

¹⁶² See paragraph 6.159-6.160.

¹⁶³ FMN, Table 13.1.

¹⁶⁴ See paragraph 6.158.

¹⁶⁵ FMN, Table 13.1.

¹⁶⁶ Note of a call with [X], June 2022, paragraph 3.

¹⁶⁷ FMN, Table 13.1.

¹⁶⁸ Note of call with [X], June 2022, paragraph 2.

¹⁶⁹ FMN, Table 13.1.

¹⁷⁰ Note of a call with [X], July 2022, paragraph 3.

¹⁷¹ FMN, Table 13.1 and response to the CMA questionnaire from [X], 21 July 2022.

¹⁷² As regards the Merger, see section 35(1)(b) of the Act.

¹⁷³ [CMA129](#), paragraph 9.1.

¹⁷⁴ [CMA129](#), paragraph 9.4.

¹⁷⁵ [CMA129](#), paragraph 9.4.

relevant market, or other ways in which some constraints are more important than others.¹⁷⁶

- 6.7 We considered whether the market definition should be segmented by customer group, namely police, fire and rescue, ambulance and transport customers.

Product scope

- 6.8 Product market definition starts with the relevant products of the merger firms.¹⁷⁷ In identifying what other significant competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand-side factors.¹⁷⁸ The CMA may also consider supply-side factors.¹⁷⁹
- 6.9 The Parties overlap in the supply of ICCS to emergency services and transport customers. We considered whether market definition should cover all of these customers or whether there should be segmentation by customer group.

Customer types

Parties' views

- 6.10 The Parties submitted that the appropriate frame of reference is the supply of ICCS to emergency services and transport customers, given that ICCS products are broadly substitutable across different customer segments and that suppliers can straightforwardly expand into customer segments even if they do not have an existing presence in that segment.¹⁸⁰
- 6.11 NECSWS submitted that the relevant product frame of reference should include the supply of ICCS to all emergency services customers without further segmentation. NECSWS submitted that:
- (a) ICCS software is inherently capable of being supplied to different types of emergency services customers, and there are minimal differences in the features and functionality of ICCS software supplied to different types of emergency services customers;¹⁸¹ and
 - (b) Barriers for a supplier of ICCS to one type of emergency services customer to supply another type of emergency services customer are therefore very low.¹⁸²

¹⁷⁶ CMA129, paragraph 9.4.

¹⁷⁷ CMA129, paragraph 9.6.

¹⁷⁸ CMA129, paragraph 9.6.

¹⁷⁹ CMA129, paragraph 9.6.

¹⁸⁰ Parties, Initial Phase 2 Submission, 31 May 2022, paragraph 3.4.

¹⁸¹ FMN, paragraph 13.4.

¹⁸² FMN, paragraph 13.7.

- 6.12 Furthermore, the Parties submitted that ICCS transport customers share many of the same characteristics of the Parties' core emergency services customers.¹⁸³ The Parties therefore submitted that it is not meaningful to separate ICCS-utilising transport customers: these customers can choose from the same array of providers available to the emergency services.¹⁸⁴

Our assessment

- 6.13 We considered whether the relevant product market for ICCS should be segmented by customer group.

Demand-side substitutability

- 6.14 In relation to emergency service customers, the products used by different customer groups seem to be broadly the same. Third party feedback received by the CMA indicates that the core design and framework on which ICCS software is developed are broadly the same regardless of the type of emergency customer being served. The CMA has been told that ICCS 'is generic'¹⁸⁵ and that the 'fundamental features [are] the same across emergency services.'¹⁸⁶ Many customers indicated that ICCS for one type of emergency service customer can be used by different emergency service customers. For example, one ambulance customer said that 'ICCS used by ambulance services can also be used by the police, and fire and rescue services'.¹⁸⁷
- 6.15 This is also consistent with feedback from one competitor which indicated that broadly speaking all UK emergency services use the same or similar communications infrastructure and that when it had to make changes to serve different types of emergency services customer, these were mainly restricted to 'functional' adaptations to support subtly different ways of working between the emergency services. This competitor explained that ICCS is a constant work in progress requiring regular tailoring and updating for all customers, whether they be within the same or a different emergency segment.¹⁸⁸
- 6.16 In relation to transport customers, one third party competitor said that transport customers have requirements that, whilst often less functional/feature-rich than emergency service customers' requirements, are more unique based on their individual need, operation, infrastructure and existing environments.¹⁸⁹ Another competitor told the CMA that the functionality of ICCS for transport customers is similar to the functionality for emergency customers and that it had started offering

¹⁸³ FMN paragraph 13.32.

¹⁸⁴ FMN, paragraph 13.34.

¹⁸⁵ Note of a call with [redacted], February 2022, paragraph 12.

¹⁸⁶ Note of a call with [redacted], January 2022, paragraph 17.

¹⁸⁷ Note of a call with [redacted], January 2022, paragraph 8.

¹⁸⁸ Response to the CMA questionnaire from [redacted], 3 March 2022, question 4b and 4d.

¹⁸⁹ Response to the CMA questionnaire from [redacted], 3 March 2022, question 4d.

ICCS to those customers with very few changes needed.¹⁹⁰ Another competitor said that the operational processes and integration points for transportation customers do differ significantly, but noted that these differences impact ICCS less than other products such as RMS and CAD.¹⁹¹

- 6.17 Some third parties did identify some differences between customer segments that could impact ICCS requirements. These differences related to the technical interface between the ICCS and the customers' other systems, which typically would be tailored to the type of emergency service. For example, one police customer stated that 'other emergency services will have similar requirements, albeit the interface to systems and solutions used after the initial call will be different and therefore the data collected and processed will differ'.¹⁹² One fire and rescue customer noted that 'police control rooms mobilise in a slightly different way to fire', indicating some difference in requirements between different types of emergency services customer.¹⁹³

Supply-side substitutability

- 6.18 The Parties supply ICCS to all types of emergency services customer as well as transport customers. A number of the Parties' competitors also supply more than one type of customer.¹⁹⁴ For example, Frequentis currently supplies police, fire and rescue customers and transport customers and has been awarded a contract to supply ambulance customers, and [redacted] supplies fire and rescue, and police customers.¹⁹⁵ The limited evidence received from transport customers indicates that broadly the same suppliers are active in supplying ICCS to transport customers as emergency service customers.¹⁹⁶
- 6.19 However, not all competitors are active across all customer segments (for example Systel, which has been active in the UK since 2013, only supplies fire and rescue customers).¹⁹⁷ There are also significant differences in suppliers' shares of supply across different segments. Although we recognise that these differences may be driven in part by recent contract wins and losses (in particular for ambulance customers where there are few contracts), we also consider that these may suggest that some suppliers are relatively weaker or stronger in particular customer segments.
- 6.20 Many suppliers have expanded from supplying one type of customer to supplying others. SSS initially had police customers but now also serves both fire and

¹⁹⁰ Response to CMA questionnaire from [redacted], 3 March 2022.

¹⁹¹ Response to the CMA questionnaire from [redacted], 3 March 2022.

¹⁹² Response to CMA questionnaire from [redacted], 13 March 2022, question 4.

¹⁹³ Response to the CMA questionnaire from [redacted], 3 March 2022, question 4.

¹⁹⁴ See, for example, FMN, Table 13.1.

¹⁹⁵ Response to the CMA questionnaire from [redacted] and [redacted], 3 March 2022, question 2a.

¹⁹⁶ Response to the CMA questionnaire from [redacted] and [redacted], 3 March 2022, question 6.

¹⁹⁷ For example, see FMN, Table 14.1A.

rescue, and ambulance customers,¹⁹⁸ NECSWS started supplying ambulance customers but now also serves police, and fire and rescue customers,¹⁹⁹ [X] has [X] started supplying [X] customers,²⁰⁰ and Saab has until recently targeted police forces in the UK but is now beginning to target other customer segments, including the other UK emergency services.²⁰¹ Two competitors noted that significant development time and resources is required to adapt ICCS to supply new types of emergency services customer.²⁰²

- 6.21 The Parties' internal documents available to the CMA indicate that the Parties often consider the competitive landscape for ICCS overall without breaking down their analysis by customer segment.²⁰³ However, we also identified internal documents for both Parties that look at shares of supply by customer segment, suggesting that suppliers' competitive strength may vary by segment.

Provisional view on segmentation by customer types

- 6.22 Based on the evidence above, our provisional view is that on the demand-side requirements across customer segments are broadly similar (although we have observed some differences in requirements by different types of customers in respect of how the ICCS interfaces with the customers other systems). On the supply-side, there is evidence that it is relatively easy for suppliers to substitute between customer segments and many suppliers do so. Some suppliers have particular strengths within certain customer segments and we take account of this in our competitive assessment.
- 6.23 It is therefore our provisional view that it is not appropriate to segment the relevant market by customer type.

Geographic scope

Parties' views

- 6.24 NECSWS submitted that the Parties supply customers across the UK, conditions of competition do not differ materially across the country, and that the geographic frame of reference should be at least UK-wide.²⁰⁴

¹⁹⁸ FMN, paragraph 13.8.2.

¹⁹⁹ FMN, paragraph 13.10.

²⁰⁰ Response to the CMA questionnaire from [X], 3 March 2022., question 4.

²⁰¹ Response to the CMA questionnaire from [X], 3 March 2022., question 4

²⁰² Response to the CMA questionnaire from [X] and [X], 3 March 2022, question 4b.

²⁰³ NECSWS Internal Document, Annex 10.2.22 to the FMN, '[X]', 20 March 2021, page 15 and Capita SSS Internal Document, Annex 9.3.4 to the FMN, '[X]', 17 September 2020, page 24.

²⁰⁴ FMN, paragraph 13.27.

Our assessment

- 6.25 We considered whether the relevant geographic market should be widened beyond the UK. We recognise that some international firms are active in the ICCS market in the UK and that some of these firms market their ICCS product in other countries.
- 6.26 The Parties' internal documents mainly discuss products in the context of UK customers rather than on an international basis. Where other countries/regions are discussed, the Parties dedicate specific analysis and separate actions to those particular countries/regions.²⁰⁵ International competitors without a UK customer base are not mentioned in relation to competition for UK customers (see Internal documents section below).
- 6.27 Third parties highlighted that suppliers must comply with UK regulatory requirements in order to supply UK customers, and that suppliers not already active in the UK would need to tailor their product to the UK market in order to supply UK customers. In particular, third parties highlighted that using suppliers based outside the UK raised issues around IT security and data protection. For example:
- (a) One third party said that there are very few non-UK suppliers that can offer solutions that meet UK-specific requirements.²⁰⁶
 - (b) One third party said that customers generally ask for a recent UK reference as part of their procurement process.²⁰⁷
- 6.28 Customers have told us that a supplier being currently active in the UK is an important feature when considering the procurement of ICCS. In particular, customers note the importance of having service personnel present in the UK and the existence of specific challenges and requirements in the UK that require local knowledge (see Chapter 9). Furthermore, as set out in the Recent opportunities section below, no customer in the UK has considered an ICCS provider beyond those that operate in the UK despite there being other ICCS providers globally that provide a similar ICCS product.

Provisional view on geographic scope

- 6.29 Based on the evidence above, our provisional view is that the relevant geographic market is the UK only. The potential for entry by international suppliers not

²⁰⁵ For example, see NECSWS Internal Document, Annex 1.21 to the Phase 1 s109(1), '[3<]', August 2020, page 31 - separate slides are dedicated to products in Australia.

²⁰⁶ Response to the CMA questionnaire from [3<], 3 March 2022, question 6.

²⁰⁷ Response to the CMA questionnaire from [3<], 3 March 2022, question 6.

currently active in the UK market is considered further in the competitive assessment and our assessment of countervailing factors.

Provisional view

- 6.30 For the reasons set out above, our provisional view is that the relevant market is the supply of ICCS to emergency service and transport customers in the UK without any customer segmentation between customer segments. We consider that any differences in competitors' relative strength or weakness across customer segments can be taken into account in the competitive assessment.

Competitive assessment overview

- 6.31 In the remainder of this chapter, we assess the key evidence we have reviewed in considering whether the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS to emergency service and transport customers in the UK.
- 6.32 We have considered:
- (a) market shares;
 - (b) internal documents;
 - (c) recent opportunities;
 - (d) customers' and competitors' views; and
 - (e) market developments.
- 6.33 After our assessment of these various types of evidence, at the end of this chapter, we set out our provisional conclusion.
- 6.34 In this chapter, we have considered a horizontal unilateral effects theory of harm. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.²⁰⁸ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.²⁰⁹ The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.²¹⁰ Where there are few existing suppliers, the merger firms

²⁰⁸ CMA129, paragraph 4.1.

²⁰⁹ CMA129, paragraph 4.3.

²¹⁰ CMA129, paragraph 4.3.

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.²¹¹

- 6.35 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.²¹² The more closely the merger firms compete the greater the likelihood of unilateral effects.²¹³ The concept of close competition is not limited to products or services that have similar characteristics.²¹⁴ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.²¹⁵ Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.²¹⁶ The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.²¹⁷ For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.²¹⁸

Market shares

- 6.36 In this section we present estimates of market shares within the ICCS market. In a differentiated market such as the supply of ICCS to fire and rescue, police, ambulance and transport customers in the UK, horizontal unilateral effects are more likely to result from a merger where one or more of the merger parties has a strong position in the market.²¹⁹ The level and stability of market shares are relevant evidence in this regard.²²⁰

Parties' views

- 6.37 The Parties have made a number of submissions on the relevance of market shares. In particular, the Parties consider that very little weight should be applied to an assessment of market shares as a measure of competitive strength on a forward-looking merger and agreed with the factors set out in paragraph 8.27.²²¹
- 6.38 The Parties submitted estimates of market shares of supply of ICCS to emergency service customers in the UK in 2021. Their estimates were made on a volume

²¹¹ CMA129, paragraph 4.3.

²¹² CMA129, paragraphs 4.8–4.10.

²¹³ CMA129, paragraph 4.8.

²¹⁴ CMA129, paragraph 4.9.

²¹⁵ CMA129, paragraph 4.9.

²¹⁶ CMA129, paragraph 4.10.

²¹⁷ CMA129, paragraph 4.10.

²¹⁸ CMA129, paragraph 4.10.

²¹⁹ CMA129, paragraph 4.12(a).

²²⁰ CMA129, paragraph 4.12(a).

²²¹ Parties response to the Market Shares WP, 4 August 2022, paragraphs 1 and 6.

basis, based on the volume of calls handled by emergency service customers and accounting for contracts that have already been won or lost but are not yet live. The Parties' estimates are shown in Table 6-1.

Table 6-1 Parties' estimate of ICCS market shares based on volume of calls (UK, 2021)

Competitor	Share of volume of calls (%)
NECSWS	[10-20]
SSS	[10-20]
Parties Combined	[20-30]
Frequentis	[60-70]
Motorola	[5-10]
Saab	[0-5]
Systel	[0-5]
Total	100%

Note: 2021 suppliers incorporating won and lost contracts due to go live.

Source: FMN, Table 14.1B.

Our assessment

- 6.39 Measures of concentration such as shares of supply can be useful evidence when assessing closeness of competition.²²² Therefore, as part of our competitive assessment we often use market shares in our defined market(s) as one measure of the strength of different competitors.
- 6.40 We consider that examining market shares provides context to our competitive assessment of the ICCS market. They are a measure of historical market concentration and, in particular, capture the outcome of previous competition in a period through which current suppliers have been active in the market. However, we also recognise that they have limitations which reduce their usefulness in this case. As such, we assess them alongside other evidence in the round in forming our provisional conclusion.
- 6.41 As part of our review, we examined market shares using several different metrics, including revenue-based estimates, customer-number based estimates and the Parties' volume-based estimates. Estimates of market shares differ by metric used, as set out in Table 6-2.

²²² CMA129, paragraph 4.14.

Table 6-2 Market shares in ICCS (2021)

	Shares by revenue (%)	Shares by volume of calls (%)	Shares by number of customers (%)	Number of customers
NECSWS	[20-30]	[10-20]	[10-20]	[3<]
SSS	[40-50]	[10-20]	[30-40]	[3<]
Parties combined	[60-70]	[20-30]	[50-60]	[3<]
Frequentis	[30-40]	[60-70]	[20-30]	[3<]
Motorola	[0-5]	[0-5]	[5-10]	[3<]
Saab	[0-5]	[0-5]	[0-5]	[3<]
Systel	[0-5]	[0-5]	[10-20]	[3<]
Total	100	100	100	[3<]

Sources: CMA calculations based on third party responses to phase 2 questionnaire and FMN, Table 14.1B.

Notes: Shares by revenue: We have calculated revenue shares by collecting revenue information from suppliers active in the market. Saab and Systel did not submit any revenue data and hence we have had to estimate their revenues on the basis of customer average customer expenditure from their customers that responded to our questionnaires and their customer numbers. For Saab we have also had to allocate its revenues from its integrated Control Room Solution to ICCS. We have done this using an estimate derived from SSS's view of future contract values for three customers requiring both ICCS and Control Room Solution or CAD. Shares by revenue are similar for previous years. 2019: NECSWS ([3<]%), SSS ([3<]%), Frequentis ([3<]%), Motorola ([3<]%) and 2020: NECSWS ([3<]%), SSS ([3<]%), Frequentis ([3<]%).

Shares by volume of calls: We have repeated the Parties' estimates of shares by volume of calls.

Shares by number of customers: We have calculated shares of the total number of customers by using customer lists collected from suppliers currently active in the market. The number of customers column treats the eight Scottish regional fire and rescue customers and 13 English, Scottish and Welsh Ambulance services as individual customers thereby affecting [3<] and [3<] accordingly.

- 6.42 The market shares estimates show that the market for ICCS is concentrated with only six suppliers. In general, in a differentiated product market we place more weight on revenue shares than other metrics, since they more accurately represent the economic value of contracts. We consider this holds in assessing this market. We recognise that our use of estimates in the absence of data for two suppliers affects the accuracy of the revenue estimates, although we consider that these are two smaller suppliers, and it does not affect comparisons between the other suppliers. Hence, while we focus on revenue shares, we have examined estimates based on all three metrics used above.
- 6.43 The Parties are the first and third largest competitors based on shares by revenue with the Merger resulting in a combined market share of [60-70]% and an increment of [20-30]%. Frequentis is the second largest competitor with a share of [30-40]%. Motorola, Saab and Systel are all smaller competitors. Shares by number of customers show a broadly similar picture as shares by revenue.
- 6.44 Frequentis is the largest competitor based on shares by volume of calls. However, Frequentis' share is driven by the large sized customers that it has. Specifically, Frequentis has the ARP contract (which receives more calls than all police forces in the UK combined) and Frequentis also serves two of the larger police forces (the Metropolitan police and Police Scotland). The Parties are the second and third largest competitors based on shares by volumes of calls. Motorola ([0-5]%), Saab ([0-5]%) and Systel ([0-5]%) are all smaller competitors.

Provisional conclusion

- 6.45 Our provisional view is that the market for ICCS is concentrated and that the Merged Entity is likely to be the largest competitor post-Merger. The Parties are

the first and third largest competitors based on shares by revenue and will be the largest competitor post-Merger with a combined share of [60-70]%. Frequentis is the second largest competitor ([30-40]%) based on shares by revenue. While Frequentis has a larger share based on shares by volume of calls this is largely driven by one large contract (ARP). Motorola ([0-5]%), Saab and Systel are all notably smaller competitors. Market share estimates based on the number of customers present a broadly consistent picture with the other metrics.

Internal documents

- 6.46 We have reviewed the Parties' internal documents for evidence of their own views of the competitive constraints they face.²²³ A description of our methodology is given in Appendix C: Internal Documents (**Appendix C**). This is followed by summaries of relevant points from the individual documents we have reviewed (Appendix C – from Document 1 to Document 30). Where the Parties have made submissions in relation to the detail of these individual documents, these submissions and our response follow each document's summary in Appendix C.

NECSWS's documents

Closeness between the Parties

SSS

NECSWS's views

- 6.47 NECSWS submitted that its internal documents do not show that SSS is considered a strong competitive threat currently or in future. NECSWS states that references to SSS as a competitor are based on its historic market share, but that NECSWS frequently recognises that SSS [redacted].²²⁴

Our assessment

- 6.48 We consider that NECSWS consistently mentions SSS in the competitor analyses we have seen.²²⁵ This includes:
- (a) [redacted].²²⁶
 - (b) [redacted].²²⁷

²²³ CMA129, paragraph 4.13.

²²⁴ NECSWS response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2 (A).

²²⁵ Appendix C, Documents 1,2,3,4,5,7.

²²⁶ Appendix C, Document 3.

²²⁷ Appendix C, Document 4.

(c) [REDACTED].²²⁸

(d) [REDACTED].²²⁹

6.49 While we note that some of NECSWS's documents present SSS's current [REDACTED] as a weakness, there are also discussions about SSS seeking to upgrade its ICCS product.²³⁰

6.50 Our view is that NECSWS's documents consider SSS to be a competitive threat, given the consistency with which SSS appears in its documents and the level and degree of analysis of SSS's offering. However, NECSWS also considers SSS's competitive threat to have weaknesses, in particular that SSS's current [REDACTED].

Closeness with others

6.51 NECSWS frequently mentions the ICCS competitor set as being Motorola, Frequentis and Saab in addition to the Parties. Systel is not mentioned in any of NECSWS's documents and no other ICCS providers are acknowledged.²³¹

Motorola

NECSWS's views

6.52 NECSWS submitted that it views Motorola [REDACTED].²³²

Our assessment

6.53 NECSWS appears to regard Motorola as a strong competitor in the ICCS market with Motorola frequently appearing in all of NECSWS's competitive assessments that we have reviewed.²³³ This includes [REDACTED].²³⁴ NECSWS recognises Motorola for:

(a) [REDACTED].²³⁵

(b) [REDACTED].²³⁶ and

(c) [REDACTED].²³⁷

²²⁸ Appendix C, Document 1.

²²⁹ Appendix C, Documents 1,2,7.

²³⁰ Appendix C, Document 1,2.

²³¹ Only one document, Document 3, discusses [REDACTED]. However, we understand that Mark43 has no intention of entering the ICCS market in the UK in the next few years.

²³² Appendix C, Document 2,3.

²³³ Appendix C, Documents 1,2,3,5.

²³⁴ Appendix C, Document 3.

²³⁵ Appendix C, Document 2.

²³⁶ Appendix C, Document 1.

²³⁷ Appendix C, Documents 1,2.

- 6.54 Our view is that NECSWS's documents consider that Motorola is a strong competitive threat given the frequency that Motorola appears in NECSWS's documents and the level and degree of analysis of Motorola's offering. NECSWS's documents particularly recognise Motorola's [REDACTED].

Frequentis

NECSWS's views

- 6.55 NECSWS submitted that Frequentis is recognised as a [REDACTED]. Frequentis' significant market presence is noted and [REDACTED].²³⁸ NECSWS further submitted [REDACTED],²³⁹ referencing an internal document which states this view.²⁴⁰

Our assessment

- 6.56 Frequentis is often mentioned in NECSWS's documents.²⁴¹ Frequentis is recognised for:

- (a) [REDACTED];²⁴²
- (b) '[REDACTED]',²⁴³ [REDACTED],²⁴⁴ [REDACTED];²⁴⁵ and
- (c) [REDACTED];²⁴⁶

- 6.57 One document also highlights the need for NECSWS [REDACTED].²⁴⁷

- 6.58 Notwithstanding that Frequentis has had [REDACTED], NECSWS also notes that:

- (a) [REDACTED];²⁴⁸ and
- (b) [REDACTED].²⁴⁹

- 6.59 Our view is that NECSWS's documents mention Frequentis often but less consistently than SSS or Motorola. Where Frequentis is mentioned, it is recognised as a key competitor [REDACTED]. However, NECSWS also states that Frequentis [REDACTED]). We therefore consider that while Frequentis exerts a competitive

²³⁸ NECSWS response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2(B).

²³⁹ NECSWS response to the Internal Documents WP, 4 August 2022, ICCS slide 10.

²⁴⁰ Appendix C: Internal Documents, Document 10.

²⁴¹ Appendix C, Document 1, 4, 5.

²⁴² Appendix C, Document 1.

²⁴³ Appendix C, Document 1.

²⁴⁴ Appendix C, Document 5. We also recognise that NECSWS states in Document 8 that today Frequentis [REDACTED]. However, this is solely based on market shares.

²⁴⁵ Appendix C, Document 2.

²⁴⁶ Appendix C, Document 4.

²⁴⁷ Appendix C, Document 9.

²⁴⁸ Appendix C, Document 1.

²⁴⁹ Appendix C, Document 1.

constraint on NECSWS, this constraint is likely to have limitations due to NECSWS's view of the [X].

Saab

NECSWS's views

- 6.60 NECSWS submitted that Saab is recognised as a [X].²⁵⁰ NECSWS further submitted that Saab [X]. [X]; since its entry into the police segment in 2016 it has won contracts to supply ICCS to [X]. NECSWS understands from informal market feedback that Saab has likely been designated as preferred bidder in [X] procurement of ICCS and CAD to replace SSS as incumbent supplier.²⁵¹

Our assessment

- 6.61 Saab is often mentioned in NECSWS's documents.²⁵² Saab is recognised for:

- (a) [X];²⁵³
- (b) [X];²⁵⁴ and
- (c) [X].²⁵⁵

- 6.62 NECSWS's documents also note that:

- (a) [X];²⁵⁶ and
- (b) [X].²⁵⁷

- 6.63 We therefore consider that Saab exerts a competitive constraint on NECSWS and is referenced in NECSWS's competitive analyses and benchmarking. However, Saab has a particular strength in combined CAD and ICCS procurements given its unified offering and this makes Saab a more limited constraint given [X]. Furthermore, [X].

Provisional view - NECSWS's documents

- 6.64 Our provisional view, based on NECSWS's internal documents, is that the market for ICCS is concentrated with only six suppliers and that SSS is a key competitor in this market. NECSWS regularly refers to and closely monitors SSS, with SSS

²⁵⁰ NECSWS response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2(B).

²⁵¹ NECSWS response to the Internal Documents WP, 4 August 2022, ICCS slide 10.

²⁵² Appendix C, Documents 1,2,3,5.

²⁵³ Appendix C, Document 9.

²⁵⁴ Appendix C, Document 2.

²⁵⁵ Appendix C, Document 3.

²⁵⁶ Appendix C, Document 1.

²⁵⁷ Appendix C, Document 1.

being included in [REDACTED] NECSWS competitor analyses we have reviewed. These documents include referring to SSS as:

- (a) a [REDACTED] player;
- (b) a competitor that will be [REDACTED];
- (c) a competitor who [REDACTED]; and
- (d) a competitor whose [REDACTED].

6.65 NECSWS also frequently refers to three other competitors, namely Motorola, Frequentis and Saab:

- (a) Motorola, alongside SSS, is mentioned in [REDACTED] NECSWS's competitor analyses and is often depicted as a strong competitive threat. Motorola is also referred to as having [REDACTED].
- (b) Frequentis is frequently mentioned in NECSWS's documents but appears to be considered by NECSWS as a weaker constraint than SSS or Motorola. Frequentis is generally recognised in the internal documents as having a good product and good track record in the UK. However, Frequentis is also recognised in the internal documents as [REDACTED].
- (c) Saab is also frequently mentioned in NECSWS's documents. Saab is recognised as having [REDACTED]. However, while Saab is recognised for its participation, and success, in tenders [REDACTED] suggesting that Saab will provide a more limited constraint than other competitors overall. Saab is also noted to have [REDACTED].

SSS's documents

Closeness between the Parties

NECSWS

SSS's views

6.66 SSS mentions NECSWS consistently in its internal documents.²⁵⁸ SSS refers to NECSWS's ICCS product as [REDACTED] in a document from 2022.²⁵⁹ SSS's documents also recognise NECSWS for:

²⁵⁸ Appendix C, Documents 12,14,17,18,20,21,23,28.

²⁵⁹ Appendix C, Document 12.

- (a) [REDACTED];²⁶⁰
- (b) [REDACTED];²⁶¹
- (c) [REDACTED];²⁶² and
- (d) [REDACTED].²⁶³

6.67 However, SSS's documents also recognise that NECSWS has [REDACTED] and has had some issues regarding [REDACTED].²⁶⁴ One document also ranks NECSWS's ICCS product as '[REDACTED]' and overall it is seen as an [REDACTED] to both Motorola's and SSS's.

Our assessment

6.68 We consider that SSS's documents identify NECSWS to be a competitive threat, given the consistency with which NECSWS appears in its documents and the level and degree of analysis of NECSWS's offering. In particular, SSS recognises a number of strengths of the NECSWS offering, covering its [REDACTED]. SSS also recognises some weaknesses of NECSWS's offering including [REDACTED].

Closeness with others

6.69 SSS frequently mentions the ICCS competitor set as being Motorola, Frequentis and Saab in addition to the Parties. Systel is generally absent from competitor analyses, while SSS's other four competitors often appear together when comparisons are made.

Motorola

SSS's views

6.70 SSS views Motorola as exerting a [REDACTED] on SSS. SSS submitted that Motorola's [REDACTED] since 2020/2021.²⁶⁵

Our assessment

6.71 Motorola is regularly mentioned in SSS's competitive analyses.²⁶⁶ A qualification review suggests that SSS viewed its own ICCS product and Motorola's as having a [REDACTED]; however, we note that SSS [REDACTED].²⁶⁷ In particular, there is evidence of SSS

²⁶⁰ Appendix C, Document 17.

²⁶¹ Appendix C, Document 20.

²⁶² Appendix C, Document 20.

²⁶³ Appendix C, Document 21.

²⁶⁴ Appendix C, Document 21.

²⁶⁵ SSS response to the Internal Documents WP, 4 August 2022, paragraph 3.3.6.

²⁶⁶ Appendix C, Documents 14, 16, 17, 18, 19, 20, 23, 24.

²⁶⁷ Appendix C, Document 17.

identifying an increase in Motorola's competitive strength in recent years and Motorola being recognised [X].²⁶⁸ Motorola is particularly recognised for its [X]. However, SSS also perceives Motorola as being [X] solution.²⁶⁹

- 6.72 We consider that SSS's documents identify Motorola as a strong competitive threat given the frequency that Motorola appears in SSS's documents and the level and degree of analysis of Motorola's offering. SSS's documents particularly recognise Motorola's [X] and that it has been [X] recently.

Frequentis

SSS's views

- 6.73 In the context of responding to our Internal Documents working paper, SSS submitted that it believes Frequentis to be a [X] competitor.²⁷⁰

Our assessment

- 6.74 Frequentis is regularly mentioned in SSS's competitive analyses.²⁷¹ Our view is that SSS's assessment of Frequentis appears to have evolved throughout the years. Two documents, including one from 2018, emphasise Frequentis' competitive [X], describing it as the '[X]' in the ICCS market.²⁷² Frequentis is also recognised as having a [X] reputation and a '[X]' solution.²⁷³
- 6.75 More recent SSS's documents note that:
- (a) Frequentis' solution is [X].²⁷⁴
 - (b) Frequentis is [X],²⁷⁵ and
 - (c) in a recent 2022 email, [X].²⁷⁶
 - (d) Frequentis' ICCS is recognised as being [X].²⁷⁷
- 6.76 Our view is that SSS's documents consider that Frequentis is a competitive threat given the consistency with which Frequentis appears in SSS's documents and the level and degree of analysis of Frequentis's offering. However, while Frequentis is

²⁶⁸ Appendix C, Document 23 Motorola is acknowledged as SSS's [X], whereas Motorola is described as an [X] and SSS [X] in an older 2018 document (Document 22).

²⁶⁹ Appendix C, Documents 17,18.

²⁷⁰ SSS response to the Internal Documents WP, 4 August 2022, paragraph 3.4.

²⁷¹ Appendix C, Document 12,13,14,17,18,20,21,22,23.

²⁷² Appendix C, Document 20,22.

²⁷³ Appendix C, Document 20,21.

²⁷⁴ Appendix C, Document 23.

²⁷⁵ Appendix C, Document 12,17.

²⁷⁶ Appendix C, Document 13.

²⁷⁷ Appendix C, Document 20,21.

sometimes labelled as a [redacted], SSS's documents also highlight several weaknesses of Frequentis including that it is [redacted] other systems, that it has [redacted] large contracts that it has won and that for some opportunities it has a weaker offering than SSS.

Saab

SSS's views

- 6.77 SSS submitted that it considers Saab to be a [redacted] competitor than we deem it to be.²⁷⁸ To evidence this assessment, SSS referred to recent internal documents which described Saab as a legitimate competitor for ICCS opportunities.

Our assessment

- 6.78 Saab is often mentioned in SSS's competitive analyses.²⁷⁹ Saab is seen as:

- (a) having a [redacted] but its [redacted] are thought to be [redacted];²⁸⁰
- (b) having [redacted] than SSS on a particular opportunity;²⁸¹
- (c) an [redacted] threat with a [redacted] but with [redacted];²⁸² and
- (d) [redacted].²⁸³

- 6.79 Our view is that SSS's documents consider that Saab is a competitive threat. However, Saab appears less consistently and with less analysis/detailed commentary than other competitors suggesting that it is a less monitored competitor.

Systel

SSS's views

- 6.80 SSS submitted that Systel is included in a number of SSS's internal documents, ranging from 2020 to 2022, showing that Systel has been a consistent subject of SSS's competitive analysis and that they will remain so going forward.²⁸⁴

²⁷⁸ SSS response to the Internal Documents WP, 4 August 2022, paragraph 3.3.10.

²⁷⁹ Appendix C, Documents 13,14,15,17,18,23,25.

²⁸⁰ Appendix C, Document 23.

²⁸¹ Appendix C, Document 13.

²⁸² Appendix C, Document 20.

²⁸³ Appendix C, Document 17,18. In SSS's response to our Internal Documents WP, SSS clarified that Saab now has stand-alone ICCS capabilities.

²⁸⁴ SSS response to the Internal Documents WP, 4 August 2022, paragraph 3.3.2.

Our assessment

- 6.81 Systel is only mentioned in a few of SSS's internal documents.²⁸⁵ References to Systel are typically for specific tenders that require CAD and with little further detail rather than in competitor analyses. In the documents where Systel is mentioned it is described as a '[X]' and appraised as a '[X]'. One document from 2022 notes that Systel '[X]'.²⁸⁶ This implies that SSS views it as a weaker constraint for ICCS than its other competitors.
- 6.82 We do not consider that the documents that SSS have highlighted demonstrate that Systel is a consistent subject of SSS's competitive analysis in the ICCS market as set out in paragraphs 99 to 105 in Appendix C.²⁸⁷

Other ICCS competitors

SSS's views

- 6.83 SSS also referred to the inclusion in its competitor watchlist of '[X]' or other technology vendors of enterprise 'commercial off the shelf' products, such as Salesforce and Amazon Web Services.²⁸⁸

Our assessment

- 6.84 SSS's internal documents did not suggest there are additional competitors in the ICCS market. While we did see two other suppliers mentioned, we do not consider these suppliers to be ICCS competitors. In particular:
- (a) Content Guru is only mentioned in one document.²⁸⁹ We understand that Content Guru does not offer an ICCS product and has no plans to offer an ICCS product.²⁹⁰

Provisional view – SSS's documents

- 6.85 Our provisional view of the evidence presented in SSS's internal documents is that they suggest the market for ICCS is concentrated with only six suppliers and NECSWS is a key competitor in this market. SSS regularly refers to, and closely monitors NECSWS.

²⁸⁵ Appendix C, Document 12, 16, 20.

²⁸⁶ Appendix C, Document 12.

²⁸⁷ Appendix C, Documents 29, 30.

²⁸⁸ SSS response to the Internal Documents WP, 4 August 2022, paragraph 3.7.

²⁸⁹ Appendix C, Document 18.

²⁹⁰ Response to the CMA questionnaire from '[X]', 16 August 2022.

- 6.86 SSS also frequently refers to three other competitors, namely Motorola, Frequentis and Saab:
- (a) Motorola appears to be viewed as a [X] with evidence of an increase in Motorola's [X] in recent years and a recognition of its [X].
 - (b) Frequentis appears to be viewed as a [X] with a [X]. However, SSS's documents view it as having several [X] including [X].
 - (c) Saab is also regularly mentioned but not as prominently as SSS, Motorola and Frequentis.
- 6.87 Systel is mentioned notably less frequently than the other competitors and appears to be a weaker constraint.

Recent opportunities

- 6.88 Evidence of customer diversion between merger parties and past competitive interactions, such as merger parties' offers in tenders, is relevant to the assessment of closeness of competition.²⁹¹
- 6.89 We have analysed customer data on opportunities (tenders, direct awards and extensions) since 2017 in the ICCS market. These opportunities allow suppliers to retain their customers or win customers from their competitors. Consideration of a suppliers' frequency of participation and success rates in opportunities allows us to assess the current competitive constraints being provided by different suppliers.

Parties' views

- 6.90 The Parties submitted their own estimates of recent opportunities (the Parties' Opportunities Data) covering their understanding of the type of opportunity, which suppliers bid and which supplier was successful.²⁹²
- 6.91 The Parties submitted that an analysis of opportunities is inherently backward looking and that earlier opportunities will be less informative as to the level of competitive interaction (or lack thereof) between the Parties today and the choice of credible suppliers customers would choose from today.²⁹³ In particular, opportunities going back to 2017 will understate the competitive constraint of more recent competitors, such as Motorola in the case of ICCS, and masks the [X].²⁹⁴ It is therefore important to give greater weight to opportunities awarded more recently.

²⁹¹ CMA129, paragraph 4.13.

²⁹² Parties, response to RFI 5, 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

²⁹³ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 2.

²⁹⁴ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 2.

- 6.92 Whilst in the Parties' view caution needs to be applied in interpreting the results, the Parties view an analysis of opportunities to be more informative and carry more evidential weight as opposed to market share analysis.²⁹⁵
- 6.93 The Parties stated that other competitors (in addition to Motorola) such as Frequentis, Saab and Systel, have been awarded large contracts over this period including, the high value tender by the Department of Health for the supply of ICCS, a 2018 tender for the supply of ICCS at Police Scotland and a 2019 tender for the supply of CAD and ICCS which were awarded to Frequentis.²⁹⁶ Saab won Police Cumbria where SSS was the incumbent and Police Nottinghamshire where NECSWS was incumbent (both in 2018). Systel also won a large tender to supply [X] in 2018 as well as [X] in 2019.²⁹⁷ SSS also noted that for the [X] tender ([X]), [X].²⁹⁸
- 6.94 The Parties submitted that, in relation to the direct awards which SSS has received, these all relate to support and maintenance contracts (generally for two to three years) and are not awards for new solutions. Often customers that make direct awards to extend service and maintenance do so in order to enable them to undertake or complete their procurement process. Whilst SSS has [X] won contracts from its existing customer base which does represent a degree of incumbency advantage, it is unclear how the Merger would affect this. More generally, SSS's success in more recent tenders has been particularly limited when compared to other competitors such as Motorola and significant contracts won by Frequentis and Systel.²⁹⁹
- 6.95 SSS stated that each of the three tenders that it has won had exceptional circumstances. In particular:
- (a) The 2017 [X] tender was for [X];³⁰⁰
 - (b) The 2021 [X] tender was [X],³⁰¹ [X];³⁰² and
 - (c) The 2018 [X] tender was conducted under its Technology Services framework and was '[X]'.³⁰³

²⁹⁵ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 3.

²⁹⁶ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 16a.

²⁹⁷ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 20.

²⁹⁸ SSS, main party hearing transcript, 2 August 2022, page 7, lines 1-5.

²⁹⁹ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 39.

³⁰⁰ SSS, main party hearing transcript, 2 August 2022, page 73, lines 1-10.

³⁰¹ SSS, main party hearing transcript, 2 August 2022, page 66, lines 3-4.

³⁰² SSS, main party hearing transcript, 2 August 2022, page 66, lines 3-6 and page 80, lines 7-11.

³⁰³ SSS, main party hearing transcript, 2 August 2022, page 65, lines 3-24.

Our assessment

- 6.96 Our analysis of opportunities is based on information received from customers, competitors and the Parties. We asked customers to identify opportunities (tenders, direct awards and extensions) that they had awarded since 2017. We asked them to provide the identities of the winning supplier and other suppliers that were involved (those that bid, were informally involved or invited to the process) alongside other details (eg contract length). We consider that customers have the most accurate information around the identities and nature of suppliers' involvement in each opportunity. Where we have not received relevant information from customers, we have supplemented our analysis with information from the Parties' opportunities data and from competitors' submissions as to which opportunities they were involved in.
- 6.97 We have found that since 2017 there have been relatively few opportunities for ICCS customers. In particular, there have been [X] tenders, [X] direct awards and [X] extensions (see Table 6-3).
- 6.98 Typically, only a small number of competitors (two on average) submit an official bid for a given opportunity. Contracts awarded, via both tenders and direct awards are typically long (c. five years on average plus the possibility of an extension which is used in around 50-75% of contracts).
- 6.99 As set out in chapter 5 (Nature of Competition), tenders provide the strongest evidence of direct competition. However, there is evidence that some direct awards also involve market testing which can be formal or informal and that customers may also negotiate with their incumbent supplier for improved terms at the point of extension. More generally, the presence of alternative suppliers provides customers with outside options to which they could switch in the event that they are unhappy with the offering of their current provider. The strength and attractiveness of these outside options will influence the incentive for an existing supplier to maintain and improve its offering to a customer, particularly where the contract is approaching a break point. Therefore, the Merger could lessen competition in the ICCS market if it results in customers having fewer outside options.

Closeness between Parties

- 6.100 NECSWS and SSS have been active in the market since 2017 and have both won tenders, direct awards and extensions. Table 6-3 sets out the total number of ICCS opportunities since 2017 and the number of tenders that the Parties have participated in, as well as the number of opportunities won by each of the Parties.

Table 6-3 Parties' participation in ICCS opportunities since 2017

	<i>Market wide total</i>	<i>NECSWS</i>	<i>SSS</i>
Tenders	[X]	-	-
Party involved in	-	[X]	[X]
Both Parties involved in	-	[X]	[X]
Party officially bid in	-	[X]	[X]
Both Parties officially bid in	-	[X]	[X]
Won	-	[X]	[X]
Direct awards won	[X]	[X]	[X]
Extensions won	[X]	[X]	[X]

Note: 'Involved' in means that the Party was at least invited to the opportunity (and may have submitted an informal or formal bid).

Source: CMA analysis of Parties, customer and competitor data

- 6.101 NECSWS and SSS have performed strongly and won the majority of direct awards and extensions available. NECSWS has won [X]/[X] direct awards ([X]) and [X]/[X] extensions ([X]). SSS has won [X]/[X] direct awards ([X]) and [X]/[X] extensions ([X]). Notably, [X] of the direct awards, and [X] of the extensions that SSS has been awarded have a [X] contract period with over half of these having been awarded since 2020.
- 6.102 We consider that in the ICCS market the Parties' successes in winning direct awards and extensions, shows that their offerings are viable options for some customers and that the recency and length of some of these wins, suggests that they are an indicator of future competitive strength. In particular, the willingness of customers to enter into contracts of up to [X] years indicates that customers are satisfied with the ICCS product being offered by SSS. We consider that it also demonstrates that in some instances at least they are not purely being used to extend service and maintenance for a short period of time to enable them to undertake or complete their procurement process as put forward by the Parties in paragraph 6.94.
- 6.103 The Parties have been frequent bidders in tenders, although they have had lower success rates than other suppliers and have won more opportunities in the form of direct awards and extensions. As regards bidding frequency, the Parties are two (of three) of the most frequent bidders. SSS in particular submits a bid in [X] ([X]/[X]) tenders. As regards bidding success, NECSWS has won [X] out of the [X] tenders that it bid for with [X] of these dating back to 2017. SSS has only won [X] of [X] tenders that it bid for with two of these wins occurring in 2018 and one in 2021. SSS has put forward that each of these tenders had a unique set of circumstances. We consider these tender successes demonstrate SSS's offering is a viable option for these customers and therefore that SSS's presence in the market means it will continue at least in some circumstances to exert a competitive constraint.
- 6.104 Notwithstanding the Parties' lower success rates in tenders, NECSWS and SSS have both been involved in the same opportunity [X]. At least one of the Parties

submitted an official bid [REDACTED].³⁰⁴ [REDACTED]. This demonstrates that the Parties are competitive constraints on each other.

- 6.105 [REDACTED] ([REDACTED]). Additionally, SSS has also won [REDACTED] direct awards and [REDACTED] extensions over the same period. Therefore, while SSS has lost some customers, it has also retained a significant number of customers, often with contracts of between [REDACTED].
- 6.106 Looking forward, a number of SSS contracts are set to end [REDACTED] and so we have considered below the extent to which SSS's historical record in retaining and winning customers is likely to be informative of its ability to retain these customers, given changing customer needs – see the Market developments section below.

Closeness with others

- 6.107 In addition to the Parties, four other ICCS competitors have been active in the market since 2017 and between them have won tenders, direct awards and extensions. Table 6-4 sets out the total number of ICCS opportunities since 2017 and the number of tenders that each of the Parties competitors have participated in, as well as the number of opportunities won by each of the Parties' competitors.

Table 6-4 Parties competitors' participation in ICCS opportunities since 2017

	Market wide total	Motorola	Frequentis	Saab	Systel
Tenders	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Party involved in	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Party officially bid in	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officially bid in with NECSWS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officially bid in with SSS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Won	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Direct awards won	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Extensions won	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Note: 'Involved' in means that the Party was at least invited to the opportunity (and may have submitted an informal or formal bid).

Source: CMA analysis of Parties, customer and competitor data

- 6.108 Competitors of the Parties typically bid for tenders less frequently than the Parties with Motorola being the exception. Competitors of the Parties have generally had a high success rate in tenders that they have participated in since 2017. In particular:
- (a) Motorola has won [REDACTED];
 - (b) Saab has won [REDACTED];
 - (c) Frequentis has won [REDACTED]; and
 - (d) Systel has won [REDACTED].

³⁰⁴ The low number of official bids in tenders is due to NECSWS having [REDACTED] bid for [REDACTED] tenders since 2017.

- 6.109 Motorola and Saab appear to have become stronger competitors in recent years following their recent wins in 2021 and 2022. However, neither Frequentis nor Systel have [REDACTED]. In relation to direct competition with the Parties:
- (a) NECSWS lost [REDACTED] to Motorola and [REDACTED] to Frequentis; and
 - (b) SSS lost [REDACTED] to Saab, [REDACTED] to NECSWS, [REDACTED] to Frequentis, [REDACTED] to Systel and [REDACTED] to Motorola.
- 6.110 The above analysis demonstrates the level of direct competitive pressure that the Parties face from competitors when bidding head-to-head in tenders. Notably, Motorola exerts a high level of direct competitive pressure on the Parties given how [REDACTED]. Frequentis and Systel in particular have exerted a lower level of direct competitive pressure in recent years. However, there is likely to be some uncertainty around which opportunities any given competitor will bid for as the Parties will not have full sight of which of their competitors will bid for any given opportunity. This is particularly true for Frequentis as it [REDACTED] which may lower the expectation that it will participate in any given tender. Motorola [REDACTED] and therefore there may be an expectation that it will bid even if it does not. Systel only serves fire and rescue customers currently and therefore the Parties will expect that it will not bid for police customers while the Parties will expect that Saab is likely to only bid for opportunities with integrated solutions. This means that Motorola in particular, but to some extent also the other competitors, may impose some constraint on the Parties even for opportunities which they do not ultimately bid for.
- 6.111 The Parties' competitors have won only one direct award and six extensions since 2017. Motorola and Saab's [REDACTED] may be explained by the fact that they only entered the ICCS market in 2015/2016. Many direct awards are awarded via frameworks which last several years which may mean that these suppliers have not been available on some frameworks. Similarly, for extensions, any contracts that they have won are likely to be still in their initial terms. However, Frequentis has been in the market for notably longer [REDACTED].

Provisional view

- 6.112 Our provisional view is that the opportunities analysis demonstrates that the Parties are important competitive constraints on each other.
- 6.113 The Parties regularly bid in tenders in a market where the average number of official bids for each tender is very low. The Parties are two of the (three) most frequent competitors to bid in tenders. SSS is the competitor which bids [REDACTED] in tenders.
- 6.114 NECSWS and SSS have both been involved in [REDACTED]. While SSS only competed directly with NECSWS in [REDACTED], it lost to NECSWS in [REDACTED] where both bid.

- 6.115 Overall, the Parties have won few tenders ([X]) but this includes tenders won in the last two years indicating their offerings have been considered viable by customers recently. Only Motorola has [X].
- 6.116 The Parties have won a large number of direct awards and extensions since 2017, sometimes explicitly in competition with one another and other suppliers. The Parties [X] and SSS [X].
- 6.117 Notably, [X] of SSS's direct awards, and [X] of SSS's extensions awarded had a [X]-year contract period with over half of these being awarded since 2020. The willingness of customers to enter into contracts of up to [X] years indicates that those customers are satisfied with the ICCS product being offered by SSS, and are likely to have considered outside alternatives (whether formally or informally) when deciding to extend/award a direct award to SSS. We also consider that the length of these contracts demonstrates that in some instances at least they are not purely being used to extend service and maintenance for a short period of time to enable them to undertake or complete their procurement process.
- 6.118 Regardless of the type of opportunity (ie a tender, direct award or extension), an ICCS customer will face the same alternative suppliers. Therefore, the potential competitor set that the Parties face for all types of opportunities is the same. Motorola provides a strong constraint, particularly in recent years and has [X] and won tenders. Frequentis and Saab also provide a constraint and have been successful in the tenders that they have participated in. However, Frequentis and Saab have only participated in a [X] of tenders and the evidence suggests that the Parties' expectations of their participation in future would be similar. Systel is a weaker constraint having participated in [X]. Even though it was successful when it has bid, it has focused on fire and rescue opportunities meaning that its constraint is narrowly focused and likely identifiable by the Parties.

Customers' views

- 6.119 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.³⁰⁵
- 6.120 We have analysed responses to our customer questionnaire on their views of suitable alternative ICCS suppliers.

Parties' views

- 6.121 The Parties submitted that the evidence set out below in paragraphs 6.123 to 6.128 show that ICCS customers consider that there are four other large alternative UK-based suppliers in the supply of ICCS and confirms the Parties'

³⁰⁵ CMA129, paragraph 4.13.

position that there are a number of credible alternatives to both NECSWS and SSS in the supply of ICCS solutions.³⁰⁶

- 6.122 The Parties stated that while NECSWS and SSS received only a few more mentions than other competitors, this is to be expected in light of their existing contracts. In particular, their number of mentions will be overstated due to historic success and current wins; as such, this data will not be representative of the prevailing competitive conditions.³⁰⁷

Our assessment

- 6.123 Evidence from the Parties' customers supports the view that there are six providers of ICCS namely: NECSWS, SSS, Motorola, Frequentis, Saab and Systel.
- 6.124 We asked customers to list all of the ICCS providers that they believe could meet their software requirements, ranking the suitability of their offering from one to five (where five is most suitable). Table 6-5 sets out the number of mentions for each competitor who received more than four mentions.

Table 6-5 Number of mentions of ICCS competitors

	<i>Number of mentions</i>
SSS	20
NECSWS	18
Motorola	17
Frequentis	16
Saab	12
Systel	9

Question: Please list all of the ICCS providers that you believe could meet your software requirements in the following table, ranking the suitability of their offering from 1 to 5 (where 5 is most suitable)

Source: 22 customer responses to our phase 1 questionnaire

Note: Eight other suppliers were mentioned but are not shown here, because we either understand that they do not have an ICCS product, for example, where they are prime contractors for a wider set of services. Sopra/Steria was mentioned 4 times, Hexagon was mentioned 3 times and all other providers were mentioned 2 or fewer times.

- 6.125 While the Parties were the most mentioned competitors, Motorola, Frequentis and Saab also received a notable number of mentions with Systel being mentioned slightly less.
- 6.126 We also asked ICCS customers, what impact, if any, would the acquisition of SSS by NECSWS have on them as an ICCS customer and to provide a supporting explanation. Our analysis is set out in Appendix D. While some customers raised concerns, the vast majority of customers responded with a 'neutral' or 'don't know' response, and very few customers provided explanations for their answers. Some customers also stated that their view was conditional on the Merged Entity's plans for its products.

³⁰⁶ Parties' response to the Customer Evidence WP, 4 August 2022, paragraph 18.

³⁰⁷ Parties' response to the Customer Evidence WP, 4 August 2022, paragraph 18.

6.127 Given the limited engagement from customers with this question we have placed a limited amount of weight on the responses to this question.

Provisional view

6.128 Our provisional view is that the customer evidence provides further support for the finding that there are six suppliers of ICCS products in the UK: NECSWS, SSS, Frequentis, Motorola, Saab and Systel. The Parties are two of the main competitors having been the most mentioned customers. However, Motorola, Frequentis and Saab were also mentioned a notable number of times, albeit slightly less frequently, as having a proven product that could meet the customer's software requirements.

Competitors' views

6.129 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.³⁰⁸

Our assessment

6.130 Evidence from the Parties' competitors supports the view that there are six providers of ICCS with the Parties being two of the main competitors. In particular:

- (a) [X] views [X], [X], [X] and [X] as its principal competitors for any future bids.³⁰⁹ [X] ranked [X] and [X] as its strongest competitors (scoring 5/5) recognising [X] strength as being that it is a dominant platform offering in police and fire and rescue sectors but its legacy ICCS capability as being a weakness. It ranked [X] as a 3 noting it had a strong ICCS capability but no platform offering and [X] as a 1 noting it was a strong platform but its offering focused on CAD and its ICCS offering is weak with no hosting capability.³¹⁰ [X] also noted that [X] was the only recent vendor who has broken into the ICCS market ([X]) and thought this was likely due to its price offering.³¹¹
- (b) Saab noted that from an ICCS-only perspective, its competitors have traditionally been NECSWS, SSS and Frequentis. [X].³¹²
- (c) Frequentis told us that NECSWS, SSS, Frequentis, Systel and Motorola were the main suppliers of ICCS products but the majority of customers would be between Frequentis, NECSWS and SSS.³¹³ Frequentis ranked NECSWS as

³⁰⁸ CMA129, paragraph 4.13.

³⁰⁹ Note of a call with [X], June 2022, paragraph 14.

³¹⁰ Response to the CMA questionnaire from [X], 3 March 2022, question 5.

³¹¹ Note of a call with [X], June 2022, paragraph 6.

³¹² Note of call with [X], July 2022, paragraph 8.

³¹³ Note of a call with [X], June 2022, paragraph 9.

a 4/5 noting its strengths being that it is strong in the police market and its price but its perception is its weakness being its product is older. It ranked SSS as a 3/5 noting its strengths being it has major market share across fire and rescue and police with ICCS and CAD and its price but it perceives its lack of development in certain products as a weakness. It ranked Motorola as a 2/5 noting it has a strong service management offering, ESN and cloud referenced as strengths but Frequentis's perception is Motorola's product is not as feature rich as some of the providers. It ranked Saab as a 2/5 noting that its ICCS product is only normally offered as part of a complete CAD solution and that it currently does not offer a full web based solution.³¹⁴

Provisional view

- 6.131 Our provisional view, based on competitors' views, is that the Parties are two of the main suppliers in the market and among the closest competitors to each competitor who provided its views. Two competitors ranked the Parties as their closest two competitors. Competitors identified the ICCS market as being concentrated, with references to either five or six suppliers in total.

Provisional view on current competition

- 6.132 NECSWS and SSS provide software and solutions to the emergency services sector which is an important market for public safety. ICCS in particular is a control room service that is mission-critical and needs to be available 24/7/365 where customers mandate that there can be no single point of failure to avoid having a severe impact on public safety. The market for ICCS is concentrated with only six competitors operating it. As set out in paragraph 6.4, there is some differentiation between suppliers in terms of product offering and the customer type that each supplier serves which means for any given customer there is likely to be less than six suppliers who can compete for the contract.
- 6.133 The Parties have historically been important competitors and are currently the largest and third largest suppliers of ICCS on a revenue basis. Recently, the Parties have only directly competed with each other a few times, however they refer to each other in recent internal documents as key competitors. Competitors and customers also frequently mention the Parties as being competitors in this market, although some recognise that SSS's ICCS product is outdated.
- 6.134 SSS's recent performance in tenders has been poor. However, it competes in more tenders than any other competitor, is recognised as having aggressive pricing and has won a few tenders. Other suppliers may adapt their bids given their views of where SSS may bid and how it may price. [X] SSS has [X]

³¹⁴ Response to the CMA questionnaire from [X], 3 March 2022, question 5.

managed to retain a strong customer base through direct awards and extensions. [X] of SSS's direct awards and extensions which have been awarded since 2020 had a [X] contract period. Given the critical nature of the ICCS product this demonstrates that customers are willing to continue using SSS's ICCS product for a notable period of time (between [X]) and suggests that SSS's ICCS product still meets customer needs despite it being more outdated than some of its competitors' products.

- 6.135 Motorola has a strong offering and in the recent past has frequently participated in and won tenders. Other competitors, such as Frequentis and Saab also have a strong offering, albeit they do not frequently bid. [X].
- 6.136 Overall, considering all of the relevant evidence, our provisional view is that the Parties are two of the three largest ICCS suppliers and are currently close competitors.

Market developments

- 6.137 We have assessed whether there are any market developments that may mean that the strength of the competitive constraint the Parties place on each other, and other competitors place on the Parties, may materially change.
- 6.138 We first assess whether, and how fast, there may be a change in customer requirements towards public-cloud solutions (see paragraphs 5.16 to 5.30 in chapter 5). We then consider how many opportunities will arise over that timeframe and how well placed the Parties and other suppliers are to compete for these opportunities.

Changing customer requirements – transition to public-cloud solutions

Parties' views

- 6.139 NECSWS submitted that suppliers of cloud-based solutions have a competitive advantage over suppliers of on-premise solutions:
- (a) as cloud technology enables suppliers to implement and deploy their solution much more quickly and at lower cost, and provides more flexibility to add and remove users, or supply additional capacity to store or process as it is needed;³¹⁵ and
 - (b) in respect of service availability, maintenance and upgrades: service availability can be 100% if the supplier offers replacement infrastructure which is automatically activated when there are problems with the main

³¹⁵ NECSWS response to the CMA's RFI 2, 30 May 2022, question 32a.

solution, and software updates can be installed frequently and easily to ensure that the solution is always up to date.³¹⁶

6.140 The Parties have stated that there is a strong trend towards procuring cloud-based ICCS solutions and that SSS is not a credible competitor for new opportunities going forward given that:³¹⁷

(a) [REDACTED];

(b) Even if there had been an alternative buyer, which the Parties do not agree with, there is no evidence that such a buyer would have made the necessary investments to [REDACTED];

(c) If, in the absence of the Merger, [REDACTED].

6.141 The Parties have also submitted that they believe that evidence shows in terms of revenue, SSS could reasonably be expected [REDACTED].³¹⁸

6.142 In addition to SSS's lack of a cloud-enabled ICCS, [REDACTED].³¹⁹ SSS also stated that its issue with its ICCS is a lack of cloud capability but also [REDACTED].³²⁰

PDS strategy

6.143 As set out in paragraph 5.26, the PDS told us that in line with the Government's cloud strategy, there is an expectation that when undertaking procurement processes, police forces will consider cloud solutions. However, services are procured locally (by individual forces) under local decision making and it is for each force to make an assessment regarding utilising the cloud; with no police force obliged to adopt a cloud solution. Moving to cloud is a large organisational change and some organisations are not currently cloud ready. The PDS estimated that it will take until 2030 for 80% of customers to move to public-cloud services although it expects the pace to increase as work is undertaken to provide centralised design services and common standards documents.

Customers' views

6.144 We asked customers to indicate how important they expected cloud-based ICCS products to be when next deciding on an ICCS product. Figure 6-1 below shows that almost all ICCS customers answered that cloud would be important in future

³¹⁶ NECSWS response to the CMA's RFI 2, 30 May 2022, question 32d.

³¹⁷ Parties' response to the AIS, 4 August 2022, paragraph 1.4.4.

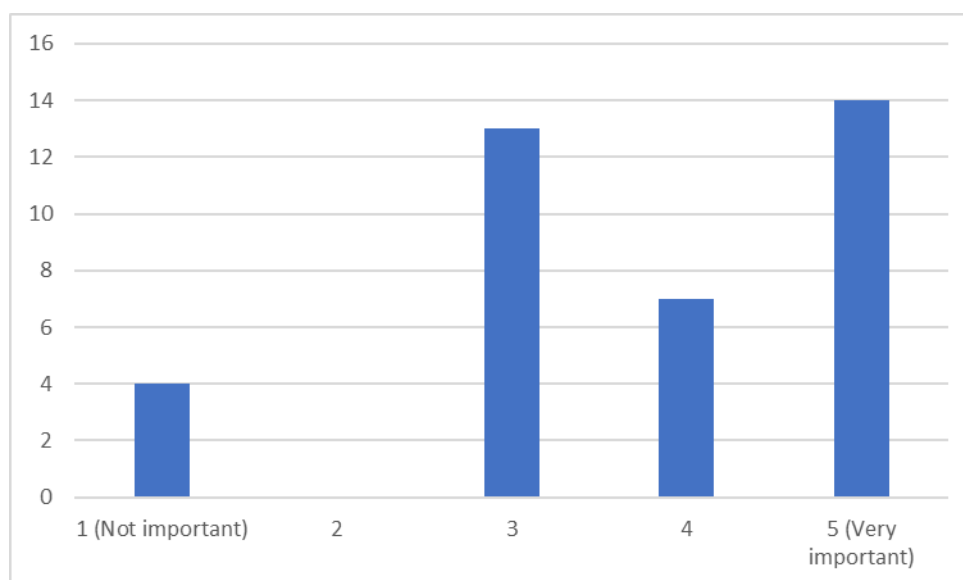
³¹⁸ Parties' response to the AIS, 4 August 2022, paragraph 4.18.

³¹⁹ FMN, paragraph 11.6.1c.

³²⁰ SSS, main party hearing transcript, 2 August 2022, page 13, lines 16-18.

(almost all answered between 3-5 on a scale of 1-5). More than half (22/39) of customers said that it would be a four or a five (very important).

Figure 6.1: Figure 6-1 ICCS customers – importance of cloud



Question: Q12) When next deciding on an ICCS product, how important or unimportant will an ICCS suppliers' cloud capability be for you? 1 = not important, 5 = very important.

Base: 38 fire and rescue and police customers.

Source: CMA analysis of third party data.

6.145 Alongside their quantitative responses, most customers provided comments to explain their answer. These responses were varied and with a degree of detail however it was most frequently referred to (by 15 customers) that moving to cloud is in line with local and/or national strategies.³²¹ In order to summarise these responses, we have classified them under three broad categories: customers who are supportive of cloud-based solutions, customers who have some reservations about cloud-based solutions and customers whose responses do not indicate their thoughts on cloud-based solutions:

- (a) 19 customers were supportive of and/or prefer cloud-based solutions. In particular:
 - (i) Seven respondents referred to the benefits of cloud, including its flexibility, integration, collaborative benefits and scope for cost-savings;³²²
 - (ii) One respondent had already moved to cloud;³²³

³²¹ Response to the CMA questionnaire from [redacted], [redacted] and [redacted], 26 May 2022, question 12; [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted] 20 May 2022, question 12; [redacted], [redacted] and [redacted], 25 May 2022, question 12; [redacted] 14 March 2022, question 26; [redacted], 10 June 2022, question 12.

³²² [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

³²³ [redacted].

- (iii) Two respondents said they expected to move to cloud but in the more distant future;³²⁴ and
 - (iv) Nine respondents mentioned that moving to cloud fits with either their own or national strategy.³²⁵
- (b) 15 customers had reservations about and/or no preference for cloud-based solutions. In particular:
- (i) Eight respondents said they were wary of the risks (eg connectivity issues) of a cloud-based solution;³²⁶
 - (ii) Four respondents said they would consider all options and had no strong preference for cloud or on-premise solutions;³²⁷
 - (iii) One respondent said that a 'cloud first' model is in line with national and organisational strategy but operational requirements may result in a traditional locally hosted solution;³²⁸ and
 - (iv) Two respondents said that cloud was not a main or determinative factor in deciding who to appoint as a supplier.³²⁹
- (c) Five customers' responses did not indicate their thoughts on cloud-based solutions.

6.146 We consider that the customer responses above indicate that a significant proportion of customers who provided a response indicating their view on cloud-based solutions indicated that they have at least some reservations about cloud-based solutions. We further understand that at least five of these customers (ie the customers with reservations) are likely to consider an ICCS procurement process in the next few years. Our view is therefore that while there is a trend towards procuring cloud-based ICCS solutions, a competitor who does not yet have a cloud solution is still likely to be able to compete for some opportunities.

Competitor's views

6.147 One competitor³³⁰ told us that the trend towards cloud-based deployment is strongest in the fire and rescue sector, where customers tend to ask for this as a managed service. Police customers are at the early stages of cloud-based requirements. Over the next couple of years, it expects the majority of fire and

³²⁴ [REDACTED], [REDACTED].

³²⁵ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

³²⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

³²⁷ [REDACTED], [REDACTED], [REDACTED], [REDACTED].

³²⁸ [REDACTED].

³²⁹ [REDACTED], [REDACTED].

³³⁰ Note of a call with [REDACTED], June 2022, paragraph 3.

rescue customer requirements to be cloud-based. However, it has seen a recent fire and rescue customer tender for an on-premise solution, with a requirement to be able to move to cloud in the future. Over the same period, it expects Police customers to be seeking either on-premise or cloud-based solutions.

- 6.148 Another competitor³³¹ told us that the ability to offer a cloud-based solution is important, and will become increasingly important in future. Currently, a number of customers are open to cloud-hosted services, which was not the case two years ago, although there are still some customers that do not wish to adopt a cloud-based solution. On-premise solutions would still be viable competitors, depending on customer requirements. An on-premise solution would not always offer the flexibility of a hosted solution. One added benefit of a cloud-solution is that it enables greater collaboration with neighbouring forces.
- 6.149 We consider that the competitor responses above indicate that customer requirements will vary both between emergency service sectors (with fire and rescue customers appearing to be ahead of police forces in terms of transitioning to public-cloud solutions) and by individual customer. Our view is therefore that while there is a trend towards procuring public-cloud ICCS solutions, this does not mean that all customers currently want, or will want in the next few years, a public-cloud ICCS solution. Therefore, the fact that a competitor does not yet have a public-cloud solution does not mean that it is not a credible competitor in some circumstances and will not be able to compete for some opportunities.

Number of opportunities

- 6.150 We have examined how many future opportunities are likely to arise in the ICCS market and over what timeframes. This is relevant to the time period over which it is appropriate for us to assess the effects of the Merger.
- 6.151 Using evidence provided by suppliers, we have identified c.[X] opportunities per year in 2023 and 2024. This covers opportunities in both the police and fire and rescue sectors, and a small number of opportunities in transport.
- 6.152 Evidence from SSS supports that there will be more opportunities for ICCS in the next few years compared to the previous five years. In particular, SSS stated that its [X] over the next few years with one of the key factors being the [X].³³² However, we have also seen one internal document that indicates that [X].³³³
- 6.153 We consider that with these forthcoming opportunities for competition in the market, it is appropriate for us to focus our assessment in particular on the next

³³¹ Note of a call with [X], June 2022, paragraph 4.

³³² SSS, main party hearing transcript, 2 August 2022, page 74, lines 6-11.

³³³ Appendix C, Document 12.

few years to provisionally determine whether the Merger has resulted, or may be expected to result, in an SLC.

Competitiveness of Parties' products

- 6.154 We have reviewed the evidence on whether it is likely that NECSWS and SSS will be able to compete for future ICCS opportunities over the next few years and the foreseeable future beyond this. We note that SSS risks losing customers over the next few years given that it has a number of contracts that will end during this same period.
- 6.155 We have considered the Parties' ability to win customers through:
- (a) Tenders; and
 - (b) Direct awards and extensions.

Ability to win tenders

- 6.156 We consider that customers will have a range of requirements in forthcoming opportunities and these will typically be specified within the tender documentation. We have considered the Parties' ability to win tenders that require public-cloud solutions, those that require only an on-premise solution or roadmap to a public-cloud solution and also the Parties' ability to meet other non-cloud based technical requirements.

Tenders requiring a cloud-based solution

- 6.157 Some future tenders are likely to require a solution deployed through a public-cloud (either immediately or via a roadmap). [X]. This is likely to limit their ability to compete for opportunities with this requirement over the next few years.
- 6.158 NECSWS is still developing its cloud-based ICCS. NECSWS told us that, in the UK, its ICCS product (Cortex) cannot currently operate in the cloud. However, it has just embarked on a reinvestment project to modernise Cortex. [X].³³⁴ This investment will take [X] years and cost around [X] of investment.³³⁵ NECSWS also noted that the investment will [X] with the principal aim of investment being to retain existing customers but also to enable it to compete for new-name customers in the UK.
- 6.159 SSS has submitted that it believes it will take it [X] to develop a cloud-solution.³³⁶ We consider in detail the likelihood and timing of SSS developing a cloud-based

³³⁴ NECSWS, main party hearing transcript, 27 July 2022, page 44, lines 13-17.

³³⁵ NECSWS, main party hearing transcript, 27 July 2022, page 45, lines 1 and 3.

³³⁶ SSS response to the CMA's RFI 4, 13 July 2022, paragraphs 71.2 and 72.8.

ICCS product in the following section. While SSS does not currently have a [X]cloud based ICCS, it can offer customers a [X] solution and it has submitted bids with a [X] offering in recent tenders that had a [X]cloud requirement.³³⁷ For example:

- (a) SSS bid and won the [X] tender with a [X]. We note that SSS was the only bidder in this tender.³³⁸ Additionally, SSS noted that [X].³³⁹
- (b) SSS has also bid for an ICCS-only contract with a [X].³⁴⁰
- (c) SSS has also submitted a bid for a [X] offer to [X], for a control solution for CAD and ICCS earlier this year. SSS has been unsuccessful in this bid.³⁴¹

6.160 We therefore consider that while SSS does not yet have a [X]cloud solution, it may still be able to provide some constraint, through offering [X]. SSS appears to have both the ability and incentive to continue to compete for customers while it develops its [X] cloud offering. In particular, despite the fact that the [X] fire and rescue tender has resulted in [X], SSS has still bid for several other customers with a similar [X] solution.

Required cloud-related changes in SSS's ICCS product

6.161 Prior to the merger, we have seen evidence that SSS had planned to develop its ICCS product to make it a [X] cloud offering:

- (a) One document notes that SSS [X].³⁴²
- (b) Another internal document noted that SSS's short-to-medium term strategy was to [X].³⁴³

6.162 However, due to [X].³⁴⁴

6.163 Despite [X].³⁴⁵ [X].

6.164 SSS estimates that even if it had to rewrite its ICCS software to achieve a cloud-based product that this could be done in [X].³⁴⁶

³³⁷ A hosted solution is one where the supplier hosts the solution on its own premises (or at a data centre) rather than at the customer's premises. The infrastructure is private and the resources are not shared with any other customers or organisations. Upgrades can be deployed by the supplier directly. One disadvantage of this approach is that it is more costly than a public-cloud solution since it does not realise cost savings from shared resources.

³³⁸ SSS response to the CMA's RFI 4, 13 July 2022, paragraph 73.3.

³³⁹ SSS response to the CMA's RFI 4, 13 July 2022, paragraph 73.10.

³⁴⁰ SSS response to the CMA's RFI 4, 13 July 2022, paragraph 73.13.

³⁴¹ SSS response to the CMA's RFI 4, 13 July 2022, paragraph 73.14.

³⁴² Parties, Issues Meeting presentation, 6 April 2022, slide 10.

³⁴³ Appendix C, Document 28.

³⁴⁴ Parties Initial Phase 2 Submission, 31 May 2022, paragraph 2.5.

³⁴⁵ SSS response to the CMA's RFI 4, 13 July 2022, paragraphs 72.1 and 72.2.

³⁴⁶ SSS response to the CMA's RFI 4, 13 July 2022, paragraphs 71.2 and 72.8.

6.165 SSS has stated that [REDACTED].³⁴⁷

6.166 Most recently, SSS has informed the Monitoring Trustee (**MT**) that it [REDACTED].³⁴⁸

6.167 We note that there is some uncertainty around how long it would take SSS to transition its ICCS product to have [REDACTED]cloud functionality. In particular, in one submission from SSS, see paragraph 6.140(c), it noted that it would take between [REDACTED]. However, SSS indicated in another submission that it is likely to be possible within [REDACTED] and possibly sooner.³⁴⁹ In addition, SSS is recognised as having [REDACTED].³⁵⁰ This could support its ability to achieve this.

Viability of investment plans

6.168 We have also considered the incentive to invest in transitioning SSS's ICCS product to being a [REDACTED]cloud solution. As noted above, the exact size of the investment needed is uncertain, as is the potential return and timing of that return. However, we note that all investments entail some degree of uncertainty and risk. In the round, our provisional view is that there is likely to be an incentive for investment. In particular:

- (a) SSS has a sizeable customer base, some of which will be at risk in the coming two years due to contracts terminating, and which investment in a credible pathway to a [REDACTED] cloud offering may allow it to retain;
- (b) In addition, a credible pathway to cloud may allow it to win new customers;
- (c) As noted above, SSS had a plan to develop its ICCS product pre-merger which was not progressed due to the financial difficulties faced by Capita;
- (d) SSS is currently making progress to develop its cloud-based ICCS (see paragraphs 6.165 and 6.166);
- (e) ICCS is considered by SSS to be a '[REDACTED]' product with a contribution margin of [REDACTED],³⁵¹ which reflects its profitability. Generally, we consider that, as a starting point, a product in which a competitor has been successful and is generating [REDACTED] is more likely to be one in which it will consider investing to try and maintain its historic/current position.
- (f) Other competitors, some of which have much smaller existing UK customer bases than SSS, are also investing in [REDACTED]cloud products. This suggests that the returns available to investment in ICCS justify the investment. We also

³⁴⁷ SSS response to the CMA's RFI 4, 13 July 2022, paragraph 72.6.

³⁴⁸ Second MT Report, 5 August 2022, paragraph 3.2.5.

³⁴⁹ SSS response to the CMA's RFI 4, 13 July 2022, paragraphs 71.2 and 72.8.

³⁵⁰ Appendix C, Document 2, 16.

³⁵¹ SSS, main party hearing transcript, 2 August 2022, pages 10, line 25 and 11, line 3.

recognise that SSS could seek to provide its ICCS overseas to spread investment costs; and

- (g) NECSWS noted that the end product for ICCS [X].³⁵² In particular, NECSWS spoke about taking the [X].³⁵³ This suggests that while SSS's ICCS product requires some investment it provides an attractive starting product to build on.

6.169 We note that there is some uncertainty about the investability of the SSS business in its entirety given the mixed evidence on potential buyers. While many potential buyers were not interested in purchasing SSS, their reasons and potential incentives varied. No bidder specifically mentioned the ICCS product as a reason for declining to bid, and therefore we consider that the lack of interest in purchasing SSS by certain potential bidders does not provide support for a lack of an investment case in ICCS on a standalone basis.³⁵⁴ We also note that Capita's reason for [X] from SSS was not solely related to SSS or ICCS, but rather [X].³⁵⁵ We consider here the viability of investment in ICCS as a standalone product.

6.170 We also recognise that two [X] suppliers without public-cloud functionality are currently in the process of investing in their products to develop it. As discussed in paragraph 6.158, NECSWS is in the process of developing its ICCS product. Saab told us that the transition to cloud is hugely important [X].³⁵⁶

6.171 We consider that the evidence from NECSWS and Saab, both of whom have a smaller UK customer base than SSS, indicates that it is likely that SSS would also have an incentive to make similar investments. In particular:

- (a) a small customer base can make the product profitable; and
- (b) we have seen evidence that customers retaining their incumbent supplier for a long duration is a feature of the market (on the assumption that a customer's needs are being met) and that it is difficult to win new customers. For example:
 - (i) one competitor noted that 'customers in general do not regularly change their ICCS or CAD provider and enter into long contracts, for example five years plus'.³⁵⁷

³⁵² NECSWS, main party hearing transcript, 27 July 2022, page 53, lines 3-6.

³⁵³ NECSWS, main party hearing transcript, 27 July 2022, page 53, lines 3-6.

³⁵⁴ Capita response to the Counterfactual WP, 4 August 2022, paragraphs 2.6 to 2.8.

³⁵⁵ Capita response to the CMA's RFI 2, 13 June 2022, question 63.

³⁵⁶ Note of a call with [X], July 2022, paragraph 3.

³⁵⁷ Note of a call with [X], June 2022, paragraph 5.

- (ii) another competitor stated ‘where suppliers have an incumbency position, this does make it difficult for a customer to move away from its incumbent supplier’.³⁵⁸
- (iii) a third competitor noted ‘customer loyalty and disloyalty are features of the market. Customers with good relationships with their existing suppliers are difficult to dislodge. However, if a supplier performs poorly, particularly in terms of support and maintenance, the customer will be open to change. One difficulty arises out of customers finding creative ways to extend contracts as it is cheaper than going out to tender’.³⁵⁹
- (iv) NECSWS told us that ‘new customers are hard to win. So [X]’.³⁶⁰

6.172 Given this, we consider that SSS’s current large customer base provides a strong starting position for it to have an incentive to invest in its product to ensure that it is meeting customer’s future needs and putting itself in the best position to retain the customers it already has.

6.173 Overall, we consider that NECSWS and SSS may not be able to compete for tenders with a firm requirement for a [X] cloud solution that will be ready for implementation in the next few years (although, as we note above, it is likely to be possible to compete in some tenders with [X] cloud or flexible cloud requirements [X], although this may not always lead to attractive financial terms for the supplier). However, we consider that it is likely that they would both continue working to develop [X] cloud capability such that they could eventually compete for such tenders. We also consider that they, and other competitors who have not yet developed a full [X] cloud solution, could use this ongoing development as a credible basis for competing in tenders through offering a roadmap to a [X]cloud solution and that this is likely to be sufficient to allow them to compete for some opportunities (see below).

Tenders requiring an on-premise solution and/or roadmap to cloud

6.174 The extent to which the Parties will exert a competitive constraint prior to developing their [X]cloud solutions will depend on:

- (a) customers’ willingness to accept an on-premise solution and/or a roadmap to cloud; and

³⁵⁸ Note of a call with [X], June 2022, paragraph 5.

³⁵⁹ Note of a call with Saab, July 2022, paragraph 7.

³⁶⁰ NECSWS, main party hearing transcript, 27 July 2022, page 25, lines 17-22.

- (b) customers' willingness to tolerate some uncertainty about the viability of the Parties' public-cloud solution and timing for when this will be developed.

6.175 We have seen evidence that suggests that there are still some customers whose stated preference is an on-premise solution and/or who have reservations about moving to a public-cloud solution:

- (a) customer evidence as set out in paragraph 6.145;
- (b) evidence from competitors as set out in paragraphs 6.147 to 6.148; and
- (c) one of SSS's internal document states '[X<]'.³⁶¹

6.176 Therefore, our view is that some tenders in the next few years are likely to require a solution that is on-premise. We note that the number of tenders with such requirements may be small and declining in the coming years, especially given the PDS strategy that is set out in paragraph 6.143.

6.177 Furthermore, we have seen some evidence that an on-premise solution that is complemented with a road-map to a [X<] cloud solution may be suitable to some customers. For example:

- (a) South Wales Police & Gwent Police held a tender in January 2022 and considered both on-premise and cloud-options, but told us that its preferred solution is on-premise. It explained that at a high-level, while the organisation does have a cloud-first strategy, there is a balance of risk with services like the control room system, particularly given the risks around major telecoms outages. Its risk analysis concluded that it would prefer that control room solutions should be on premise at present.³⁶² However, during the tender evaluation, suppliers were scored on whether they already had a cloud solution in a live environment or not; they were further scored on the way each supplier could provide a future cloud solution.³⁶³ [X<] noted that it withdrew from this tender because of the requirement to initially install an on-premise solution with the potential to move to the cloud.³⁶⁴

6.178 We consider that the above example demonstrates that some customers in the next few years may find an on-premise solution with a credible road-map to cloud not only acceptable, but preferable, and for such customers it will be a necessity that a supplier will be able to offer an on-premise solution.

6.179 As set out above, we consider that both NECSWS and SSS are likely to continue to develop their [X<] cloud solutions. Given the tender example above we consider

³⁶¹ Appendix C, Document 26.

³⁶² Note of a call with [X<], June 2022, paragraph 6.

³⁶³ Note of a call with [X<], June 2022, paragraph 6.

³⁶⁴ Submission from [X<] to the CMA, '[X<]', 1 July 2022.

that this may allow the Parties to use any development as a credible basis for competing in tenders through offering a roadmap to a [X] cloud solution.

- 6.180 Overall, on the basis of the evidence from customers, recent tenders, competitors and the PDS, we consider that there is likely to be a small and possibly declining number of opportunities in the next few years that will either only require an on-premise solution or where an on-premise solution with a credible road map to cloud may be acceptable (or even desirable) to the customer. For such opportunities, we consider that the Parties are likely to be two of the better placed suppliers to win given their current product offerings and that suppliers such as Motorola that only have a cloud solution may not bid if the requirement is for an on-premise solution with a roadmap to cloud.

Non-cloud based technical and quality considerations

- 6.181 Regardless of whether a tender has a requirement for on-premise, privately-hosted or public-cloud, it will contain a set of other requirements in relation to functionality, features and useability. We have considered how well placed the Parties are to compete over these criteria. In particular, evidence from recent tenders suggests that SSS [X]:
- (a) [X].³⁶⁵
 - (b) [X].³⁶⁶
 - (c) [X].³⁶⁷
 - (d) [X].³⁶⁸
- 6.182 Although [X] suggest that SSS's product was [X] as some of its competitors (supporting competitor's views in paragraph 6.130 that SSS's ICCS product is viewed as somewhat of a legacy product), it was not disqualified on technical grounds. Furthermore, SSS was often [X].
- 6.183 However, one SSS internal document produced in March 2022 described its ICCS system as 'rock solid'.³⁶⁹
- 6.184 There is uncertainty around the extent and cost of non-cloud related investment which SSS would need to make in its ICCS product to modernise its product to be more technically competitive going forward. However, our provisional view is that this uncertainty is not sufficient to prevent us from considering that SSS exerts a

³⁶⁵ Appendix C, Document 24.

³⁶⁶ Appendix C, Document 25.

³⁶⁷ SSS, main party hearing transcript, 2 August 2022, page 7, lines 1-5.

³⁶⁸ Response to the CMA questionnaire from [X], 9 June 2022, question 8.

³⁶⁹ Appendix C, Document 13.

competitive constraint (recognising that a constraint exists even where it does not ultimately win a tender but still competes for it).

Scope for Parties to win extensions/direct awards

- 6.185 In addition to tenders, we recognise that opportunities for extensions are also situations where indirect competitive pressure can be exerted (see Nature of competition). As set out in paragraph 6.101, SSS has a strong track record of winning direct awards and extensions. Our understanding is that given there are relatively few public-cloud solutions that have been in place for some time most past extensions have been for on-premise solutions.
- 6.186 As set out in paragraph 6.171(b) we have seen evidence that it is attractive for customers to stay with their current supplier if their supplier meets their requirements (in terms of functionality and value for money) and competitors can find it difficult to win new customers and try to retain customers. This suggests that there may be an incentive for a customer to extend with their current supplier, particularly if the supplier can demonstrate a credible roadmap to any desired product improvements.
- 6.187 Additionally, one SSS internal document produced in February 2022 indicates that a [X].³⁷⁰
- 6.188 NECSWS also noted that it would continue to offer a [X].³⁷¹ Furthermore, it expects market demand to accelerate even further towards cloud once ESN is completed and operating.³⁷² This indicates that in the next couple of years there are likely to be at least some opportunities for non public-cloud products.
- 6.189 Overall, we consider that the Parties will be well placed to win direct awards, and in particular, extensions in the next few years. We reach this view on the basis of their track record of winning these types of opportunities and their relatively large customer bases meaning they will have multiple opportunities to win such extensions.

Competitiveness of competitors' products

- 6.190 [X] currently offers a public-cloud ICCS product putting it in a good position to win upcoming opportunities that have cloud requirements. [X] told us that it intends to bid for more than [X] ICCS opportunities over the next two years.³⁷³ However, it

³⁷⁰ Appendix C, Document 12.

³⁷¹ NECSWS, main party hearing transcript, 27 July 2022, page 46, lines 2-5.

³⁷² NECSWS, main party hearing transcript, 27 July 2022, page 46, lines 14-16.

³⁷³ Response to the CMA questionnaire from [X], 31 May 2022, question 4.

also noted that the level of customer requirements for each contract would, to an extent, determine [§<] capacity for future bids.³⁷⁴

- 6.191 Frequentis also currently offers a public-cloud ICCS product and this puts it in a good position to win upcoming opportunities that have cloud requirements. However, Frequentis submitted that it intends on bidding for approximately 13 of ICCS opportunities over the next two years.³⁷⁵ Frequentis noted that in the recent past it has opted not to bid for some contracts based on its likely chance of winning a bid (following receipt of the tender details) or being able to offer the best solution in a particular market. Additionally, in some cases, it has had a conflict of resources and priorities and at any given time, there are usually more opportunities to bid than it does bid for due to customer timelines.³⁷⁶ [§<].
- 6.192 [§<].³⁷⁷ [§<].³⁷⁸
- 6.193 Systel has a private cloud capability via its data centre. However, Systel only supplies fire and rescue customers and Systel submitted that it only intends on bidding for six ICCS opportunities over the next two years.³⁷⁹ Therefore we consider that Systel is likely to add a further specific, but limited, constraint on the Parties.

Provisional view on future competition

- 6.194 A substantial proportion of opportunities forthcoming in the next few years are likely to consider suppliers' cloud capabilities as one element – and in some cases a key element – of their requirements.
- 6.195 We consider that the Parties are not well placed to win opportunities in the next few years which require an immediate public-cloud deployment. However, we consider that they will have an incentive to develop these capabilities.
- 6.196 [§<], the opportunity to retain its substantial customer base, and the possibility of winning new customers suggest that its current ICCS product is likely to provide a good starting base for an investment case to develop a cloud-capable solution. SSS is currently investigating and taking steps to further develop its strategy for potential [§<] cloud enablement. This indicates that SSS is likely to be a more effective competitor in the future.
- 6.197 The evidence suggests that it is unlikely that all upcoming tenders will require a [§<]cloud solution to be implemented immediately. A credible roadmap to cloud, or

³⁷⁴ Note of a call with [§<], June 2022, paragraph 15.

³⁷⁵ Response to the CMA questionnaire from [§<], 31 May 2022, question 4.

³⁷⁶ Note of a call with [§<], June 2022, paragraph 11.

³⁷⁷ Response to the CMA questionnaire from [§<], 31 May 2022, question 4.

³⁷⁸ Note of call with [§<], July 2022, paragraphs 8 and 11.

³⁷⁹ Response to the CMA questionnaire from [§<], 31 May 2022, question 4.

a hybrid solution ([X]), is likely to be enough to enable the Parties to compete for a number of opportunities, particularly where they are the incumbent suppliers.

- 6.198 The Parties will also be well-placed to compete for direct awards and extensions, particularly for their existing customer bases.
- 6.199 The Parties will face some constraint from other suppliers, and this may increase over the next few years, but not materially so. Motorola and Frequentis have a head-start on the Parties given that both of them already have a cloud-based product. [X] is likely to provide a strong constraint [X]. However, the Parties are not the only competitors without a [X] cloud offering currently and Frequentis, Saab and Systel are all likely to face constraints in the number of tenders that they can bid for and service over the next couple of years.

Provisional conclusion

- 6.200 We have found that the ICCS market is characterised by a relatively high degree of market concentration with the Parties being the first and third largest suppliers in the market on a revenue basis. The ICCS market is also extremely important for public safety and the ICCS product needs to be available 24/7/365 where customers mandate that there can be no single point of failure to avoid having a severe impact on public safety.
- 6.201 We are mindful that where the CMA finds evidence that competition mainly takes place among a few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.³⁸⁰ We have therefore considered the evidence of a high degree of concentration, and the importance of the product market, alongside the other evidence we have collected.
- 6.202 There have been relatively few opportunities in the ICCS market in the last five years. Where tenders have taken place on average only two suppliers have submitted a bid for them. SSS has had a good track record of retaining its customer base through direct awards and extensions. However, it has lost some customers recently and has often been unsuccessful in winning new customers via tenders since 2017. Despite this, SSS has frequently participated in tenders with a focus of competing on price and has been involved in [X] of the same opportunities as NECSWS with both Parties having competed directly in [X] of the tenders that NECSWS bid for. We consider that this indicates that the Parties are competitive constraints on each other and that SSS has acted as an competitive constraint in the market.

³⁸⁰ CMA129, paragraph 4.10.

- 6.203 The internal documents that we have viewed show that the Parties consider each other as major competitors in ICCS. Competitors and customers also told us that the Parties are two of the main ICCS suppliers in the market.
- 6.204 We have considered the prospects for each of the Parties' and their competitors' offerings in the future and whether the strength of the constraint they provide may change.
- 6.205 We consider that NECSWS will be a strong constraint in the market going forward given that it is in the process of developing its ICCS product to both modernise it and be cloud-capable.
- 6.206 We also consider that SSS is in the process of exploring options for transitioning its product to the [X] cloud and there is likely a case for investment in SSS's ICCS product to make it a more effective competitor in the future.
- 6.207 While NECSWS and SSS work on developing their [X] cloud solutions, we consider that they will continue to be effective competitors as an on-premise solution, a credible roadmap to a [X] cloud solution or a hybrid solution ([X]) is likely to be enough to enable the Parties to compete for a number of opportunities, particularly where they are the incumbent suppliers. The Parties will also be well-placed to compete for direct awards and extensions, particularly for their existing customer bases.
- 6.208 With regards to other suppliers, we consider that Motorola is well positioned in the market and will remain a strong constraint in the market in the future. Frequentis is also well positioned in terms of its product offering. However, given the Parties' view of Frequentis's recent challenges in delivering on contracts that it has won, and Frequentis's strategic decision to limit the number of tenders that it bids on, we expect it to face constraints in the number of tenders that it can bid for and service in the next few years. We consider that Saab will also provide a constraint given that it has been successful in recent tenders. However, we note that it bids strategically and focuses on tenders requiring an integrated CAD and ICCS solution. Given Systel's focus on fire and rescue customers, and the relatively small number of tenders that it expects to bid for in the next couple of years, we consider that Systel adds a further specific, but limited, constraint on the Parties.
- 6.209 In the round, we consider that the evidence shows that the Parties are currently close and important competitors in a concentrated market. SSS has had less recent tender success but has nonetheless imposed an important constraint and we consider there is likely a case for investment which will make it a more effective competitor in future. We have therefore provisionally concluded that the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS to emergency services and transport customers in the UK.

7. COMPETITIVE ASSESSMENT - DUTIES

- 7.1 In this chapter, we assess whether the loss of competition between NECSWS and SSS as a result of the Merger has resulted, or may be expected to result, in an SLC in the supply of Duties to police forces in the UK.
- 7.2 The Parties currently overlap in the supply of Duties to police forces in the UK. The Merger combines the two Parties and removes any competitive constraint they place on each other. We have considered whether the Merged Entity would be likely to worsen its offering (for example, by removing available product lines, reducing service quality or investment, or increasing prices) compared to the situation if the Merger did not take place. This is a horizontal unilateral effects theory of harm.
- 7.3 This chapter sets out details of our investigation and provisional findings in relation to this theory of harm, covering: (a) details of the Parties' and competitors' offerings; (b) market definition; (c) the key evidence we have reviewed in our competitive assessment, including: market shares; our assessment of the Parties' internal documents; analysis of recent opportunities; evidence from third parties; and our assessment of future market developments; and (d) our provisional conclusions.

Suppliers' offerings

- 7.4 The Parties are two of the main Duties suppliers currently active in the UK. These suppliers offer differentiated Duties products to customers. We briefly outline some of the features of these suppliers' offerings below.
- (a) NECSWS³⁸¹ – NECSWS offers a duty planning and rostering software solution called CARM to UK police forces. CARM can connect to other back-office systems but is not part of a broader Enterprise Resource Planning (**ERP**) solution (ie wider enterprise resource planning software that include HR and finance functions).³⁸² [3<].³⁸³
- (b) SSS³⁸⁴ – SSS offers a Duties management solution to UK police forces known as Origin DMS. This is part of the broader Origin product which is an integrated suite of modules covering multiple back-office functions, such as Leave Requests, Time Management and Health & Safety. Customers may

³⁸¹ FMN, paragraphs 12.51 to 12.53.

³⁸² See paragraph 7.19 for further details as regards ERP solutions.

³⁸³ NECSWS response to Cloud WP, 4 August 2022, page 40.

³⁸⁴ SSS Site Visit Presentation, 13 June 2022, slides 60-61.

use all, or just some, of these modules. Origin can be deployed on-premise or deployed [redacted].³⁸⁵

- (c) Crown Workforce Management (**Crown**)³⁸⁶ – Crown is a dedicated Duties supplier which offers a Duties system to police forces. Its system can integrate with ERP suppliers. [redacted].
- (d) Totalmobile³⁸⁷ – Totalmobile offers a workforce management tool that enables shift pattern design. Totalmobile operates in the police sector, as well as ambulance and other sectors. Its solution can integrate with other suppliers. Totalmobile uses an on-premise solution but has recently developed a cloud-based version using Microsoft Azure.
- (e) SAP³⁸⁸ – SAP has a workforce management system, but it does not currently actively provide this to emergency services customers (including police forces). However, SAP has previously provided customers with an on-premise ERP solution that contained elements of shift planning capabilities and some police forces continue to use this solution.
- (f) Zellis³⁸⁹ – Zellis provides a time and attendance solution that allows rostering of employees; clock in/clock out functionality; absence management; and automatic timesheet completion. This solution has both a web and mobile app. The product is typically sold as part of its payroll and HR solution. Zellis offers its Duties product to a range of customers across multiple sectors, including in the police sector.

Market definition

7.5 This section sets out our provisional views on the relevant market. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.³⁹⁰ An SLC can affect the whole or part of a market or markets.³⁹¹

7.6 While market definition can sometimes be a useful tool, it is not an end in itself.³⁹² The outcome of any market definition exercise does not determine the outcome of the CMA’s analysis of the competitive effects of the merger in any mechanistic way.³⁹³ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the

³⁸⁵ SSS response to the CMA’s RFI 4, 18 July 2022, question 75.1.

³⁸⁶ Note of a call with [redacted], June 2022, paragraph 3.

³⁸⁷ Note of a call with [redacted], June 2022, paragraph 2.

³⁸⁸ Submission from [redacted] to the CMA, 19 July 2022.

³⁸⁹ Response to the CMA questionnaire from [redacted], 9 March 2022, question 10.

³⁹⁰ As regards the Merger, see section 35(1)(b) of the Act.

³⁹¹ CMA129, paragraph 9.1.

³⁹² CMA129, paragraph 9.4.

³⁹³ CMA129, paragraph 9.4.

relevant market, or other ways in which some constraints are more important than others.³⁹⁴

Product scope

7.7 Product market definition starts with the relevant products of the merger firms.³⁹⁵ The Parties overlap in the supply of Duties to police forces only. We considered whether the market definition should be broader than this and whether other customer groups should be included (eg supply to all emergency services customers). We also considered whether the relevant market should be widened to include ERP. In identifying what other significant competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand.³⁹⁶ The CMA may also consider supply-side factors.³⁹⁷

Customer types

Parties' submissions

7.8 The Parties submitted that the relevant market should include the supply of Duties to all emergency services customers because:³⁹⁸

- (a) Duties software has broadly the same basic functionality regardless of customer type.³⁹⁹ All Duties software enables workforce planning, scheduling and shift management based on a set of rules which are an input into the software. Although the content of the rules themselves will generally differ between different categories of emergency services customer, the products and the types of rules involved are the same or broadly similar.⁴⁰⁰
- (b) The scale of investment required by, for example, NECSWS, to focus on a different set of emergency services customers such as fire and rescue customers would not present an obstacle to doing so.⁴⁰¹
- (c) There are no significant differences in ongoing customer support provided to different categories of emergency services customers.⁴⁰²

7.9 The Parties also submitted that the fact that some suppliers' shares of supply differ significantly across emergency services customer segments is not indicative of any significant difference in conditions of competition across different emergency

³⁹⁴ CMA129, paragraph 9.4.

³⁹⁵ CMA129, paragraph 9.6.

³⁹⁶ CMA129, paragraph 9.6.

³⁹⁷ CMA129, paragraph 9.6.

³⁹⁸ FMN, paragraph 13.27.

³⁹⁹ Parties' response to the Phase 1 Issues Letter, paragraph 4.6.1.

⁴⁰⁰ FMN, paragraph 13.16.

⁴⁰¹ FMN, paragraph 13.21.

⁴⁰² FMN, paragraph 13.24.

services customer groups as competition takes place ‘for the market’ in bidding markets such that shares of supply can fluctuate significantly.⁴⁰³

Our assessment

- 7.10 The starting point for our assessment is that the Parties supply Duties only to police forces.⁴⁰⁴

Differences in competitive conditions

- 7.11 The Parties’ own share of supply data indicates that the Parties and other suppliers of Duties, with the exception of Totalmobile, are only active in one emergency services customer segment.⁴⁰⁵ For example, according to the Parties’ data, [X]; [X] and [X] only serve fire and rescue customers; and Working Time Solutions only serves ambulance customers.⁴⁰⁶ The Parties’ data is consistent with feedback received from competitors during our investigation.^{407 408}
- 7.12 We acknowledge that in bidding markets with long term contracts current differences in shares of supply between customer segments may not necessarily be indicative of any significant difference in conditions of competition across different customer groups. However, in this case, the fact that only one sizable supplier of police forces is active across multiple emergency services segments is indicative that there may be significant differences in conditions of competition across these customer segments. This is further evidenced by the fact that suppliers seldom bid across segments (see paragraph 7.15 below).

Demand-side substitutability

- 7.13 We asked police forces whether a solution used by other emergency services customers could meet their needs. The responses were qualitative, but only a minority (three out of 14) said that solutions used by emergency services other than police forces could meet their needs.⁴⁰⁹ Several (six out of 14) police forces

⁴⁰³ FMN, paragraph 13.22.

⁴⁰⁴ FMN, paragraph 13.1.3.

⁴⁰⁵ FMN, Table 14.3A.

⁴⁰⁶ FMN, Table 14.3A.

⁴⁰⁷ [X] (response to the CMA questionnaire from [X], 3 March 2022, question 10). [X] (response to the CMA questionnaire from [X], 3 March 2022, question). [X] confirmed it currently supplies both ambulance and police customers (response to the CMA questionnaire from [X], 3 March 2022, question 10).

⁴⁰⁸ In the phase 1 issues meeting, the Parties noted that a number of key competitors (Crown, Totalmobile and SAP) supply both emergency services customers and other mobile workforce organisations. See slide 15 of the Phase 1 Issues Meeting presentation. We do not consider that this provides evidence that there is substitutability across ‘different emergency services customers’. [X]. (Response to the CMA questionnaire from [X], 3 March 2022, question 11).

⁴⁰⁹ We have classified qualitative responses ourselves. The question was ‘13. Do you consider suppliers serving other emergency services as a viable alternative to supply your Duties needs? Please explain your answer’. We consider that 3 out of 14 respondents said solutions used by other emergency services providers could meet their needs, 6 out of 14 respondents said that a solution used by another police force could meet their needs, 2 out of 14 said other solutions couldn’t meet their needs and 3 out of 14 said they didn’t know. CMA analysis of 14 responses to our phase 1 questionnaire.

indicated that a solution used by another police force could meet their needs. This indicates that most customers would likely prefer to use a product already currently used by another police force.

- 7.14 Further, some customers highlighted specific features required by police forces. For example, one police customer highlighted that Duties software for policing is complex with all regulatory requirements needing to be ‘hard-coded’ in the software.⁴¹⁰ Another customer referred to Duties products for police forces needing to comply with UK Police legislation and terms and conditions for DMS and that products used by other emergency services are therefore not suitable without rework.⁴¹¹ One supplier also told us that fire and rescue services have different needs to police forces.⁴¹² This indicates that modifications would be needed for software to be used between different emergency services customer segments.

Supply-side substitutability

- 7.15 We have seen evidence that, from a supply-side perspective, switching into another customer segment may be time consuming and expensive. Supplier feedback also indicates that supply-side substitution is not feasible as expanding into a new customer segment is difficult due to the high level of tailoring needed to cater to the requirements of customers in a different segment. One third party that currently supplies the police said that it had considered offering its product to [X] customers, but [X].⁴¹³ Another third party indicated that it supplies ‘a specialist duty management system for [X] market’ that it had ‘spent over [X] building’ as part of and along with its [X], with a cumulative investment ‘in the region of [X].’⁴¹⁴
- 7.16 The Parties’ Opportunities Data shows that the Parties have [X] for Duties opportunities for [X] ambulance customers (they did not provide information on any opportunities in relation to fire and rescue).⁴¹⁵ Likewise, other suppliers (except Totalmobile) focus on a particular emergency services customer segment (eg [X]). For example, in our Opportunities Data (discussed in detail in paragraph 7.69), there is no instance of a supplier that is identified as being active in one customer segment being considered as an alternative by a customer in a different customer segment.⁴¹⁶
- 7.17 Furthermore, the internal documents that we have seen that consider the competitive landscape for Duties refer to suppliers that are active supplying the

⁴¹⁰ Note of a call with [X], January 2022, paragraph 33.

⁴¹¹ Response to the CMA questionnaire from [X], 10 March 2022, question 13.

⁴¹² Note of a call with [X], June 2022, paragraph 10.

⁴¹³ Response to the CMA questionnaire from [X], 3 March 2022, question 11.

⁴¹⁴ Response to the CMA questionnaire from [X], 3 March 2022, question 11.

⁴¹⁵ Parties, Response to CMA’s RFI 5 24 March 2022, Annex 3.1.

⁴¹⁶ This is based on three procurements by police forces and four procurements by fire customers.

police (ie the customer segment where the Parties are active), rather than suppliers to emergency services more generally. For example, SSS's internal documents refer to Crown, Totalmobile (GRS) and NECSWs (all of which are active in the police segment) and do not refer to suppliers such as [X] (which are all active in other customer segments).⁴¹⁷ The Parties submitted that Duties is a more limited area for NECSWs and the Parties have a lower level of focus and market visibility with respect to other Duties suppliers.⁴¹⁸ We consider that this supports a finding that the Parties see their key rivals as those that currently supply other police forces and not those that supply other segments.

Provisional view on segmentation by customer types

- 7.18 For the reasons set out above, our provisional view is that it is appropriate to segment the supply of Duties by emergency services customer type and that the relevant market for assessment covers the supply of Duties to police forces only.

ERP suppliers

Parties' submissions

- 7.19 The Parties submitted that the frame of reference should include both suppliers of Duties and suppliers of ERP software,⁴¹⁹ (ie wider enterprise resource planning software that include HR and finance functions). In particular, the Parties submitted that although Duties can be procured separately or as part of ERP software, most tenders are for wider ERP software rather than the Duties aspect alone. ERP suppliers can choose to sub-contract the Duties element to a third-party supplier or build a Duties product themselves. The Parties submitted that in the event of a small but significant and non-transitory price increase, ERP vendors that do not currently have an in-house Duties offering may see an opportunity to develop and supply their own Duties product. The Parties submitted that international ERP suppliers such as SAP and Oracle already supply Duties to police forces in the UK and that other ERP suppliers (such as Unit4 or Advanced) could readily develop a Duties capability by customising their existing ERP product.⁴²⁰
- 7.20 The Parties also submitted that third party feedback on substitutability between ERP software and Duties received by the CMA during its phase 1 investigation focused on degrees of functionality which might be more relevant to closeness of

⁴¹⁷ See, Appendix C, Documents 38-46.

⁴¹⁸ Parties' response to the Phase 1 Issues Letter, paragraph 4.7.

⁴¹⁹ Parties' response to the Phase 1 Issues Letter, paragraph 4.8.

⁴²⁰ FMN, paragraphs 13.15 and 13.25 and Parties' response to the Phase 1 Issues Letter, paragraph 4.8.1.

competition such that ERP suppliers should not be excluded from consideration as actual or potential competitors.⁴²¹

Our assessment

- 7.21 We considered whether suppliers of Duties are constrained by ERP suppliers and, as such, whether ERP suppliers should be included in the same relevant market as Duties suppliers.
- 7.22 Although customers sometimes procure Duties as part of a wider tender for an ERP software, we found that generally an ERP supplier will sub-contract the Duties component to a third party-supplier of Duties or will work with a customer's existing Duties supplier. We have seen very limited evidence that police forces use Duties solutions developed in-house by their ERP supplier.⁴²² Where we have seen evidence of a solution provided by an ERP supplier, these are legacy solutions, for which the ERP supplier no longer provides support and maintenance.⁴²³ Some police forces told the CMA that it is important that their Duties product integrates into wider systems such as their ERP software.⁴²⁴
- 7.23 Furthermore, as indicated in paragraph 7.14 above, Duties solutions are highly complex. We asked customers whether ERP solutions could be an alternative to Duties. Several customers (seven out of 17) did not consider that ERP solutions were an alternative, including some customers that had scoped these solutions as an option but found that they did not have the necessary functionality.⁴²⁵ These customers emphasised that Duties solutions are highly specialised and offer greater functionality than ERP software.⁴²⁶ For example, one police customer told the CMA that 'in the early stages' Duties solutions supplied by ERP suppliers had been 'fairly unsophisticated', and that as a result, police forces started demanding that their ERP provider enable integration with their existing Duties solution which had been designed and supplied by a third party.⁴²⁷ Another police customer said that as 'forces get used to the support of the deep functionality available [with a specialist Duties solution] they are reluctant to forego that for the poorer cousin functionality of the ERP module'.⁴²⁸ Another police customer that had scoped the

⁴²¹ Parties' response to the Phase 1 Issues Letter, paragraph 4.8.22.

⁴²² We have observed only one such instance in feedback from third parties. [§].

⁴²³ We understand [§] legacy, on-premise ERP solution which includes shift planning capabilities. Of [§] and this is for the ERP solution as a whole. Submission from [§] to the CMA, 19 July 2022.

⁴²⁴ For example, see Response to the CMA questionnaire from [§], 3 March 2022, question 10; Response to the CMA questionnaire from the [§], 3 March 2022, question 11; Response to the CMA questionnaire from [§], 3 March 2022, question 11.

⁴²⁵ We have classified qualitative responses ourselves. The question was '14. To what extent do you consider suppliers of Enterprise Resource Planning (ERP) software (which includes functions such as HR and finance), such as SAP and Unit4 (Agresso), to be an alternative to procuring Duties?'. We consider that 4 out of 17 respondents said ERP solutions were an alternative to Duties, 7 out of 17 respondents said they were not an alternative, 2 out of 17 said they would consider them and 4 out of 17 said they didn't know. CMA analysis of 17 responses to our phase 1 questionnaire.

⁴²⁶ For example, see responses to the CMA questionnaire from [§], [§], [§], [§], [§], [§], [§], 3 March 2022, questions 14 and 15.

⁴²⁷ Note of a call with [§], January 2022, paragraph 32.

⁴²⁸ Response to the CMA questionnaire from [§], 3 March 2022, questions 14 and 15.

possibility of replacing its specialised Duties solution with ERP software said that the functionality offered was ‘limited particularly in the policing context’ and that a third party specialised Duties solution had to be deployed alongside the ERP software to replicate the functionality available in its existing Duties solution.⁴²⁹

7.24 Suppliers of Duties solutions that responded to the CMA’s merger investigation did not consider that they compete with ERP solutions.⁴³⁰ A third party described ERP software and Duties solutions as complementary and explained that it [X].⁴³¹ That third party said that none of the principal ERP vendors including Oracle, Microsoft, SAP, Unit4/Agresso and MHR has a resource scheduling component that is capable of dealing with the many complexities of the police sector. Another third party said that ‘ERP software does not typically help with rostering, shift planning, time sheets or clocking in and out’ which Duties software does.⁴³²

7.25 We note that one internal SSS document states that while SSS’s main competitor is Crown, and NECSWs (Northgate) is an [X], the ERP supplier Oracle is a [X] to SSS’s Origin product. However, the same document also notes that Oracle [X].⁴³³

Provisional view on ERP

7.26 For the reasons set out above, we consider that ERP suppliers are unlikely to supply an appropriate substitute to Duties for police forces supplied by specialist suppliers. As such, our provisional view is that the relevant market should not include supply of broader ERP solutions.

Provisional view on product scope

7.27 For the reasons set out above, our provisional view is that the relevant product market is the supply of Duties to police forces. Our provisional view is that the relevant product market should not include the supply of Duties to other emergency services customer types or the supply of broader ERP solutions.

Geographic scope

7.28 We have considered the geographic scope of the relevant market. As with product markets, the CMA’s focus in defining geographic markets is on demand-side factors and identifying the most important competitive alternatives to the merger firms.⁴³⁴ The CMA may consider a range of evidence as regards geographic

⁴²⁹ Response to the CMA questionnaire from [X], 3 March 2022, questions 14 and 15.

⁴³⁰ Response to the CMA questionnaire from [X] and [X], 3 March 2022, questions 13 and 14.

⁴³¹ Response to the CMA questionnaire from [X] 3 March 2022, question 13.

⁴³² Response to the CMA questionnaire from [X], 3 March 2022.

⁴³³ SSS Internal Document, Annex 10.2.22 to the FMN, [X], 20 March 2021, slide 24-26.

⁴³⁴ CMA129, paragraph 9.13.

scope, including the views of market participants on consumer preferences and product characteristics.⁴³⁵

7.29 NECSWS submitted that the narrowest candidate geographic market is the UK.⁴³⁶

7.30 One third party said that overseas suppliers had ‘not gained traction with any UK police services’.⁴³⁷ Another third party said non-UK suppliers ‘lack the specialist functionality required’ to supply a Duties solution ‘within sensible timescale, risk and cost parameters’.⁴³⁸ Another third party said that it didn’t see any barriers to entry into the UK Duties market from other countries, although there are issues related to data protection, which would not be a problem as long as data is hosted in the UK.⁴³⁹ It also identified issues around the complexity of the solution, the reluctance of customers to change suppliers and the small size of the market. One customer noted that ‘UK Police legislation and terms and conditions for HR and DMS [is] likely preventative of immediate viable alternatives from other countries’.⁴⁴⁰

Provisional view on geographic scope

7.31 For the reasons set out above, particularly third parties’ views on the specificity of certain UK requirements, including those flowing from relevant legislation, our provisional view is that the appropriate geographic market definition for Duties is the UK.

Provisional view on market definition

7.32 For the reasons set out above, our provisional view is that the relevant market is the supply of Duties to police forces in the UK.

Competitive assessment overview

7.33 In the remainder of this chapter, we assess the key evidence we have reviewed in considering whether the Merger has resulted, or may be expected to result, in an SLC in the supply of Duties to police forces in the UK.

7.34 We have considered:

(a) market shares;

⁴³⁵ CMA129, paragraph 9.13.

⁴³⁶ FMN, paragraph 13.27. This submission was made across the Relevant Markets and applies also to Duties.

⁴³⁷ Response to the CMA questionnaire from [§<], 3 March 2022, question 15.

⁴³⁸ Response to the CMA questionnaire from [§<], 3 March 2022, question 15.

⁴³⁹ Note of a call with [§<], June 2022, paragraph 12.

⁴⁴⁰ Response to the CMA questionnaire from [§<], 3 March 2022, question 17.

- (b) internal documents;
- (c) recent opportunities;
- (d) customers' and competitors' views; and
- (e) market developments.

7.35 After our assessment of these various types of evidence, at the end of this chapter, we set out our provisional conclusion.

7.36 In this chapter, we have considered a horizontal unilateral effects theory of harm. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.⁴⁴¹ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.⁴⁴² The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.⁴⁴³ 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.⁴⁴⁴

7.37 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.⁴⁴⁵ The more closely the merger firms compete the greater the likelihood of unilateral effects.⁴⁴⁶ The concept of close competition is not limited to products or services that have similar characteristics.⁴⁴⁷ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.⁴⁴⁸ Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.⁴⁴⁹ The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.⁴⁵⁰ For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the

⁴⁴¹ CMA129, paragraph 4.1.

⁴⁴² CMA129, paragraph 4.3.

⁴⁴³ CMA129, paragraph 4.3.

⁴⁴⁴ CMA129, paragraph 4.3.

⁴⁴⁵ CMA129, paragraph 4.8-4.10.

⁴⁴⁶ CMA129, paragraph 4.8.

⁴⁴⁷ CMA129, paragraph 4.9.

⁴⁴⁸ CMA129, paragraph 4.9.

⁴⁴⁹ CMA129, paragraph 4.10.

⁴⁵⁰ CMA129, paragraph 4.10.

elimination of competition between them would raise competition concerns, subject to evidence to the contrary.⁴⁵¹

Market shares

7.38 In this section we present estimates of market shares within the Duties market. In a differentiated market such as the supply of Duties to police forces in the UK, horizontal unilateral effects are more likely to result from a merger where one or more of the merger parties has a strong position in the market.⁴⁵² The level and stability of market shares are relevant evidence in this regard.⁴⁵³

Parties' views

7.39 The Parties submitted that market shares need to be interpreted with caution for the purposes of a forward-looking merger assessment.⁴⁵⁴

7.40 They submitted that little weight should be attributed to a market share analysis for the purposes of assessing different suppliers' past, present and future competitive strength.⁴⁵⁵

7.41 The Parties submitted estimates of market shares for the supply of Duties to police forces in the UK in 2021. Their estimates were made on a volume basis, based on the number of police officers per police customer, according to official data on the number of police officers per force in England and Wales as of March 2021.⁴⁵⁶ The Parties' estimates are shown in Table 7-1.

Table 7-1 Shares of supply for supply of Duties to police forces (UK, 2021)

Competitor	Number of police officers (%)
NECSWS	[30-40]
Capita SSS	[20-30]
Parties Combined	[50-60]
Crown	[20-30]
Totalmobile (GRS)	[10-20]
SAP	[5-10]
Zellis	[0-5]
Midland HR	[0-5]
In House	[5-10]
Total	100%

Source: FMN, Table 14.3A.

⁴⁵¹ CMA129, paragraph 4.10.

⁴⁵² CMA129, paragraph 4.12(a).

⁴⁵³ CMA129, paragraph 4.12(a).

⁴⁵⁴ Parties' response to the Market Shares WP, 4 August 2022, paragraph 1.

⁴⁵⁵ Parties' response to the Market Shares WP, 4 August 2022, paragraph 1.

⁴⁵⁶ FMN, paragraph 14.17.8.

Our assessment

- 7.42 Measures of concentration such as shares of supply can be useful evidence when assessing closeness of competition.⁴⁵⁷ Therefore, as part of our competitive assessment we often use market shares for the defined market(s) as one measure of the strength of different competitors.
- 7.43 We consider that examining market shares provides context to our competitive assessment of the Duties market. They are a measure of historical market concentration and, in particular, capture the outcome of previous competition in a period through which current suppliers have been active in the market. However, we also recognise that they have limitations which reduce their usefulness in this case. As such, we assess them alongside other evidence in the round in forming our provisional conclusion.
- 7.44 As part of our review we examined market shares using several different metrics (Table 7-2), including the revenue-based estimates, estimates based on customer numbers, and the Parties' volume-based estimates.

Table 7-2 Shares of supply for Duties suppliers (UK, 2021)

Competitor	Revenue (%)	Number of police officers (%)	Number of police forces (%)	Number of police forces
NECSWS	[10-20]	[30-40]	[10-20]	[<]
SSS	[50-60]	[20-30]	[30-40]	[<]
Parties Combined	[60-70]	[50-60]	[40-50]	[<]
Crown	[20-30]	[20-30]	[20-30]	[<]
Totalmobile (GRS)	[5-10]	[10-20]	[30-40]	[<]
SAP	[-]	[5-10]	[5-10]	[<]
Zellis	[0-5]	[0-5]	[0-5]	[<]
In House	[-]	[5-10]	[0-5]	[<]
MidlandHR/Unverified	[-]	[0-5]	[0-5]	[<]
Total	[>]	[>]	[>]	[>]

Note: The Parties' included MidlandHR in their volume estimates but MidlandHR told us it does not compete in the Duties market.

Source: CMA estimates based on Parties and third party data.

Shares by revenue: We have calculated revenue shares by collecting revenue information from suppliers active in the market.

Shares by number of police officers: We have repeated the Parties' estimates of shares by number of police officers.

Shares by number of police forces: We have calculated shares of the total number of police forces by using customer lists collected from suppliers currently active in the market.

- 7.45 The market share estimates differ across the three metrics. For the purposes of our merger assessment the most significant difference across metrics was in the size of NECSWS's market share. In the Parties' volume-based estimates NECSWS is found to have a market share of [30-40]%. A large proportion of this market share is attributable to NECSWS's provision of Duties to the Metropolitan Police, which has a high number of staff. If market shares are estimated on the basis of revenues or customer numbers, NECSWS's share falls significantly to [10-20]% or [10-20]% respectively.

⁴⁵⁷ CMA129, paragraph 4.14.

- 7.46 In general, in a differentiated product market we place more weight on revenue shares than other metrics, since they more accurately represent the economic value of contracts. We consider this holds in assessing this market. However, we also recognise that the revenue profiles of contracts vary such that revenues may not be a stable metric across time.⁴⁵⁸ We have therefore looked at all three metrics.
- 7.47 Regardless of the metric used, the Parties are two of the three largest competitors. Taken together, we estimate that the Parties' combined market share is around [40-50]%-[60-70]% with a minimum increment from the Merger of [10-20]%.

Provisional view

- 7.48 Overall, across all metrics, we consider that the current market share data shows that the supply of Duties to police forces is highly concentrated, with a small number of suppliers accounting for a large proportion of overall supply. In particular, the Parties are among the four largest suppliers, reflecting historical successes they have had in the market.

Internal documents

- 7.49 We have reviewed the Parties' internal documents for evidence of their own views of the competitive constraints they face.⁴⁵⁹ We note that we have found and reviewed relatively few internal documents discussing Duties. This may be because there are very few competitive opportunities for Duties or because it is a relatively small part of the Parties' businesses (approx. [3<]% of NECSWS's UK revenues and approx. [3<]% of SSS's UK revenues). Summaries of relevant points within the documents we have reviewed are given in Appendix C – from Document 32 to Document 46.

NECSWS's views – NECSWS's documents

- 7.50 NECSWS submitted that the documents that the CMA reviewed were primarily focused on the Metropolitan Police opportunity, which ended in a cancelled procurement. NECSWS submitted that its assumptions in relation to this opportunity as set out in the internal documents WP were inaccurate, because the 'main' suppliers NECSWS identified ([3<]) were not considered suitable by the Metropolitan Police.⁴⁶⁰

⁴⁵⁸ We have examined revenue market shares between 2019 and 2021 and found that they varied by up to nine percentage points. We have focused on the most recent (2021) revenue market shares and looked at these alongside other metrics.

⁴⁵⁹ CMA129, paragraph 4.13.

⁴⁶⁰ NECSWS's response to Internal Documents WP, 4 August 2022, paragraph 1.4.1(a).

- 7.51 NECSWS submitted that internal documents relating to Duties cited by the CMA are characterised by a level of optimism in relation to CARM [REDACTED].⁴⁶¹
- 7.52 NECSWS made the following observations on the substantive conclusions drawn in our Internal Documents WP:
- (a) NECSWS and SSS are not close competitors in Duties and have [REDACTED] against each other since [REDACTED] 2015. The Parties will not be close competitors, [REDACTED], in Duties absent the Transaction, because NECSWS intends [REDACTED].
 - (b) Duties products are broadly similar across emergency services customer segments and the non-emergency services user base. This allows ERP suppliers and workforce management suppliers to compete for Duties opportunities, as recognised in NECSWS's internal documents [REDACTED].

Our assessment - NECSWS's documents

Response to NECSWS's views

- 7.53 We acknowledge that the documents we have reviewed primarily focused on consideration of a historical Metropolitan Police opportunity. We consider they provide insight into NECSWS's views of the competitive landscape at the time and that even if its views proved to be ultimately incorrect as regards the specific opportunity [REDACTED], they reflect NECSWS's own assessment of the market at the point in time. We consider more recent developments related to the Metropolitan Police in paragraph 7.133 below.
- 7.54 In relation to NECSWS's submissions at paragraph 7.52 we consider the point about opportunities at paragraph 7.78, the point about future plans for CARM at paragraph 7.134 and the similarities with other products at paragraphs 7.10 to 7.26.

Closeness between the Parties

- 7.55 NECSWS mentioned and analysed [REDACTED] as a possible competitor when it considered the previous Metropolitan Police opportunity.⁴⁶² NECSWS saw [REDACTED] as having a similar Duties offering to itself.⁴⁶³

⁴⁶¹ NECSWS's response to Internal Documents WP, 4 August 2022, paragraph 1.4.1(b).

⁴⁶² Appendix C, Documents 32 and 34.

⁴⁶³ Appendix C, Document 34.

Closeness with others

- 7.56 NECSWS regularly mentions [X] and considers that [X] has a stronger offering than its own offering.⁴⁶⁴ NECSWS mentioned [X] once and did not conduct a detailed assessment of its offering (unlike with [X]).⁴⁶⁵ NECSWS mentioned [X] once but noted that its offering is not typically used by the police.⁴⁶⁶

Provisional view

- 7.57 We have seen only a limited number of NECSWS documents relevant to the Duties market. However, these documents indicate that the pool of competitors NECSWS mentions, and analyses, is very limited. NECSWS considers that [X] and [X] are close competitors to itself in the Duties market. Beyond these two suppliers NECSWS is also aware of [X] and [X] as suppliers, but the documents show they are not seen as close constraints.

SSS's views – SSS's documents

- 7.58 SSS submitted that historic documents do not reflect the current state of competition and the documents should be interpreted with reference to the context in which they were created, including that some documents were created in the context of the proposed sale of SSS, which might 'set out aspirational targets'.⁴⁶⁷
- 7.59 SSS submitted that an absence of any reference to Totalmobile in competitive assessments within its internal documents does not mean that SSS does not, in practice, view Totalmobile as a strong competitor.⁴⁶⁸ Even in the absence of specific references in SSS's internal documents, SSS submitted that it considers Totalmobile as providing a strong constraint.⁴⁶⁹
- 7.60 SSS submitted that, despite stating in a document that its product is the superior product in the market, it is not the case that [X].⁴⁷⁰

⁴⁶⁴ Appendix C, Documents 32, 33, 34, 38.

⁴⁶⁵ Appendix C, Document 34.

⁴⁶⁶ Appendix C, Document 34.

⁴⁶⁷ SSS's Response to the Internal Documents WP, 4 August 2022, 2.2 and 2.5.

⁴⁶⁸ We note that we have seen one reference to Totalmobile under the name of GRS which it acquired. See Appendix C, Document 41.

⁴⁶⁹ SSS's Response to the Internal Documents WP, 4 August 2022, 5.2.1.

⁴⁷⁰ SSS's Response to the Internal Documents WP, 4 August 2022, 5.2.2.

Our assessment - SSS's documents

Response to SSS's views

- 7.61 In relation to SSS's submissions set out at paragraph 7.58, we recognise these are historical documents and have taken their context into account when determining how much weight to place on them as evidence.
- 7.62 With regards to the submissions set out at paragraphs 7.59 and 7.60, we have seen no evidence to substantiate SSS's claims and note that they do not align with the other evidence we have reviewed in this chapter (as well as not being reflected in the terms of internal documents discussed in this section).

Closeness between the Parties

- 7.63 SSS regularly mentions NECSWS in its documents⁴⁷¹ and sees it as the [X] competitor in the Duties market (after Crown and itself).⁴⁷² While SSS sees NECSWS [X],⁴⁷³ [X] of its mentions of NECSWS show that it sees NECSWS as a competitor.

Closeness to other suppliers

- 7.64 SSS describes the Duties market in the UK as having intense rivalry, with only three main suppliers (Crown, NECSWS and itself).⁴⁷⁴ It has described itself in some documents as being the [X] and has in a recent [X], than both Crown and NECSWS.⁴⁷⁵
- 7.65 SSS regularly analyses Crown when assessing competitors.⁴⁷⁶ SSS recognises Crown as one of two major suppliers in the UK (the other being SSS itself).⁴⁷⁷ SSS sees Crown's product as being [X] than SSS's,⁴⁷⁸ but considers that Crown [X].⁴⁷⁹ This shows that SSS considers Crown as a [X] competitive constraint.
- 7.66 SSS mentions Totalmobile in one of its documents but note that it is not aware of it having recent success.⁴⁸⁰ This indicates that SSS views Totalmobile only as a [X] constraint.

⁴⁷¹ Appendix C, Documents 38, 40, 42, 43, 44, 45.

⁴⁷² Appendix C, Document 38.

⁴⁷³ Appendix C, Document 40.

⁴⁷⁴ Appendix C, Document 45.

⁴⁷⁵ Appendix C, Document 38.

⁴⁷⁶ Appendix C, Documents 38, 41, 43, 44, 45 and 46.

⁴⁷⁷ Appendix C, Document 38.

⁴⁷⁸ Appendix C, Documents 38 and 44.

⁴⁷⁹ Appendix C, Document 45.

⁴⁸⁰ Appendix C, Document 41.

7.67 SSS mentions Oracle in one document but only to note it has no Duties capability.⁴⁸¹ SAP is not referenced in SSS's documents.

Provisional view

7.68 We have seen only a limited number of SSS documents relevant to the Duties market. These documents show that SSS considers Crown to be its [X] competitor and [X] constraint on it in the market. SSS also considered NECSWS to be a competitor, the [X] strongest competitor in the market, albeit with a [X] product than itself. SSS's internal documents indicate that other providers are not considered to be material constraints on SSS.

Recent opportunities

7.69 Evidence of customer diversion between merger parties and past competitive interactions, such as merger parties' offers in tenders, is relevant to the assessment of closeness of competition.⁴⁸²

7.70 We have analysed customer data on opportunities (tenders, direct awards and extensions) since 2017 in the Duties market. These opportunities allow suppliers to retain their customers or win customers from their competitors. Consideration of a suppliers' frequency of participation and success rates in opportunities allows us to assess the current competitive constraints being provided by different suppliers.

Parties' views

7.71 The Parties submitted their own estimates of recent opportunities (the Parties' Opportunities Data) covering their understanding of the type of opportunity, which suppliers bid and which supplier was successful.⁴⁸³ They submitted that this analysis was clear evidence that the Parties were not close competitors in Duties.⁴⁸⁴ They submitted:

(a) [X]; and

(b) [X].

Our assessment

7.72 We have conducted our own assessment of recent opportunities in the Duties market, drawing on evidence received from customers, competitors and the Parties. We have found there to have been a very small number of opportunities in

⁴⁸¹ Appendix C, Document 43.

⁴⁸² CMA129, paragraph 4.13.

⁴⁸³ Parties, response to RFI 5, 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

⁴⁸⁴ Parties' initial Phase 2 Submission, 31 May 2022, paragraph 4.10.

the Duties market since 2017 (see Table 7-3). We have seen evidence of only one completed tender process,⁴⁸⁵ although we note that we have seen evidence of four tender/framework processes that were commenced and subsequently were either cancelled, delayed or deferred.⁴⁸⁶ We have seen evidence of [X] direct awards and note that for several of these we have conflicting information as to whether they were best described as a tender or a direct award.⁴⁸⁷ We have also seen evidence of [X] extensions.

Table 7-3 Duties opportunities since 2017

	Market wide total [X]	NECSWS	SSS
Tenders	-	-	-
Party involved in	-	[X]	[X]
Both Parties involved in	-	[X]	[X]
Won	-	[X]	[X]
Direct awards	[X]	[X]	[X]
Extensions	[X]	[X]	[X]

Note: 'Involved in' means that the Party was at least invited to the opportunity (and may have submitted an informal or formal bid).

Source: CMA analysis of Parties', customer and competitor data, data until June 2022.

7.73 We have also observed that there has been very few examples of customers changing suppliers. Almost all of the opportunities have been awarded to the incumbent supplier.

Closeness between the Parties

7.74 [X] both Parties have won direct awards and extensions over this period. SSS has [X] direct awards and [X]. NECSWS has [X] direct awards and [X] extension. For both Parties, these [X] have been entirely from existing customers where they held an incumbency position. The Parties' successes in direct awards and extensions indicates that they have been seen as viable options for their own customers.

7.75 The lack of direct competition between the Parties must be viewed alongside the very limited amount of direct competition to have occurred in the market at all. We consider that Parties' presence in the market means they have placed some indirect constraint on each other at the point of award for the opportunities discussed above.

Closeness with others

7.76 [X] we have identified in the market was for a wider package of software, of which Duties was only one component. SSS won this contract [X]. The customer identified other bidders for the contract, but we consider these bidders were

⁴⁸⁵ We recognise that some direct awards included an initial market test. However, where customers have described the eventual appointment as a direct award we have classified them in this manner.

⁴⁸⁶ Response to the CMA questionnaire from [X], 22 June 2022, question 3.

⁴⁸⁷ We recognise that some direct awards included an initial market test. In some cases the appointed supplier referred to these opportunities as tenders while the customer referred to them as direct awards. Where customers have described the eventual appointment as a direct award we have classified them in this manner.

unlikely to be able to provide the Duties component themselves, given no other evidence suggests they have a presence in the Duties market.⁴⁸⁸

- 7.77 Outside the [redacted] tender since 2017 the most active alternative supplier was Crown, which won [redacted] direct awards and [redacted] extension. While direct awards and extensions do not provide examples of direct competition with either of the Parties, as the most active supplier (in terms of winning opportunities) in the market, we consider that Crown's success in direct awards and extensions indicates that it exerted a strong indirect constraint as an alternative option for customers considering either tendering, or not appointing their incumbent supplier through a direct award or extension. Totalmobile was [redacted].

Provisional view

- 7.78 Our opportunities analysis shows that there are relatively few opportunities in the market and tender opportunities are particularly rare.
- 7.79 Almost all opportunities are won by incumbents. Crown and SSS have been particularly successful at retaining customers. NECSWS has also won some direct awards and extensions to retain its existing customers.
- 7.80 Overall, we consider the opportunities data shows little evidence of strong competition in the supply of Duties in the UK. The most successful suppliers in the market have been Crown and SSS and these are likely to have placed a constraint on each other, even if indirectly. There is relatively limited evidence of SSS and NECSWS placing a constraint on each other for opportunities; nonetheless, we consider that their ability to win direct awards and extensions indicates that they placed some indirect competitive constraint on each other.

Customers' views

- 7.81 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.⁴⁸⁹
- 7.82 We asked customers to identify all the Duties providers that they believed could meet their software requirements, ranking the suitability of their offering from one to five (where five is most suitable). The results are shown in Table 7-4.

⁴⁸⁸ Smartek21 Ltd, Pretium Change Management, Agilisys, Cloud Logik and DBaaS all submitted an official bid for the one tender but did not win it. We understand that this tender was for a combined ERP solution of which Duties was one aspect and that these competitors primarily provide ERP solutions as opposed to solely Duties. Response to the CMA questionnaire from Cleveland Police, 16 February 2022.

⁴⁸⁹ [CMA129](#), paragraph 4.13.

Table 7-4 Number of mentions of Duties suppliers

	<i>Number of mentions</i>
Crown	7
SSS	3
NECSWS	2
Totalmobile	2
SAP	1

Question: Please list all of the Duties providers that you believe could meet your software requirements in the following table, ranking the suitability of their offering from one to five (where five is most suitable)

Source: Eight customer responses to CMA phase 1 questionnaire.

- 7.83 Eight customers answered this question, out of 15 that responded to our phase 1 questionnaire (and 48 police forces in the UK).
- 7.84 Crown was mentioned the most times (mentioned by seven of eight respondents) as a supplier that could meet the customers needs. Only two forces commented on its strengths and weaknesses.
- 7.85 NECSWS was mentioned twice but neither of the respondents discussed NECSWS's strengths or weaknesses.⁴⁹⁰
- 7.86 SSS was mentioned three times. Only one force listed SSS's strengths and weaknesses.⁴⁹¹
- 7.87 Totalmobile was mentioned twice but neither of the respondents discussed Totalmobile's strengths or weaknesses.⁴⁹²
- 7.88 SAP was mentioned once as a suitable supplier.⁴⁹³

Provisional view

- 7.89 Given the relatively limited number of responses and the lack of elaboration by respondents on strengths and weaknesses, we place limited weight on this customer questionnaire evidence, but consider that it is consistent with other evidence in showing a limited competitor set and not identifying significant alternative suppliers to the Parties, Crown and Totalmobile.

Competitors' views

- 7.90 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.⁴⁹⁴

⁴⁹⁰ Response to the CMA questionnaire from [redacted] and [redacted], 3 March 2022, question 16.

⁴⁹¹ Response to the CMA questionnaire from [redacted], [redacted] and [redacted], 3 March 2022, question 16.

⁴⁹² Response to the CMA questionnaire from [redacted] and [redacted], 3 March 2022, question 16.

⁴⁹³ Response to the CMA questionnaire from [redacted], 3 March 2022, question 16.

⁴⁹⁴ [CMA129](#), paragraph 4.13.

7.91 [X].

7.92 Totalmobile⁴⁹⁵ submitted that SSS (Capita) and Crown are its main competitors⁴⁹⁶ in the Duties market for police forces. It did not refer to NECSWS as a competitor, but it noted that both NECSWS's and SSS's Duties products have a dated look and feel, although it considered that this is a problem with all Duties systems.

Provisional view

7.93 We consider that alternative suppliers identified the same competitor set as the other sources of evidence for the Duties market. The views of competitors indicate that Crown and SSS as the leading suppliers in the Duties market and that NECSWS and Totalmobile are credible (albeit less strong) competitors.

Market developments

7.94 We have assessed whether there are any market developments that may mean that the strength of the competitive constraint the Parties place on each other and others place on the Parties, may materially change.

7.95 We first assess how many future opportunities will arise, then how well placed the Parties and other suppliers are to compete for these opportunities and then whether, and how fast, there may be a change in customer requirements towards public-cloud solutions (see paragraphs 5.16-5.30 in chapter 5).

Number of opportunities

7.96 We have examined how many future opportunities are likely to arise in the Duties market and over what timeframes. This is relevant to the time period over which it is appropriate for us to assess the effects of the Merger.

7.97 Using evidence provided by suppliers, we have identified [X] likely tender opportunities over the period 2022 to 2023 (we were unable to identify if any, and if so how many, opportunities may arise in 2024).⁴⁹⁷

7.98 We consider that with these forthcoming opportunities for competition in the market, it is appropriate for us to focus our assessment in particular on the next few years to provisionally determine whether the Merger has resulted, or may be expected to result, in an SLC.

⁴⁹⁵ Note of a call with [X], June 2022, paragraph 10.

⁴⁹⁶ Totalmobile also listed Allocate Software as a competitor, although this was in the context of provision of rostering to the NHS, rather than police customers, and hence we have omitted above.

⁴⁹⁷ Response to the CMA questionnaire from [X], 13 June 2022, question 4.

Future transition towards cloud-based services

Parties' views

- 7.99 The Parties submitted that it is now essential for suppliers to be able to offer a cloud-based solution in Duties.⁴⁹⁸ They submitted that on-premise solutions will continue to be relevant for extensions in the near future, given customers' existing solutions, but they will not be able to impose a meaningful competitive constraint in relation to new contract tenders, taking into account (in the Parties' view) clear evidence of the trend in this direction.
- 7.100 Further, the Parties submitted that suppliers with cloud-based capabilities currently exert a strong competitive constraint, and that (in their view) the evidence suggests that customers' adoption of cloud-based solutions will only increase in the near future.⁴⁹⁹ The Parties submitted that suppliers who do not keep up with customer requirements are likely to exert a materially weaker constraint going forward.

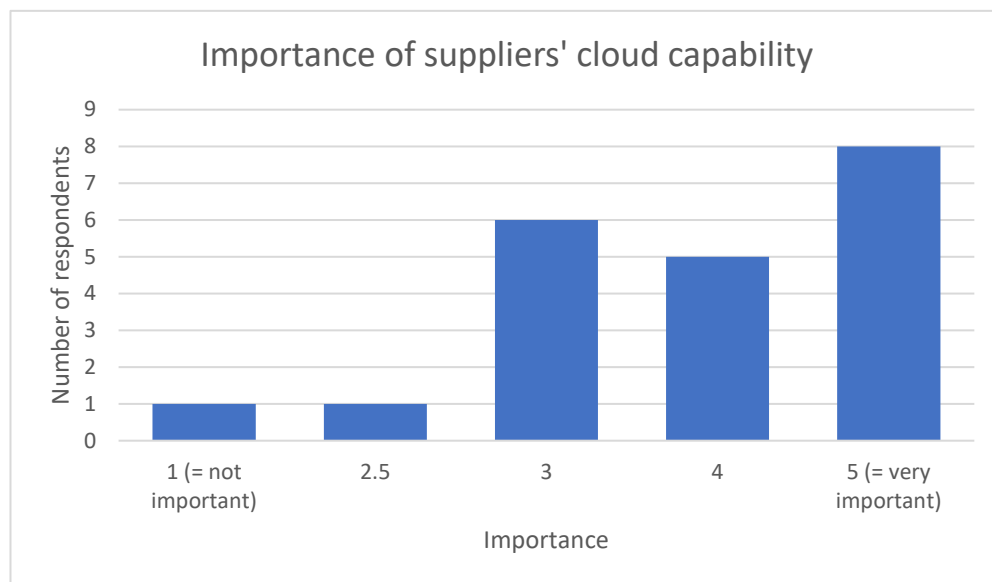
Customers' views

- 7.101 We asked customers to indicate how important they expected cloud-based services to be in future. Figure 7-1 below shows that most Duties customers answered that cloud would be important in future (13 out of 21 answered that it was between four and five in importance on a scale of one to five, with five being very important and one being not important).

⁴⁹⁸ Parties, Response to Market Developments WP, 4 August 2022, page 40.

⁴⁹⁹ Parties, Response to Market Developments WP, 4 August 2022, page 40.

Figure 7-1 Duties: Customers – importance of cloud



Note: One customer gave a response of '2.5' which is shown on the x axis of the chart.

Question: Q31. When next deciding on a Duties product, how important or unimportant will a Duties suppliers' cloud capability be for you?

Base: 21 police forces.

Source: CMA analysis of third-party data.

7.102 Alongside their quantitative responses, most customers also provided comments to explain their answer. These responses were varied and often explained the respondent's view with specific or detailed points. In order to summarise these responses, we have classified them under the broad themes set out below. Some respondents gave answers that have been classified into multiple categories.

- (a) Nine respondents mentioned that moving to cloud fits with either their own or national strategy;⁵⁰⁰
- (b) Four respondents said cloud-services would be important because of their benefits;⁵⁰¹
- (c) Five respondents said they would carefully balance any decision on cloud against the risks or that they were currently considering cloud;⁵⁰²
- (d) Two respondents said cloud was a consideration but not vital; and⁵⁰³
- (e) Two respondents said they were already actively moving towards cloud.⁵⁰⁴

⁵⁰⁰ Response to the CMA questionnaire from [redacted], 26 May 2022, question 19; [redacted], 26 May 2022, question 46; [redacted], 26 May 2022, question 36; [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted], 20 May 2022, question 46.

⁵⁰¹ Response to the CMA questionnaire from [redacted], 26 May 2022, question 36; [redacted] and [redacted] 20 May 2022, question 46; [redacted], 26 May 2022, question 46.

⁵⁰² Response to the CMA questionnaire from [redacted], 26 May 2022, question 31; [redacted], 26 May 2022, question 19; [redacted], 26 May 2022, question 46; [redacted] and [redacted] and [redacted], 20 May 2022, question 46.

⁵⁰³ Response to the CMA questionnaire from [redacted], 20 May 2022, question 46; [redacted], 26 May 2022, question 40.

⁵⁰⁴ Response to the CMA questionnaire from [redacted], 26 May 2022, question 32; [redacted], 20 May 2022, question 46.

7.103 One customer told us on a call that for its next procurement it was likely that a cloud-based solution would be preferred to an on-premise solution, but that a privately-hosted solution would likely be sufficient (as opposed to a public-cloud solution).⁵⁰⁵

Competitors' views

7.104 We spoke to two competitors that had differing views as to how long on-premise solutions would remain viable.

7.105 One competitor told us that it anticipates that all tenders will be cloud-based in the next three years. However, it expects on-premise solutions will remain viable for the next 12-18 months.⁵⁰⁶

7.106 One competitor told us that it is now essential for suppliers to offer a cloud-based solution.⁵⁰⁷ It considered that purely on-premise solutions will no longer be a viable proposition.

Provisional view

7.107 Our provisional view is that being able to offer a cloud solution will be increasingly important. It is unclear from the customer responses outlined above what form of cloud solution (public or privately hosted) customers may prefer. Some customers say they will actively consider cloud, but will consider the risks and benefits of it at the stage at which they next procure.

Future competitiveness of the Parties' products

7.108 We have considered the likely future competitiveness of the Parties' products taking into account that their broad prospects for future competitiveness, as well as our provisional view set out at paragraph 7.107 above that an ability to offer a cloud solution will be increasingly important.

NECSWS's views - CARM

7.109 NECSWS submitted that [REDACTED]. [REDACTED].⁵⁰⁸

⁵⁰⁵ Note of a call with [REDACTED], September 2022, paragraph 13.

⁵⁰⁶ Note of a call with [REDACTED], June 2022, paragraph 7.

⁵⁰⁷ Note of a call with [REDACTED], June 2022, paragraph 3.

⁵⁰⁸ Parties' response to AIS, 4 August 2022, paragraph 1.4.6.

Current customers

7.110 [REDACTED], NECSWS currently has [REDACTED] Duties customers covering [REDACTED] police forces (one customer is a consortium of three police forces). The last of these contracts currently runs until [REDACTED] and there are [REDACTED] within these contracts.⁵⁰⁹

Metropolitan Police

7.111 [REDACTED].⁵¹⁰

7.112 [REDACTED].⁵¹¹

7.113 [REDACTED].⁵¹²

7.114 [REDACTED]⁵¹³ [REDACTED].⁵¹⁴ [REDACTED].⁵¹⁵

7.115 [REDACTED].

Marketing of CARM and opportunities for CARM

7.116 NECSWS last won a new customer for CARM in [REDACTED].⁵¹⁶ [REDACTED].

7.117 [REDACTED]:⁵¹⁷

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].

7.118 [REDACTED]:⁵¹⁸

(a) [REDACTED].

(b) [REDACTED].⁵¹⁹ [REDACTED].⁵²⁰ [REDACTED].⁵²¹

⁵⁰⁹ NECSWS's Response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5a and b.

⁵¹⁰ NECSWS's Response to the CMA's RFI 2, 30 May 2022, question 12b.

⁵¹¹ FMN, 15.65.

⁵¹² NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12b-d.

⁵¹³ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5.

⁵¹⁴ NECSWS's main party hearing transcript, page 94.

⁵¹⁵ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12.

⁵¹⁶ Parties' response to AIS, 4 August 2022, paragraph 1.4.6.

⁵¹⁷ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, Q5c.

⁵¹⁸ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, Q5c.

⁵¹⁹ FMN, paragraphs 15.69 and 15.70 and NECSWS's response to the CMA's RFI 2, 30 May 2022, Q12e.

⁵²⁰ NECSWS's response to the CMA's RFI 2, 30 May 2022, Q12.

⁵²¹ NECSWS's response to the CMA's RFI 2, 30 May 2022, Q12e.

(c) [REDACTED].

Plans for CARM

7.119 [REDACTED].⁵²²

7.120 [REDACTED].⁵²³ Specifically, NECSWS referred to the following documents:

(a) [REDACTED].⁵²⁴

(b) [REDACTED].⁵²⁵

(c) [REDACTED].⁵²⁶

(d) [REDACTED].⁵²⁷

CARM's financial position

7.121 [REDACTED].⁵²⁸

Cloud-capability

7.122 NECSWS submitted that [REDACTED].⁵²⁹

Third party views - CARM

7.123 One customer told us that CARM has been its primary resource management system for the last 15 years.⁵³⁰ It currently uses version 4.2 of the CARM product. It said that this works as a duties management tool but not as an adequate resource management tool.⁵³¹ It said the current version is [REDACTED]. The customer is currently upgrading to version 4.7 which would address [REDACTED] and would give the product a further 2 to 3 years of life.⁵³² It noted that CARM also has a version 5 which is an advanced product and very different to version 4.7.

⁵²² NECSWS's response to the AIS, 4 August 2022, paragraph 6.1.

⁵²³ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, Q5d.

⁵²⁴ NECSWS internal document, Annex 189 to the CMA queries of 28 July following main party hearing [REDACTED], 5 July 2021, slides 2-5

⁵²⁵ NECSWS Internal Document, Annex 18.1.27 to the DMN, [REDACTED], 23 September 2021, page 11.

⁵²⁶ NECSWS Internal Document, Annex 190 to the CMA queries of 28 July following main party hearing [REDACTED], 23 September 2021, slide 4.

⁵²⁷ NECSWS, internal document, Annex 191 to the CMA queries of 28 July following main party hearing [REDACTED].

⁵²⁸ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5e.

⁵²⁹ NECSWS's response to Market Developments WP, 4 August 2022, page 40.

⁵³⁰ [REDACTED] submission to the CMA, 26 August 2022, question 4.

⁵³¹ Note of a call with [REDACTED], September 2022.

⁵³² Note of a call with [REDACTED], September 2022.

- 7.124 The same customer is reviewing its strategy for a long-term solution. It explained that while it does this, it is ‘almost certain’ that it will have to extend its current CARM contract further while it considers and chooses its future options.
- 7.125 With regards to its future options, it told us that it would likely look for a replacement for the current version of CARM. It would assess which options could meet its needs, in particular one that can integrate with its wider ERP solution and one that could be cloud-based (although a privately-hosted cloud option would likely be sufficient).
- 7.126 Choosing a future option would require it to assess the available options. This would likely include assessing CARM version 5 and solutions from other providers. It has not yet decided the form of procurement it will undertake, whether that will be contested or not, and whether or not it will use SPF2 for such a procurement.
- 7.127 One customer told us that it had been using CARM for many years and it is fully embedded in its working practices and system interfaces.⁵³³ Due to several back-office systems and process reviews it thought it would not be cost effective to ‘complete the contract’ at the last procurement point. A direct award was agreed with the supplier to avoid additional framework charges.
- 7.128 One customer told us that at its next procurement - expected around September 2023 - it would be seeking a product with [redacted].⁵³⁴
- 7.129 One supplier told us that it understands that NECSWS’s CARM product is [redacted].⁵³⁵

Our assessment – CARM

- 7.130 In light of the above evidence regarding the future competitiveness of CARM, we have considered the likelihood of NECSWS winning new customers and/or retaining existing customers, and its incentives in relation to staying active in the market.
- 7.131 With regards to new customers, while NECSWS has made both some active attempts to market CARM to new customers up until 2019, and some reactive attempts since 2021, [redacted]. However, given there are relatively few open opportunities to win new customers in the market, this is not surprising or out of line with other suppliers’ success rate as regards new customers.
- 7.132 With regards to existing customers, NECSWS has had mixed success in retaining its current Duties customers. [redacted].

⁵³³ Response to the CMA questionnaire from [redacted], 10 June 2022, question 42.

⁵³⁴ Response to the CMA questionnaire from [redacted], 8 June 2022, questions 45 and 51.

⁵³⁵ Note of a call with [redacted], June 2022, paragraph 12.

- 7.133 We consider that following [X] cancellation of its recent procurement, its future intentions for contracting a Duties supplier are highly uncertain. [X]. [X] (see paragraph 7.123) while it reviews its future strategy (see paragraph 7.123). If [X] launches a further procurement for a new Duties product (or a tender that includes Duties functionality), it is unclear whether NECSWS's CARM product would meet the requirements of that tender, given [X] prior comments on the suitability of CARM [X]. However, in its latest submission to us, [X] stated that it would likely make an assessment of the latest version of CARM (v5) alongside other suppliers' products when it came to reviewing future options. We further note that NECSWS is on the SPF2 framework and if a future Duties procurement was run using this framework it could seek to bid if it wished to. The time until any future procurement occurs would also allow NECSWS to consider its options and potentially develop its offer to [X] to make it more attractive.
- 7.134 With regards to NECSWS's incentives to remain active in the market with CARM, we have considered in particular CARM's financial position. CARM earned a positive gross margin of approximately [X]% in FY22, and a positive gross margin for the preceding [X] financial years (although before accounting for 'Cap Dev' it earned [X] in FY20 and FY22).⁵³⁶ We acknowledge that the Metropolitan Police contract [X]. [X].
- 7.135 We acknowledge NECSWS's submission that [X]. We do not consider that the documentary evidence submitted by NECSWS is conclusive in this regard. These documents are all from a period when the Merger was under consideration and may have been produced when NECSWS focused on its plans for SSS's Origin product, assuming the Merger could be completed.⁵³⁷ The documents contain limited references to NECSWS's future intentions for CARM and three of the four documents refer to [X]. One of the documents, which contains a proposal to [X].⁵³⁸
- 7.136 We note that NECSWS's suggested interpretation of the above documents is not entirely consistent with other evidence we have considered. For example, as noted at paragraphs 7.117 to 7.118 above, NECSWS has undertaken some activity to promote CARM in the last few years and, as noted at paragraph 7.118, it has won extensions for some of its existing Duties contracts with its current CARM product.
- 7.137 Further, other internal documents, while also not conclusive, suggest that NECSWS planned to continue to promote CARM.

⁵³⁶ NECSWS, Responses to CMA Queries of 28 July 2022 following NECSWS's main party hearing, 3 August 2022, question 1.

⁵³⁷ See [CMA129](#), paragraph 2.29(a).

⁵³⁸ NECSWS Internal Document, Annex 189 to the CMA queries of 28 July following main party hearing [X], 5 July 2021, slide 4.

(a) [REDACTED],⁵³⁹

(b) [REDACTED],⁵⁴⁰

7.138 Thus, our view is that the documents highlighted to us by NECSWS do not sufficiently demonstrate that it is likely that NECSWS [REDACTED] absent the Merger.

7.139 Overall, we have seen evidence that NECSWS has historically been the third largest supplier in the market. In light of this, we have considered carefully the evidence [REDACTED]. We consider that the evidence set out above shows, that NECSWS:

(a) will continue to supply and support existing customers for several years (including contracts lasting until [REDACTED]);

(b) has won [REDACTED] very recent extensions ([REDACTED]);

(c) faces significant uncertainty [REDACTED] ([REDACTED]), [REDACTED];

(d) has short-term profitability for CARM, [REDACTED]; and

(e) [REDACTED].

7.140 Given the above, on balance, [REDACTED]. As such, we consider that NECSWS will have the incentive to continue to offer CARM as a competitive proposition in the market.

SSS's views – Origin

7.141 SSS submitted that SSS's Origin solution is not cloud capable [REDACTED]. SSS told us that customers are telling SSS that they require cloud and will come to tender for this in the next two years - [REDACTED].⁵⁴¹

Our assessment – Origin

7.142 In our view, Origin will remain a strong competitive constraint in the market in future because:

(a) it currently has a large customer base and a strong position in the market, including having won several direct awards and extensions. It is likely well-placed to utilise this to continue to win direct awards and extensions;

(b) it has been able to provide a 'deployed-in-the-cloud' solution to some customers, [REDACTED];

⁵³⁹ NECSWS, Internal Document, Annex 5.11 to the phase 1 s190(1) '[REDACTED]', slides 8 and 52.

⁵⁴⁰ NECSWS, Internal Document, Annex 9.2.2 to the FMN, '[REDACTED]', July 2020, slide 11.

⁵⁴¹ Parties' response to AIS, 4 August 2022, paragraph 1.4.6.

- (c) we acknowledge that it likely requires [redacted]. However, we consider it is credible that SSS will achieve this and note that SSS has submitted [redacted].⁵⁴² in the interim it is well-placed to present this as a credible road-map.

Future competitiveness of competitors' products

Competitors' views

- 7.143 We have also considered the likely future competitiveness of the products of suppliers other than the Parties, particularly in relation to cloud-capability and in relation to changes from their current offerings.
- 7.144 Crown submitted that [redacted].⁵⁴³ It also submitted that its offering is already cloud-based using the Microsoft Azure platform. It also submitted that incremental and sometimes major product improvements occur every [redacted].⁵⁴⁴
- 7.145 Totalmobile submitted that [redacted].⁵⁴⁵ It also submitted that it has recently developed a cloud-based version of its product using Microsoft Azure. At present this is broadly the same as its on-premise solution but, in future, additional functionalities will be built into the cloud-based product that will not be available on-premise.⁵⁴⁶
- 7.146 SAP submitted that it has no plans to provide direct supply of Duties management services to any emergency services customer in the UK in the next two years.⁵⁴⁷
- 7.147 Zellis submitted that it has no plans to bid for future opportunities in the Duties market.⁵⁴⁸
- 7.148 MidlandHR submitted that [redacted].⁵⁴⁹

Our assessment – competitors' products

- 7.149 We consider that, among the Parties' competitors, Crown and Totalmobile have public-cloud based products ([redacted]). This capability may mean they are well-placed to compete for opportunities requiring a public-cloud solution in the next few years.

Provisional view

- 7.150 We recognise that there is uncertainty [redacted]. Our provisional view is that NECSWS would continue to supply CARM and it would continue to be a competitive

⁵⁴² SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 77.4.

⁵⁴³ Response to the CMA questionnaire from [redacted], 13 June 2022, question 4.

⁵⁴⁴ Note of a call with [redacted], June 2022, paragraph 3 and 8.

⁵⁴⁵ Response to the CMA questionnaire from [redacted], 13 June 2022, question 4.

⁵⁴⁶ Note of a call with [redacted], June 2022, paragraph 2.

⁵⁴⁷ [redacted] submission to the CMA, 19 July 2022.

⁵⁴⁸ Response to the CMA questionnaire from [redacted] 10 June 2022, question 4.

⁵⁴⁹ [redacted] submission to the CMA, 9 August 2022.

proposition in the Duties market in the next few years (see paragraphs 7.139 and 7.140).

- 7.151 As set out in paragraph 7.142, we consider that Origin would remain a strong competitive constraint in the market. We recognise it may require some development, but consider that this is likely, particularly given the incentives around its current large customer base.
- 7.152 We consider that broadly, other current suppliers (Crown and Totalmobile) will remain constraints in the market, and do not consider it likely that suppliers in adjacent markets will become competitors in the time period of our assessment, given their lack of existing plans to enter.
- 7.153 We consider that customers will increasingly require public-cloud based solutions in future, but do not consider that a movement towards cloud materially affects this competitive assessment, since we consider all main suppliers have a form of cloud capability (private or public cloud) and there is the potential to develop this further or win opportunities with either privately-hosted cloud solutions or public-cloud solutions.

Provisional conclusion

- 7.154 We have found that the Duties market is characterised by a high degree of market concentration with SSS and Crown having the majority of customers in the market and NECSWS and Totalmobile having fewer customers.
- 7.155 We are mindful that where the CMA finds evidence that competition mainly takes place among a few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.⁵⁵⁰ We have therefore considered the evidence of a high degree of concentration alongside all of the other evidence we have collected.
- 7.156 There have been very few opportunities in the Duties market over the last five years and in particular very few tenders. [3<]. Despite this lack of recent direct competition, we recognise that given the small number of current suppliers in the market, the Parties are likely future competitors, directly or indirectly.
- 7.157 We have found and reviewed comparatively few internal documents from the Parties. These documents show that the Parties have historically considered Crown to be the strongest competitor in Duties and have considered each other to

⁵⁵⁰ CMA129, paragraph 4.10.

be competitors. Competitors and customers also told us that the Parties were among a small number of suppliers in the market.

- 7.158 We have considered the prospects for each of the Parties' offerings in future and whether the strength of constraint they currently place on each other and other suppliers place on them may change.
- 7.159 NECSWS has [X]. We recognise that there is uncertainty [X]. However, given NECSWS's current position in the market and ongoing contracts (including recent extensions), [X]. [X] we consider that NECSWS's Duties product is likely to continue in the market serving its current customers, to be available as an option for new customers and therefore to remain a constraint on SSS in future.
- 7.160 SSS currently has a strong position in the Duties market. While some third-party feedback identifies weaknesses in SSS's product, we have seen evidence that SSS is exploring developing its Duties product and consider that given the strength of its current product it is likely to have an incentive to develop the product. We therefore consider that SSS is likely to remain a strong competitor in the market in future and will remain a constraint on NECSWS.
- 7.161 With regards to other suppliers, we consider that Crown is well positioned to remain a strong constraint in the market in the future and that Totalmobile will also provide a constraint, particularly given its recently developed cloud-based solution. As such, our expectation is that future competition in this market is likely to occur between Crown, NECSWS, SSS and Totalmobile.
- 7.162 As such, absent the Merger we consider that in the next few years NECSWS and SSS would be likely to remain competitors in the market and as such to place a direct or indirect competitive constraint on each other.
- 7.163 In view of our assessment above, we therefore provisionally conclude that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in the market for Duties in the UK.

8. COMPETITIVE ASSESSMENT – RMS

- 8.1 In this chapter, we assess whether the loss of competition between NECSWS and SSS has resulted, or may be expected to result, in an SLC in the supply of RMS to police forces in the UK.
- 8.2 The Parties currently overlap in the supply of RMS in the UK. The Merger combines the two Parties and removes any competitive constraint they place on each other. We have looked at whether the Merged Entity would be likely to worsen its offering (for example, by removing available product lines, reducing

service quality or investment, or increasing prices) compared to the situation if the Merger did not take place. This is a horizontal, unilateral effects theory of harm.

- 8.3 This chapter sets out details of our investigation and provisional findings in relation to this theory of harm, covering: (a) details of the Parties' and competitors' offerings; (b) market definition; (c) the key evidence we have reviewed in our competitive assessment, including: market shares; our assessment of the Parties' internal documents; analysis of recent opportunities; evidence from third parties; and our assessment of future market developments; and (d) our provisional conclusions.

Suppliers' offerings

- 8.4 RMS for police forces enables the recording and managing of case-related information. It usually covers four main functions, namely, case (for managing court case files), crime (for recording details of crimes), custody (for processing detainees) and intelligence (for recording intelligence reports).⁵⁵¹ These functions can be provided as an integrated solution (a single application) or as separate modules (standalone software solutions).
- 8.5 The Parties are two of three main RMS suppliers currently active in the UK. There is some differentiation between suppliers in terms of product offering and the customer type that each serve:
- (a) SSS offers two different RMS products: PoliceWorks and UNIFI. PoliceWorks is an integrated RMS (ie an RMS structured as a single application albeit it is also deployable as modules).⁵⁵² [§<]. It is tailored to Great Manchester Police's (**GMP**) requirements⁵⁵³, but this customer has since stated that it will move away from PoliceWorks.⁵⁵⁴ UNIFI covers the same scope as integrated RMS products but is formed of separate software modules addressing the different elements of RMS where the underlying data is integrated into a single data POLE (people, objects, locations, and events) store.⁵⁵⁵ Neither PoliceWorks nor UNIFI are cloud-enabled.⁵⁵⁶
 - (b) NECSWS offers an RMS product called CONNECT. NECSWS submitted that CONNECT is a contemporary event-driven RMS, which means that data or events entered into the software will trigger other actions.⁵⁵⁷ Most

⁵⁵¹ FMN, paragraph 1.7.2.

⁵⁵² SSS, [PoliceWorks](#), undated, page 2.

⁵⁵³ Parties' Issues Meeting Presentation (confidential version), 6 April 2022, slide 20.

⁵⁵⁴ 'Update on PoliceWorks computer system from Chief Constable Stephan Watson', Greater Manchester Police's News, 21 March 2022, (last accessed 14 September 2022).

⁵⁵⁵ FMN, paragraph 15.55.

⁵⁵⁶ Parties, response to the Issues Statement, 28 June 2022, paragraph 5.1.2d.

⁵⁵⁷ FMN, paragraph 12.58-12.61.

CONNECT customers currently use a private-cloud version, [redacted] (see chapter 5 for definitions).⁵⁵⁸

- (c) Niche offers an RMS solution that allows for application programming interfaces with almost all solutions currently in use by UK police forces. Its product is based around the management of eight core pillars: intelligence, vulnerability, property, custody, incident, forensics, investigation and crime management, and case preparation and criminal justice.⁵⁵⁹ Its product is cloud-enabled as an Infrastructure-as-a-Service (**IaaS**)⁵⁶⁰ offering.⁵⁶¹
- (d) Mark43 is an overseas-based RMS provider. It has recently entered the UK market by contracting to serve Cumbria Constabulary and estimates that its product will be ready in two years.⁵⁶² Its RMS solution offers five core capabilities: Report Writing, Case Management Investigations, Property & Evidence, Stat Reporting & Crime Analysis, and Booking & Jail. Mark43 describes itself as cloud-native.⁵⁶³
- (e) There are a range of other suppliers that provide services that cover specific aspects of RMS. For example, Kim Software Solutions offers property management. These suppliers do not offer a full RMS solution on their own but can sometimes supply police forces in combination with other providers. However, the majority of police forces use a single RMS provider.

Market definition

- 8.6 This section sets out our provisional views on the relevant market. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.⁵⁶⁴ An SLC can affect the whole or part of a market or markets.⁵⁶⁵
- 8.7 While market definition can sometimes be a useful tool, it is not an end in itself.⁵⁶⁶ The outcome of any market definition exercise does not determine the outcome of the CMA’s analysis of the competitive effects of the merger in any mechanistic way.⁵⁶⁷ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the

⁵⁵⁸ NECSWS, response to Market Developments WP, 4 August 2022, page 22.

⁵⁵⁹ Note of a call with [redacted], June 2022, paragraph 1.

⁵⁶⁰ Infrastructure-as-a-Service refers to a cloud service where the supplier manages the infrastructure, but the customer manages the software and apps.

⁵⁶¹ Note of a call with [redacted], June 2022, paragraph 2.

⁵⁶² Response to the CMA questionnaire from [redacted], 29 June, question 1.

⁵⁶³ Response to the CMA questionnaire from [redacted], 29 June, question 1.

⁵⁶⁴ As regards the Merger, see section 35(1)(b) of the Act.

⁵⁶⁵ CMA129, paragraph 9.1.

⁵⁶⁶ CMA129, paragraph 9.4.

⁵⁶⁷ CMA129, paragraph 9.4.

relevant market, or other ways in which some constraints are more important than others.⁵⁶⁸

Product Scope

- 8.8 Product market definition starts with the relevant products of the merger firms.⁵⁶⁹ The Parties overlap in the supply of RMS to police forces only.
- 8.9 The Parties submitted that RMS is required only by police forces, and accordingly, the appropriate frame of reference should be supply of RMS to police forces.⁵⁷⁰
- 8.10 We have not received any evidence to the contrary from the Parties or third parties. Moreover, RMS is mentioned in the Parties' internal documents only in the context of police forces (see Appendix C: Internal Documents) which supports a product market definition focused on police forces.
- 8.11 For the reasons set out above, our provisional view is that the relevant product market is the supply of RMS to police forces.

Geographic Scope

- 8.12 We have considered the geographic scope of the relevant market. As with product markets, the CMA's focus in defining geographic markets is on demand-side factors and identifying the most important competitive alternatives to the merger firms.⁵⁷¹ The CMA may consider a range of evidence as regards geographic scope, including the views of market participants on consumer preferences and product characteristics.⁵⁷²
- 8.13 The Parties submitted that they supply customers across the UK, conditions of competition do not differ materially across the country, and that the narrowest possible geographic frame of reference should be the UK.⁵⁷³
- 8.14 We considered whether the geographic market should be widened to include countries outside the UK. We note that the Parties' internal documents mainly discuss products in the context of UK customers rather than on an international basis. Where internal documents discuss a specific opportunity, they acknowledge regional considerations (eg the supplier of neighbouring police forces). However, this did not alter the competitor set that the Parties consider in relation to that opportunity. The competitor set on which the Parties analysis focuses consists of those suppliers that already supply UK customers. Where other international

⁵⁶⁸ CMA129, paragraph 9.4.

⁵⁶⁹ CMA129, paragraph 9.6.

⁵⁷⁰ FMN, paragraph 13.14

⁵⁷¹ CMA129, paragraph 9.13.

⁵⁷² CMA129, paragraph 9.13.

⁵⁷³ FMN, paragraph 13.27

suppliers are mentioned they are typically analysed and considered in substantially less detail.⁵⁷⁴

- 8.15 Several third parties emphasised that non-UK suppliers would need to tailor their products for UK policing and UK criminal justice processes to supply UK customers.⁵⁷⁵ As noted above, Mark43 (a non-UK based supplier) has recently won a UK contract and told us that its current (international) offering lacks essential functionality for the UK emergency service market and that it expects to be able to develop this over the next two years.⁵⁷⁶
- 8.16 For the reasons set out above, particularly third parties' views on the specificity of certain UK requirements including those flowing from relevant legislation, taking the above evidence in the round, our provisional view is that the appropriate geographic market definition for RMS is the UK.

Provisional view on market definition

- 8.17 For the reasons set out above, our provisional view is that the relevant market is the supply of RMS to police forces in the UK.

Competitive assessment overview

- 8.18 In the remainder of this chapter, we assess the key evidence we have reviewed in considering whether the Merger has resulted, or may be expected to result, in an SLC in the supply of RMS to police forces in the UK.
- 8.19 We have considered:
- (a) market shares;
 - (b) internal documents;
 - (c) recent opportunities;
 - (d) customers' and competitors' views; and
 - (e) market developments.
- 8.20 After our assessment of these various types of evidence, at the end of this chapter, we set out our provisional conclusion.
- 8.21 In this chapter, we have considered a horizontal unilateral effects theory of harm. Unilateral effects can arise in a horizontal merger when one firm merges with a

⁵⁷⁴ Appendix C, Documents 34 and 35.

⁵⁷⁵ Response to the CMA questionnaire from [redacted], [redacted] and [redacted], 3 March 2022, question 21.

⁵⁷⁶ Response to the CMA questionnaire from [redacted], 29 June 2022, question 1c.

competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.⁵⁷⁷ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.⁵⁷⁸ The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.⁵⁷⁹ 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.⁵⁸⁰

- 8.22 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.⁵⁸¹ The more closely the merger firms compete the greater the likelihood of unilateral effects.⁵⁸² The concept of close competition is not limited to products or services that have similar characteristics.⁵⁸³ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.⁵⁸⁴ Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.⁵⁸⁵ The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.⁵⁸⁶ For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.⁵⁸⁷

Market shares

- 8.23 In this section we present estimates of market shares for the RMS market. In a differentiated market such as the supply of RMS to police forces in the UK, horizontal unilateral effects are more likely to result from a merger where one or more of the merger parties has a strong position in the market.⁵⁸⁸ The level and stability of market shares are relevant evidence in this regard.⁵⁸⁹

⁵⁷⁷ CMA129, paragraph 4.1.

⁵⁷⁸ CMA129, paragraph 4.3.

⁵⁷⁹ CMA129, paragraph 4.3.

⁵⁸⁰ CMA129, paragraph 4.3.

⁵⁸¹ CMA129, paragraph 4.8-4.10.

⁵⁸² CMA129, paragraph 4.8.

⁵⁸³ CMA129, paragraph 4.9.

⁵⁸⁴ CMA129, paragraph 4.9.

⁵⁸⁵ CMA129, paragraph 4.10.

⁵⁸⁶ CMA129, paragraph 4.10.

⁵⁸⁷ CMA129, paragraph 4.10.

⁵⁸⁸ CMA129, paragraph 4.12(a).

⁵⁸⁹ CMA129, paragraph 4.12(a).

Parties' views

- 8.24 The Parties have made a number of submissions on the relevance of market shares including that very little weight should be applied to an assessment of market shares as a measure of competitive strength in a forward-looking merger assessment.⁵⁹⁰
- 8.25 The Parties submitted estimates of market shares for RMS to police forces in the UK in 2021. Their estimates were made on a volume basis, based on the number of recorded crimes reported by each police customer in 2021 according to ONS data, combined with the Parties' market intelligence on which customers are supplied by each supplier in 2021. The Parties' estimates are shown in Table 8-1.

Table 8-1 Shares of supply for RMS to Police forces (UK, 2021)

Competitor	Shares by volume of recorded crimes (%)
NECSWS	[20-30%]
Capita SSS	[10-20%]
Parties Combined	[40-50%]
Niche	[40-50%]
In-house	[5-10%]
Memex	[0-5%]
EDS CRIS	[0-5%]
ABM	[0-5%]
Red Sigma	[0-5%]
Sopra	[0-5%]
Total	100%

Source: FMN, Table 14.2.

Our assessment

- 8.26 Measures of concentration such as shares of supply can be useful evidence when assessing closeness of competition.⁵⁹¹ Therefore, as part of our competitive assessment we often use market shares in our defined market(s) as one measure of the strength of different competitors.
- 8.27 We consider that examining market shares provides context to our competitive assessment of the RMS market. They are a measure of historical market concentration and, in particular, capture the outcome of previous competition in a period through which current suppliers have been active in the market. However, we also recognise that they have limitations which reduce their usefulness in this case. As such, we assess them alongside other evidence in the round in forming our provisional conclusion.
- 8.28 As part of our review, we examined market shares using several different metrics, including revenue-based estimates, customer-number based estimates and the Parties' volume-based estimates. Estimates of market shares differ by metric used, as set out in (Table 8-2).

⁵⁹⁰ Parties' response to the Market Shares WP, 4 August 2022, paragraph 1.

⁵⁹¹ [CMA129](#), paragraph 4.14.

Table 8-2 Market shares in RMS

	Shares by revenue (2021) (%)	Shares by volume of recorded crimes (%)	Shares by number of police forces (go-live) (%)	Number of police forces (go-live)
NECSWS	[60-70%]	[20-30%]	[20-30%]	[3<]
SSS	[10-20%]	[10-20%]	[5-10%]	[3<]
Parties Combined	[70-80%]	[40-50%]	[30-40%]	[3<]
Niche	[10-20%]	[40-50%]	[50-60%]	[3<]
In-house	--	[5-10%]	[0-5%]	[3<]
Memex	--	[0-5%]	--	[3<]
EDS CRIS	--	[0-5%]	--	[3<]
ABM	[5-10%]	[0-5%]	--	[3<]
RedSigma	--	[0-5%]	--	[3<]
Sopra	--	[0-5%]	--	[3<]
Mark43	--	--	[0-5%]	[3<]
Total	100%	100%	100%	48

Notes: Shares by revenue: we have calculated revenue shares by collecting revenue information from suppliers active in the market.

[3<] did not submit any revenue data and hence have been omitted. Our understanding is that these two, (along with [3<] and [3<]), are small suppliers which do not offer full RMS solutions and therefore we do not expect their absence from the revenue share calculations to materially affect our results. [3<] has not been included as we understand this is not a true RMS solution.

Shares by volume of recorded crimes: We have repeated the Parties' estimates of shares by volume of recorded crimes

Shares by number of police forces (go-live): we have calculated shares of the total number of customers by using customer lists collected from suppliers currently in the market.

Sources: CMA calculations based on third party responses to phase 2 questionnaire.

- 8.29 In general, in a differentiated product market we place more weight on revenue shares than other metrics, since they more accurately represent the economic value of contracts. However, in this market, there are differences in the business models of the main RMS suppliers, and the potential for annual revenues to vary over the course of multi-annual contracts, that make it difficult to compare like-for-like in the calculation of market shares based on revenue.^{592 593} Hence, we have examined estimates based on all three metrics used above.
- 8.30 On any market share basis, the market for RMS is concentrated, particularly between NECSWS and Niche, who together account for between [60-70]% - [80-90]% of the market. Niche is the largest competitor based on the volume of recorded crimes and number of police forces whereas NECSWS is the largest competitor by revenue. SSS is the third largest supplier with a share of [5-10]% – [10-20]%.
- 8.31 The market share estimates suggest the Merged Entity would have a combined market share of between [30-40]% and [70-80]% depending on the metric used. Niche would be the next largest supplier on the basis of revenue and volume of recorded crimes, but would be larger than the combined entity on the basis of number of police forces.
- 8.32 Memex, EDS CRIS, ABM and Sopra are all smaller competitors represented in the shares by volume, with ABM also represented in the shares by revenue. Our understanding is that these competitors do not offer a full RMS solution. It is our

⁵⁹² Niche submitted that its '[3<]'. Response to CMA questionnaire from [3<], 30 June 2022, question 1.

⁵⁹³ We have examined revenue market shares between 2019 and 2021 and found that they varied by up to 15 percentage points. We have focused on the most recent (2021) revenue market shares and looked at these alongside other metrics.

understanding that RedSigma was internally developed by Cumbria Constabulary and Durham Constabulary to serve some of their RMS functions, and it is not used by any other force.

Provisional view

- 8.33 Our provisional view is that the market for RMS is concentrated. Regardless of which measure of market shares is used, the RMS market is concentrated around NECSWS, SSS and Niche who together have a combined share of over 80% of the market.
- 8.34 However, for the reasons noted at paragraph 8.27 above, we consider them alongside other evidence that relates to current and future constraints in reaching our provisional conclusion.

Internal documents

- 8.35 We have reviewed the Parties' internal documents for evidence of their assessment of the competitive constraints they face.⁵⁹⁴ We note that we have found and reviewed relatively few internal documents discussing RMS. This may be because there are very few competitive opportunities for RMS. Summaries of relevant points within the documents we have reviewed are given in Appendix C – from Document 47 to Document 53.

Our Assessment – NECSWS's documents

- 8.36 We have found and reviewed one relevant NECSWS document relating to a specific RMS opportunity (Appendix C, Document 47). We have also reviewed a strategy document that discusses suppliers' positions in the RMS market over time (Appendix C, Document 48).

Closeness between parties

- 8.37 NECSWS is aware of SSS's historical position in supplying the market and that it remains a supplier as of 2021.⁵⁹⁵ In relation to a specific opportunity, [X]. [X].⁵⁹⁶

⁵⁹⁴ CMA129, paragraph 4.13.

⁵⁹⁵ Appendix C, Document 48, slide 13.

⁵⁹⁶ Appendix C, Document 47, slide 6.

Closeness with others

- 8.38 NECSWS considered Niche to be its strongest competitor and dedicated most of its bid strategy and analysis to comparing itself against Niche. It states in one internal document that '[X]'.⁵⁹⁷ [X].⁵⁹⁸
- 8.39 In 2019, NECSWS was aware of Mark43 and considered it to be a potential competitor. NECSWS identified that Mark43 has a new, modern, and different proposition. However, NECSWS did not see this as being entirely to Mark43's advantage as it considered it not to be a proven solution.⁵⁹⁹

NECSWS's views – NECSWS's documents

- 8.40 NECSWS submitted that although SSS was the incumbent for the [X] tender, this was with UNIFI which is not an integrated RMS, and [X].⁶⁰⁰ NECSWS told us that [X]. NECSWS considered Niche to be the competition.⁶⁰¹

Our response to NECSWS's views

- 8.41 We acknowledge that the single document we reviewed focused on the consideration of one historical opportunity. However, we have not seen, nor have NECSWS identified, any other documents that discuss the competitor set in RMS. While we have seen some more recent documents discussing specific opportunities,⁶⁰² these did not include an assessment of the competitor set. We also note that more recent documents may have been prepared with knowledge of the Merger in mind, which may have influenced their content.
- 8.42 Accordingly, we consider that one 2019 NECSWS document recognised SSS as a competitor. The same document, however, considers Niche to be its strongest competitor and also recognises Mark43 as a potential competitor. We have found little evidence that NECSWS actively monitors the competitive landscape in respect of RMS. We consider the internal documents evidence alongside other evidence that relates to current and future constraints in the round in reaching our provisional conclusion.

Provisional view – NECSWS's documents

- 8.43 We have seen very few NECSWS documents relevant to the RMS market. We therefore can only place limited weight on these documents. Nonetheless, they indicate that the pool of competitors NECSWS mentions, and analyses, is very

⁵⁹⁷ Appendix C, Document 47, slide 3-4.

⁵⁹⁸ Appendix C, Document 47, slide 11.

⁵⁹⁹ Appendix C, Document 47, slide 6.

⁶⁰⁰ NECSWS response to the Internal Documents WP, 4 October 2022, page 3.

⁶⁰¹ NECSWS response to the Internal Documents WP, 4 October 2022, page 3.

⁶⁰² NECSWS Internal Document, Annex 1.10 to the phase 1 s109(5), '[X]', 21 July 2021.

limited. The documents also indicate that NECSWS considers that Niche is a close competitor and that SSS is a competitor but is considered less strong. NECSWS also considers Mark43 to be a potential competitor that faces some barriers to entry.

Our assessment – SSS's documents

8.44 We have found and reviewed several SSS documents relating to RMS.

Closeness between the Parties

8.45 One document states that, in reference to NECSWS, '[X]'.⁶⁰³ Another internal document compares SSS's products against NECSWS.⁶⁰⁴ SSS acknowledges that there is intense rivalry in the market for RMS with only three main suppliers – Niche, NECSWS and itself.⁶⁰⁵

8.46 One internal document shows a [X] assessment by SSS of its own products in comparison to NECSWS and Niche.⁶⁰⁶ The same document also states that SSS [X].⁶⁰⁷

8.47 We consider these documents show that SSS compares itself to NECSWS and that SSS sees NECSWS as a close competitor, albeit it sees itself as a relatively weak supplier compared to NECSWS.

Closeness with others

8.48 SSS regularly mentions Niche in several documents as a strong competitor.⁶⁰⁸ In one internal document SSS ranks Niche as the [X].⁶⁰⁹ We consider that the documents show that SSS sees Niche as an established RMS provider and a significant competitor.

8.49 In one document SSS sees Mark43 as an [X] threat. It is listed as having the ability to scale but does not have as high competitiveness as NECSWS and Niche.⁶¹⁰ We consider that this Document indicates that SSS is aware of Mark43 as an emerging threat but did not consider it to be a strong competitor at the time.

8.50 SSS also refers to two other suppliers without a UK customer base in its documents, Central Square and Axon. SSS sees Central Square to be US

⁶⁰³ Appendix C, Document 51, page 21.

⁶⁰⁴ Appendix C, Document 50, page 114-115.

⁶⁰⁵ Appendix C, Document 52, slide 1.

⁶⁰⁶ Appendix C, Document 50, page 114-115.

⁶⁰⁷ Appendix C, Document 50, page 108.

⁶⁰⁸ Appendix C, Documents 50, 35, 36 and 37.

⁶⁰⁹ Appendix C, Document 51, page 21.

⁶¹⁰ Appendix C, Document 51, page 21.

focused.⁶¹¹ SSS sees Axon Records to have its sights set on the UK policing market [REDACTED].⁶¹² SSS mentions these two suppliers briefly without in-depth substantive analysis of their offerings. We consider this indicates that SSS considers them to be weak competitors.

SSS's views – SSS's documents

8.51 SSS stated that it faces challenges in relation to PoliceWorks and UNIFI and the competitive landscape within RMS, including the threat posed by Mark43 and how Mark43's emergence within the RMS market will embolden new entrants such as Axon and Central Square.⁶¹³ In particular:

- (a) SSS submitted that although it describes an 'intense rivalry' with three main suppliers (NECSWS, Niche and itself) Niche is still considered to be the strongest competitor within RMS with competition mainly driven between Niche and NECSWS.⁶¹⁴ SSS submitted that its May 2021 Product Strategy Document, prepared in anticipation of the sale of SSS, reflects SSS as being in a weak competitive position [REDACTED].⁶¹⁵
- (b) SSS submitted that the document should be considered in light of Niche's growing strength as a competitor whereas SSS's already weak position [REDACTED].⁶¹⁶
- (c) SSS submitted that the competitive landscape within RMS includes the competitive threat posed by Mark43 who, as SSS reference in its internal documents, is [REDACTED].⁶¹⁷

8.52 SSS submitted that it is an understatement to say that SSS is [REDACTED]. [REDACTED].⁶¹⁸ For example:

- (a) A portfolio review document states '[REDACTED]'.⁶¹⁹
- (b) A strategy document describes [REDACTED].⁶²⁰
- (c) A board report confirms that an '[REDACTED]'.⁶²¹

⁶¹¹ Appendix C, Document 51, page 21.

⁶¹² Appendix C, Document 51, page 21.

⁶¹³ SSS response to the Internal Documents WP, 4 October 2022, paragraph 4.1.

⁶¹⁴ SSS response to the Internal Documents WP, 4 October 2022, paragraph 4.3.1.

⁶¹⁵ SSS response to the Internal Documents WP, 4 October 2022, paragraph 4.3.1.

⁶¹⁶ SSS response to the Internal Documents WP, 4 October 2022, paragraph 4.3.2.

⁶¹⁷ SSS response to the Internal Documents WP, 4 October 2022, paragraph 4.3.3.

⁶¹⁸ SSS response to the Internal Documents WP, 4 October 2022, page 4.4.

⁶¹⁹ SSS response to the Internal Documents WP, 4 October 2022, page 4.4.1.1.

⁶²⁰ SSS Internal Document, Annex 522 to the FMN '[REDACTED]', April 2021, slide 16.

⁶²¹ SSS Internal Document, Annex 709 to the FMN '[REDACTED]', August 2020, slide 8.

Our response to SSS's views

- 8.53 In relation to SSS's submissions at paragraph 8.517.52 we note that the points SSS has highlighted in these documents primarily discuss the strength of competitors and SSS's own strength, but do not indicate a different competitor set. In relation to changes in the strength of competitors since documents were produced we consider these documents alongside other evidence that relates to current and future constraints in the round in reaching our provisional conclusion below (see paragraphs 8.146 to 8.154).
- 8.54 In relation to SSS's submissions on further internal documents which indicate [X] (paragraph 8.52), we recognise that these documents indicate a [X] uncertainty regarding the future [X] of SSS's RMS products and consider this further in our discussion of market developments below.

Provisional view – SSS's documents

- 8.55 We have seen only a limited number of SSS documents relevant to the RMS market. These documents show that the pool of competitors SSS mentions and analyses is limited. SSS considers that NECSWS and Niche are its main competitors and that Mark43 is an emerging competitor. Other providers are not considered to be material constraints on SSS. SSS assesses itself as having significant [X], to the extent that its RMS products are likely [X].

Recent opportunities

- 8.56 Evidence of customer diversion between merger parties and past competitive interactions, such as merger parties' offers in tenders, is relevant to the assessment of closeness of competition.⁶²²
- 8.57 We have analysed customer data on opportunities (tenders, direct awards and extensions) since 2017 in the RMS market. These opportunities allow suppliers to retain their customers or win customers from their competitors. Consideration of a suppliers' frequency of participation and success rates in opportunities allows us to assess the current competitive constraints being provided by different suppliers.

Parties' views

- 8.58 The Parties submitted their own estimates of recent opportunities (the Parties' Opportunities Data) covering their understanding of the type of opportunity, which suppliers bid and which supplier was successful.⁶²³

⁶²² CMA129, paragraph 4.13.

⁶²³ Parties, response to RFI 5, 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

8.59 The Parties submitted that since winning the GMP contract, SSS has won [X] to supply RMS software as part of a tender or a direct award involving a market test.⁶²⁴ Furthermore, the Parties stated that [X] was not a ‘typical’ RMS win as Police Scotland [X]. The Parties submitted that therefore the win rates do not provide evidence that SSS is a credible competitive constraint in the supply of RMS.⁶²⁵

Our assessment

8.60 We have found that there have been a small number of opportunities since 2017.

8.61 We have seen only [X] completed tenders and [X] direct awards. We note that for several of these we have conflicting information as to whether the opportunity was best described as a direct award or tender. We have therefore used the relevant customer’s description of the opportunity as our primary evidence. We have also seen evidence of [X] extensions.

8.62 Table 8-3 below presents our findings.

Table 8-3 Parties’ involvement in RMS Opportunities since 2017

	<i>Market wide total</i>	<i>NECSWS</i>	<i>SSS</i>
Tenders	4	[X]	[X]
<i>Party invited to tender</i>	-	[X]	[X]
<i>Both Parties invited to tender</i>	-	[X]	[X]
		[X]	[X]
<i>Party submitted a bid</i>	-	[X]	[X]
<i>Both Parties submitted a bid</i>	-	[X]	[X]
<i>Won</i>	-	[X]	[X]
Direct awards	9	[X]	[X]
Extensions	11	[X]	[X]

Note: Data from 2017 until June 2022.

Source: CMA analysis of Parties, customer, and competitor data.

Closeness between the Parties

8.63 The Parties were invited to bid in the same tender [X] times since 2017 and subsequently submitted bids against each other [X]. We consider that this shows that they have directly competed against each other to only a limited extent since 2017.

8.64 NECSWS submitted a bid in [X] tenders. It [X] two tenders, [X] direct awards and [X] extensions. The direct awards received by NECSWS were awarded by [X]. This makes it one of the most active competitors in the market.

8.65 SSS submitted a bid in [X] identified tenders and won [X] ([X]) in 2019 (see paragraph 8.58). SSS also secured [X] extensions ([X]). The [X] of these was

⁶²⁴ Parties, initial Phase 2 Submission, 31 May 2022, paragraph 5.8.

⁶²⁵ Parties response to Phase 1 Issues letter, paragraph 7.4.

for a customer [X]), the other [X] customers are [X].^{626,627} There is therefore some evidence that SSS's success in winning these extensions does not reflect its future competitive strength, which has likely weakened.

- 8.66 Overall, the Parties have historically had some direct competitive interaction in the market. However, evidence of direct competition between the Parties is limited and there is also some evidence that SSS's past successes do not reflect its likely future competitive strength in the market.

Closeness with others

- 8.67 Our opportunities analysis has covered opportunities from 2017 until June 2022. Asides from the Parties, there were only two other suppliers identified in our analysis that have been active since 2017.⁶²⁸
- 8.68 Niche has been very active since 2017. It submitted a bid [X] and won [X] of them. It competed directly against NECSWS in all [X] tenders and against SSS in [X]. It also received [X] direct awards, [X] from customers at least partially served by NECSWS and [X] from a customer who was supplied by a mixture of in-house and SSS. Finally, it also secured [X] extensions. Overall, Niche was the most successful supplier in the market at winning opportunities.
- 8.69 Kim Software Solutions received a direct award [X]. We understand that Kim Software Solution predominantly provides a form of record management that does not cover all of the aspects of RMS (Case, Crime, Custody, Intelligence) that other providers such as NECSWS, Niche and SSS do. On this basis, we do not believe that it acts as a direct competitor to the Parties but, rather, provides an indirect form of competition.

Provisional view

- 8.70 Our opportunities analysis shows that there is relatively little activity in the market as there have been very few open tenders and direct awards since 2017. The competition that has occurred has centred around only three parties: NECSWS, SSS and Niche.
- 8.71 Niche has been the most successful supplier in the market followed by NECSWS, and they have imposed both a direct and indirect constraint on each other. There is also evidence that NECSWS and SSS have both directly and indirectly imposed a constraint on each other, albeit to a more moderate degree.

⁶²⁶ Note of a call with [X], June 2022, paragraph 7.

⁶²⁷ Response to the CMA questionnaire from [X], 15 June 2022, question 9.

⁶²⁸ Mark43 does not feature in our analysis as we have not included Cumbria Constabulary's recent appointment of this supplier, due to lack of full details.

Customer views

8.72 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.⁶²⁹

Our assessment

8.73 We asked customers to identify viable alternative suppliers for an RMS product. Five forces out of 13 police forces that responded to the questionnaire (out of 48 police forces in total), answered our question to list all the RMS providers that they believed could meet their software requirements.

8.74 The Parties submitted that because only five forces answered our question to identify viable alternative suppliers, very little evidential weight (if at all) can be placed on the responses.⁶³⁰ We consider that the relatively low number of responses means that the insights drawn from these responses are limited and must be considered alongside other evidence in reaching our provisional conclusion (see paragraph 8.146 and onwards).

8.75 Amongst the five forces who responded, Niche, NECSWS and SSS were all mentioned as viable competitors by at least one respondent.⁶³¹

8.76 In addition, [X] told us that it was satisfied, to an extent, with both the PoliceWorks product and SSS as a supplier. [X] noted that it was aware of two other forces that use PoliceWorks. Specifically, while PoliceWorks does the job, it is inflexible.⁶³²

8.77 [X] submitted that it had identified Mark43 as a new entrant looking to enter the UK market. In 2021 [X] began a discovery phase with Mark43 to identify their requirements but recently paused this until they had completed due diligence on alternative options. [X] submitted that it may be easier to introduce the existing Niche product, but any system change would be a big undertaking for any force.⁶³³

Provisional view

8.78 Given the relatively limited number of responses and the lack of detailed comments by respondents on strengths and weaknesses, we place limited weight on this customer questionnaire evidence. However, we consider that it is consistent with other evidence in showing a limited competitor set, not identifying

⁶²⁹ CMA129, paragraph 4.13.

⁶³⁰ Parties response to the Customer Evidence WP, 4 August 2022, page 20.

⁶³¹ We acknowledge that Motorola was mentioned by one customer, but our understanding is that Motorola does not compete in the RMS market in the UK.

⁶³² Note of a call with [X], June 2022, paragraph 8-9.

⁶³³ Note of a call with [X], June 2022, paragraph 8-9.

significant alternative suppliers to the Parties besides from Niche, and indicating some issues with SSS and the PoliceWorks product.

Competitor views

- 8.79 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.⁶³⁴
- 8.80 Niche submitted that historically NECSWS, SSS and Niche have been the only suppliers of RMS in the UK. In the future, in Niche's view, there could be new entrants to the market, such as Mark43.⁶³⁵
- 8.81 Niche submitted that both NECSWS and SSS benefit from their historical presence and reputation in the police market, not just in the provision of RMS but also their penetration of adjacent markets such as ICCS.⁶³⁶ Niche submitted that they are aware of two upcoming UK opportunities for RMS, and they consider NECSWS and SSS to be their key competition for these opportunities.⁶³⁷
- 8.82 Niche further submitted, however, that SSS's reputation in the RMS market may be affected by GMP's negative experience with SSS's PoliceWorks product as the problems GMP faced with PoliceWorks are well documented. In Niche's view, PoliceWork's solution has become an orphan product – no other force has deployed it in the same format, although two forces have acquired elements of it.⁶³⁸

Provisional view

- 8.83 We consider that the alternative suppliers identified the same competitor set as the other sources of evidence for the RMS market and confirmed that the market has historically been concentrated among three suppliers. However, one competitor has also recognised that SSS has suffered reputational harm due to the poor performance of its PoliceWorks product.

Market developments

- 8.84 We have assessed whether there are any market developments that may mean that the strength of the competitive constraint the Parties place on each other and others place on the Parties, may materially change.

⁶³⁴ CMA129, paragraph 4.13.

⁶³⁵ Note of call with [redacted], June 2022, paragraph 7.

⁶³⁶ Note of call with [redacted], June 2022, paragraph 7.

⁶³⁷ Note of call with [redacted], June 2022, paragraph 9.

⁶³⁸ Note of call with [redacted], June 2022, paragraph 8.

- 8.85 We first assess how many future opportunities will arise, then how well placed the Parties and other suppliers are to compete for these opportunities and then whether, and how fast, there may be a change in customer requirements towards cloud solutions (see paragraphs 5.16-5.30).

Number of opportunities

- 8.86 We have examined how many future opportunities are likely to arise in the RMS market and over what timeframes. This is relevant to the time period over which it is appropriate for us to assess the effects of the Merger.
- 8.87 Using evidence provided by suppliers we have identified [REDACTED] opportunities over the period 2022 to 2024.⁶³⁹
- 8.88 We consider that with these forthcoming opportunities for competition in the market, it is appropriate for us to focus our assessment in particular on the next few years to provisionally determine whether the Merger has resulted, or may be expected to result, in an SLC.

Competitiveness of SSS's RMS products

- 8.89 Given that SSS has a small existing customer base in the RMS market, we have considered the extent to which SSS will continue to place a material competitive constraint within RMS over the next few years.

SSS's views – PoliceWorks and UNIFI

- 8.90 SSS submitted that their RMS products are facing issues that adversely affect their viability as a future competitor for RMS. This includes the well-documented issues with GMP.
- 8.91 SSS submitted [REDACTED].⁶⁴⁰ [REDACTED].⁶⁴¹
- (a) SSS has suffered substantial reputational damage as a result of its issues with GMP (see paragraph 8.111 below) in a market in which reputation is important.
 - (b) [REDACTED].
 - (c) [REDACTED].

⁶³⁹ CMA analysis of competitor data.

⁶⁴⁰ SSS response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 1.4.

⁶⁴¹ SSS response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 1.3-1.3.7.

- (d) UNIFI is a legacy product which SSS had stopped marketing in 2010. It is not an integrated RMS and [REDACTED].
- (e) [REDACTED].
- (f) both products have in large part been developed as bespoke products, each for a specific customer; and
- (g) [REDACTED].

8.92 SSS also submitted that customers are looking for a modern, integrated RMS product with cloud capability, in line with those offered by Niche and Mark43. In particular.⁶⁴²

- (a) Niche's product is significantly more sophisticated, with a modern-looking user interface, and importantly has cloud-capability and is mobile-enabled, supporting access from smartphones. It is used in more than 50% of UK Police forces, and this large user-base allows Niche to fund product change.
- (b) Mark43's product has a cloud native platform and is highly mobile and browser based.
- (c) SSS identified weaknesses of its UNIFI product included its [REDACTED].⁶⁴³

8.93 [REDACTED].⁶⁴⁴

Internal documents – future plans for RMS

8.94 We have reviewed SSS's internal documents for evidence of its views and plans about the future viability of its products.

PoliceWorks

8.95 SSS comments on PoliceWorks's position in two internal documents.

8.96 In one document, SSS identified the strengths and weaknesses of version 3 of its PoliceWorks product,⁶⁴⁵ namely:

- (a) Identified strengths included its bespoke and modern looking User Interface (**UI**), its generic case and custody capability, and that it is a Windows/Commercial Off-The-Shelf product (**COTS**).

⁶⁴² SSS response to the CMA's RFI 2, 30 May 2022, question 19, paragraph 19.7.

⁶⁴³ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

⁶⁴⁴ SSS response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 1.4.

⁶⁴⁵ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

- (b) Identified weaknesses included its lack of web capability (Windows Presentation Foundation), its [REDACTED], and its tailoring to GMP's specific RMS needs.

8.97 In another document, SSS classified PoliceWorks as being in the decline phase of its product life cycle, having only generated a total revenue of [REDACTED] in 2020, which was lower than that of products in their maturity phase, such as DSx or Origin. Furthermore, SSS forecasted in that same document that revenue for PoliceWorks was to remain [REDACTED] in the years between 2020 and 2022.⁶⁴⁶

8.98 This shows that SSS was aware of weaknesses in the PoliceWorks product and, in particular, saw it as a declining product [REDACTED].

UNIFI

8.99 SSS comments on UNIFI in several documents.

8.100 In one document, SSS identified the strengths and weaknesses of its UNIFI product,⁶⁴⁷ namely:

- (a) [REDACTED].

- (b) [REDACTED]'

8.101 In another document, [REDACTED] and 2025, three RMS tenders were expected to take place and UNIFI was deemed as a competitive contender [REDACTED]. In assessing its own competitive position, SSS determined that:⁶⁴⁸

- (a) [REDACTED].

- (b) [REDACTED].

- (c) [REDACTED].⁶⁴⁹

8.102 This shows that SSS was aware of weaknesses in the UNIFI product and, [REDACTED]. However, [REDACTED].

Revitalised or new RMS product

8.103 We have also looked for evidence of whether SSS considered either revitalising PoliceWorks or UNIFI or developing a new RMS product.

⁶⁴⁶ Capita SSS Internal Document, Annex 056 to the FMN, [REDACTED], December 2019, page 6.

⁶⁴⁷ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

⁶⁴⁸ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 108.

⁶⁴⁹ Capita SSS Internal Document, Annex 056 to the FMN, [REDACTED], December 2019, page 6.

8.104 In a 2021 internal document, SSS recommended to [X] into its UK RMS product and instead to focus on [X]. In the absence of further investment:

(a) PoliceWorks was predicted to become [X].

(b) UNIFI was predicted to [X].⁶⁵⁰

8.105 In an internal document, [X].⁶⁵¹

8.106 This indicates that SSS did not have a clear strategy as regards [X]. Some of the internal document evidence indicates that SSS had an [X], whereas other evidence indicates that it intended to [X] in RMS and [X]. However, we also recognise that these documents are from a period when the Merger was under consideration.

SSS's views

8.107 SSS submitted that the document relied on by the CMA to suggest that SSS had a long-term goal to remain in the RMS market by developing new products were both prepared in the context of the sales process, are aspirational only and [X].⁶⁵²

Provisional view

8.108 Overall, the internal documents referenced above suggest that SSS did not have a clear strategy as regards to [X]. The documents suggest that SSS [X] PoliceWorks and UNIFI [X], but one internal document indicated that SSS potentially had a long-term goal to remain in the RMS market by developing new products. We recognise that this long-term goal is mentioned in just one document which was prepared in the context of the sales process.

Customers' views – PoliceWorks and UNIFI

Current PoliceWorks customers

8.109 SSS currently provides PoliceWorks to [X] customers: GMP, [X]. We have received views from these customers on the suitability of PoliceWorks for their needs, now and in the future.

8.110 [X] submitted that it had chosen to exit the current system provided by SSS, so SSS's RMS is not an option for [X] going forward.⁶⁵³ In response to being asked whether [X] expects any changes in the ability of NECSWS and/or SSS's RMS

⁶⁵⁰ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [X], May 2021, page 124.

⁶⁵¹ Capita SSS Internal Document, Annex 10.2.32 to the FMN, [X], undated, page 1.

⁶⁵² SSS response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 4.1

⁶⁵³ Response to the CMA questionnaire from [X], 26 May 2022, Question 21.

products to meet its requirements for RMS, [X] stated that both are mature products that change relatively slowly.⁶⁵⁴ Whilst there will be some improvements in both products, [X] also noted that there are limitations in the PoliceWorks functionality that it would want the new system to improve upon.

- 8.111 Moreover, GMP made a public statement that after reviewing PoliceWorks and the alternative options on the market, they have concluded that 'PoliceWorks cannot be adapted or fixed to fully meet the needs of our organisation. We therefore intend to move away from the PoliceWorks system and to replace it with a tried and tested product already in use by other forces, rather than the development of bespoke technology.'⁶⁵⁵ GMP's current contract with PoliceWorks is up for renewal in June 2023.
- 8.112 GMP previously commissioned EY to review how PoliceWorks had performed[X]:⁶⁵⁶
- (a) [X];
 - (b) [X];
 - (c) [X];
 - (d) [X]; and
 - (e) [X].
- 8.113 [X] confirmed it uses SSS's PoliceWorks and RedSigma, an internally developed software, for its RMS. Its PoliceWorks solution [X] of the RMS and interface to the Crown Prosecution Service. [X] confirmed that it had a number of issues when they went live with PoliceWorks in 2014 and in 2017 [X], but that the relationship with Capita to resolve the issues was very good.⁶⁵⁷
- 8.114 [X] noted that PoliceWorks now meets functionality requirements and has gone through [X] improvements and upgrades. However, to get to this point, [X] has had to work closely with Capita on the product's application, [X].⁶⁵⁸
- 8.115 [X] submitted that there were delays by SSS [X]. The resolution of [X] the issues have taken [X] time but [X] is satisfied with the product itself. However,

⁶⁵⁴ Response to the CMA questionnaire from [X], 26 May 2022, Question 20.

⁶⁵⁵ 'Update on PoliceWorks computer system from Chief Constable Stephan Watson', Greater Manchester Police's News, 21 March 2022, (last accessed 22 August 2022).

⁶⁵⁶ EY, Review of GMP's PoliceWorks System Performance, September 2021, commissioned by GMP, pages 3-4.

⁶⁵⁷ Note of a call with [X], July 2022, paragraph 2.

⁶⁵⁸ Note of a call with [X], July 2022, paragraph 2.

[X] submitted that [X].⁶⁵⁹ [X] has signed a contract with Mark43 to replace its RMS after their current contract with SSS ends.⁶⁶⁰

- 8.116 [X] submitted that it was satisfied with SSS and its PoliceWorks modules. [X] told us that day-to-day it is irrelevant whether other forces use PoliceWorks. However, when thinking about the future, [X].⁶⁶¹ [X] was in the process of evaluating different RMS solutions in the market and considering its future plans in connection to digital casefiles. [X] had carried out due diligence on three options.

SSS's views

- 8.117 SSS submitted that the feedback from PoliceWorks customers is not reflective of the issues with PoliceWorks as the comments fail to consider the [X] with the crime and intelligence modules delivered to GMP, in respect of which SSS has faced extensive and ongoing technical and performance issues.⁶⁶²

Our provisional view

- 8.118 Overall, we consider that there is evidence from current customers that PoliceWorks will be a weak competitive constraint in future.
- (a) There are currently [X] few PoliceWorks customers.
 - (b) Current customers, both those who use it as an integrated system or use [X], have a mostly negative view of PoliceWorks. GMP, the only customer to utilise PoliceWorks in its entirety, has a negative view of PoliceWorks. It has made a public statement that the product does not suit its needs. Customers who use a limited version of PoliceWorks also voiced concerns. For example, [X].
 - (c) [X] has announced it has signed a contract with a new provider, GMP has stated publicly that it will look for an alternative solution and another current customer has said [X], which seems likely.
- 8.119 We therefore consider that current customers do not consider that PoliceWorks is likely to be an effective competitive option in future.

Current UNIFI customers

- 8.120 We have considered the situations of customers that are currently using UNIFI.

⁶⁵⁹ Note of a call with [X], July 2022, paragraph 3.

⁶⁶⁰ Response to the CMA questionnaire from [X], 23 June 2022, question 31.

⁶⁶¹ Note of a call with [X], June 2022, paragraph 7.

⁶⁶² SSS response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.14.

- 8.121 One customer is using UNIFI and has a long-term contract with options for extension until 2029.⁶⁶³ SSS with UNIFI was the only supplier that met the mandatory requirements of the customer's tender process.
- 8.122 One customer has recently extended its contract, but this is in advance of going to tender for a wider suite of products soon.⁶⁶⁴
- 8.123 Two current or former UNIFI customers have recently appointed new suppliers.⁶⁶⁵

Our provisional view

- 8.124 Overall, we consider that one UNIFI customer is relatively satisfied with the functionality of UNIFI. However, other current and recent UNIFI customers have either sought or will seek an alternative solution, indicating that UNIFI no longer best met their needs.

Other customers

- 8.125 An RMS supplier's track record and reputation are important considerations for customers when considering procuring an RMS product. One customer (a consortium of two police forces) (out of a total of 48 police forces) mentioned SSS's products being unviable going forward. [X] stated that SSS is not considered (at this time) to be an acceptable alternative.⁶⁶⁶ This indicates that there is perception among potential customers that SSS's products are weak.

Investment and implementation costs

- 8.126 In relation to the prospect of providing PoliceWorks to a new customer in the future, SSS submitted that there would be significant implementation costs and that it would need to undertake investment to make the products [X] cloud-based.⁶⁶⁷
- 8.127 SSS submitted that a number of key [X] changes would be required to be made to PoliceWorks in order to provide it to a new customer.⁶⁶⁸ [X].⁶⁶⁹
- 8.128 SSS estimated that the key changes for PoliceWorks required would take around [X] on the basis of two teams working on the product full-time, while also

⁶⁶³ Response to the CMA questionnaire from [X], 1 June 2022, question 35.

⁶⁶⁴ Response to the CMA questionnaire from [X], 15 June 2022, question 9.

⁶⁶⁵ [X].

⁶⁶⁶ Response to the CMA questionnaire from [X], 20 May 2022, Question 34.

⁶⁶⁷ SSS response to the CMA's RFI 2, 15 June 2022, question 18a-b.

⁶⁶⁸ SSS response to the CMA's RFI 2, 15 June 2022, question 18a-b.

⁶⁶⁹ SSS response to the CMA's RFI 2, 15 June 2022, question 18a-b.

delivering at least two maintenance releases per annum containing problem report fixes.⁶⁷⁰

8.129 SSS submitted that significant investment was needed to make SSS's products cloud-based. In particular:

- (a) SSS submitted that there are a number of substantial [X] required to convert PoliceWorks from an on-premise to cloud-based solution [X]. [X].⁶⁷¹
- (b) SSS submitted that it would take an investment of [X] to make UNIFI a cloud-enabled product. [X].⁶⁷²

8.130 In light of the above, SSS submitted that [X].⁶⁷³

8.131 [X].⁶⁷⁴

Our assessment – PoliceWorks and UNIFI

8.132 Overall, there is evidence that PoliceWorks will be a weak competitive constraint in the future. This is because:

- (a) current customers ([X]) [X] and [X];
- (b) [X]; and
- (c) the current lack of investment in PoliceWorks may have already harmed the product and its reputation and there are infrequent future opportunities making it harder to recoup any investment costs.

8.133 It is not clear whether, upon the end of its current contracts, UNIFI will be an attractive RMS product for new customers. This is due to:

- (a) its modular approach which may not be considered as attractive as the single integrated modern solutions offered by competitors Niche and NECSWS;
- (b) [X]; and
- (c) its high cost of implementation due to its complex configurability, which make it an expensive solution compared to competitors' products.

⁶⁷⁰ SSS response to the CMA's RFI 2, 15 June 2022, question 18a-b.

⁶⁷¹ SSS response to the CMA's RFI 2, 30 May 2022, paragraph 18.11.

⁶⁷² Parties' response to the Phase 1 Issues Letter, paragraph 7.9.

⁶⁷³ SSS, response to Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.39.

⁶⁷⁴ SSS, response to Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.39.3.

Provisional view

8.134 Overall, our provisional view is that SSS will be a weak competitive constraint in the market. While we recognise there is potential for investment into SSS's RMS products such investment involves a high degree of uncertainty due to:

- (a) the failure of past attempts to invest and develop a new product, as evidenced by PoliceWorks;
- (b) the limited number of future opportunities over which to recover investment costs which limits the incentive to invest; and
- (c) the cost estimates for the investments necessary are high in comparison to the possible available contract values in the short term.

Future transition towards cloud-based services

8.135 Given the current trend towards cloud-based solutions for police forces for RMS, we have also considered the importance of the transition towards cloud-based solutions for the relative competitive strength of the Parties and their competitors in the supply of RMS in the UK.

Parties' views

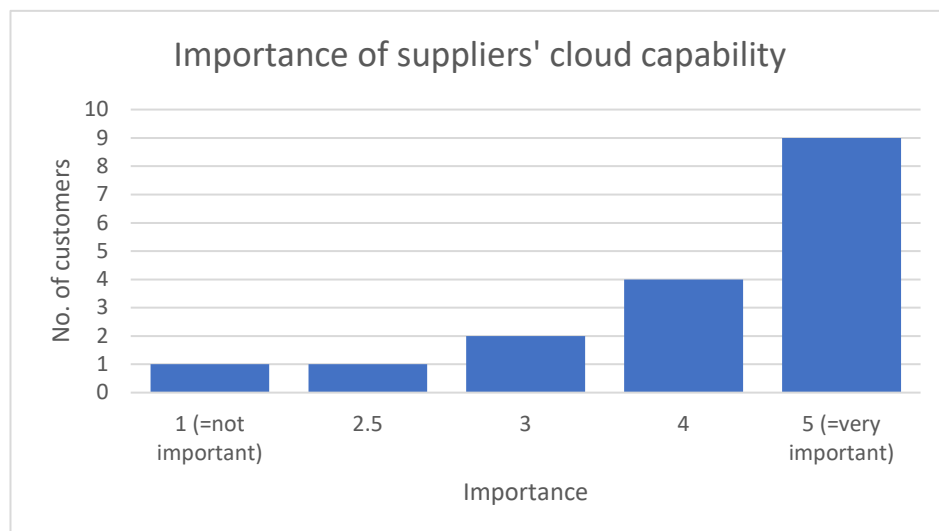
8.136 The Parties submitted that the industry has passed a 'tipping point' in relation to cloud-based solutions, and that this will only accelerate further with increased adoption in the future.⁶⁷⁵

Customers' views

8.137 We asked customers to indicate how important they expected cloud-based services to be in the future. Figure 8-1 below shows that most RMS customers answered that cloud would be important in the future (13 out of 17 answered that it was between four to five in importance on a scale of one to five).

⁶⁷⁵ Parties' response to the Market Development WP, 4 August 2022, page 19.

Figure 8-1 RMS - Importance of cloud



Question: Q29. When next deciding on an RMS product, how important or unimportant will an RMS suppliers' cloud capability be for you?

Base: 17 police forces

Source: CMA analysis of third-party data

8.138 Alongside their quantitative responses, most customers also provided comments to explain their answer. These responses were varied and often explained the respondent's view with specific or detailed points. In order to summarise these responses, we have classified them under the broad themes set out below. Some respondents gave answers that have been classified into multiple categories:

- (a) eight respondents mentioned that moving to cloud fits with either their own or national strategy;
- (b) five respondents said they were actively pursuing a move towards a cloud-based solution;
- (c) three respondents said they were not currently considering a cloud-based option;
- (d) two respondents said cloud was a consideration but not vital;
- (e) two respondents said they expected to use a cloud solution in the future, but this was not imminent; and
- (f) one respondent said that a cloud-solution was essential.

Competitors' views

8.139 One competitor told us that police forces in the UK have traditionally viewed cloud as a security risk, but this is changing, and forces are realising the benefits of cloud. The competitor stated that if police forces have the appetite for cloud-based services, then the need for a supplier to be able to provide it will be significant. However, the issue of whether police forces will be able to afford cloud-services is

now beginning to emerge. The competitor told us that one police force recently opted for an on-premise solution due to cost constraints. There is not just the upfront capital cost to move to cloud, but also costs incurred throughout the lifecycle of the product. Police forces are apprehensive that, once embedded in the cloud, costs can spiral, especially considering the exponential growth of data held by police. The cost of the connectivity for cloud-based services will also be a consideration for police forces, particularly given the integration of RMS with other services.⁶⁷⁶

- 8.140 One competitor told us it ‘recognises the desire for UK Public Safety agencies to shift critical and noncritical IT infrastructure from on-premises hardware to secure cloud environments.’⁶⁷⁷

Competitiveness of competitors’ products

- 8.141 We have considered the likely future competitiveness of the offerings of suppliers other than the Parties, particularly in relation to cloud-capability and in relation to changes from their current offerings.
- 8.142 Niche submitted that its cloud-based functionality is based on IaaS. Its existing solution is routinely deployed utilising a cloud platform such as Microsoft’s Azure solution.⁶⁷⁸ Niche also submitted that it is continually upgrading its RMS.⁶⁷⁹
- 8.143 Mark43 submitted that it is the only cloud-native RMS technology currently available in the UK.⁶⁸⁰ Mark43 will develop the Mark43 UK Public Safety Platform which will consist of Records Management, Evidence Management, Property and Evidence, Custody Management, Business Intelligence and Data Lake capabilities.

Provisional view

- 8.144 On the basis of the evidence above and paragraphs 5.16-5.30, our provisional view is that being able to offer a cloud solution will be increasingly important and a national strategy and organisational strategies are encouraging customers to adopt cloud-based solutions. The majority of customers said that cloud-based solutions will be important in future. However, a small number of customers do not consider cloud-based solutions to be vital and a competitor indicated that the transition to cloud may not be imminent for all police forces (in particular due to

⁶⁷⁶ Note of a call with [redacted], June 2022, paragraph 6.

⁶⁷⁷ Response to the CMA’s questionnaire from [redacted], 29 June 2022, question 2.

⁶⁷⁸ Note of a call with [redacted], June 2022, paragraph 2.

⁶⁷⁹ Note of a call with [redacted], June 2022, paragraph 16.

⁶⁸⁰ Response to the CMA’s questionnaire from [redacted], 29 June 2022, question 1.

cost considerations). On-premise solutions may therefore still exert some competitive pressure over the next few years.

- 8.145 We consider that NECSWS, Niche, and Mark43 already do or will be able to offer some form of cloud-based solution. SSS does not yet have this capability and would face significant investment costs to develop it (see paragraph 8.129). SSS would therefore exert a weaker competitive constraint than it otherwise would if it was better placed to develop a cloud-based solution for the supply of RMS in the UK.

Provisional conclusion

- 8.146 We have found that the RMS market is characterised by a high degree of market concentration with NECSWS and Niche having the majority of customers in the market and SSS having fewer customers.
- 8.147 We are mindful that where the CMA finds evidence that competition mainly takes place among a few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.⁶⁸¹ We have therefore considered the evidence of a high degree of concentration alongside all of the other evidence we have collected.
- 8.148 There have been very few opportunities in the RMS market in the last five years and in particular very few tenders. However, the Parties have directly competed against each other in some of these tenders.
- 8.149 We have found and reviewed comparatively few internal documents from the Parties. These documents show that the Parties have historically considered Niche to be the strongest competitor in RMS. They also show that NECSWS considers SSS a potential competitor while SSS considers NECSWS a strong competitor. Competitors and customers also told us that the Parties were among a small number of suppliers in the market.
- 8.150 We have considered the prospects for SSS's future offerings and whether their strength of constraint may change. SSS currently has a relatively weak position in the RMS market. This weak position is demonstrated by the following points, when taken together.
- (a) SSS has a small number of current customers;
 - (b) Our assessment of customer feedback is that its current customers have a relatively [X<] view of SSS's RMS products;

⁶⁸¹ CMA129, paragraph 4.10.

- (c) SSS has recently [X]. Regarding PoliceWorks, of the [X] current customers, only [X] ([X]) has not publicly announced that it is moving, or intends to move, away from the product. This would leave SSS without [X];
- (d) SSS has suffered reputational damage from public statements by current customers about issues with PoliceWorks;
- (e) Internal documents [X]; and
- (f) SSS's products have high implementation costs and require significant investment. [X] (8.126-8.131).

8.151 As such we consider that SSS's RMS existing products are unlikely to be in a position to strongly compete for future opportunities and therefore would be a negligible constraint on NECSWS in the future.

8.152 With regards to other suppliers, we consider that Niche is well positioned to remain a strong constraint in the market in the future. Should Mark43 continue its entry into the UK market we consider this may also provide a constraint in the market. This would likely reduce SSS's chance of winning the limited number of opportunities in the future even further which makes the prospect of investment in product re-launch even lower.

8.153 As such, absent the Merger we consider that in the years ahead NECSWS and SSS would be unlikely to place a competitive constraint on each other, recognising that the constraints in the markets are more likely to come from other suppliers.

8.154 In view of our assessment above, we therefore provisionally conclude that the Merger has not resulted, and may not be expected to result, in an SLC as a result of horizontal unilateral effects in the market for RMS in the UK.

9. COUNTERVAILING FACTORS

9.1 When considering whether a merger has resulted, or may be expected to result, in an SLC, we consider countervailing factors that may prevent or mitigate the effect of a merger on competition which in some cases may mean there is no SLC. This chapter sets out our provisional assessment of whether countervailing factors may prevent or mitigate the SLCs we have identified in these Provisional Findings.

9.2 We have provisionally found that the Merger has resulted, or may be expected to result, in an SLC in the supply of ICCS in the UK (see chapter 6) and in the supply of Duties in the UK (see chapter 7). We therefore focus our provisional assessment of countervailing factors on the ICCS and Duties markets:

- (a) First, we consider entry or expansion by third parties; and

(b) Second, we consider efficiencies.⁶⁸²

Countervailing factors: entry and expansion

- 9.3 As set out in CMA129 any analysis of a possible SLC includes consideration of the direct responses to the merger by rivals, potential rivals, and customers. 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.⁶⁸³ The CMA therefore considers the possibility of entry and/or expansion as a countervailing measure to what might otherwise be an SLC finding.⁶⁸⁴
- 9.4 The CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely, and sufficient to prevent an SLC from arising. It is likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).⁶⁸⁵
- 9.5 In the chapters about each theory of harm, we take account of evidence relating to entry and expansion in each of the relevant markets that would have occurred irrespective of the Merger.⁶⁸⁶
- 9.6 In this section, for each market where we have provisionally found an SLC, we assess any barriers to entry or expansion and whether any particular supplier is likely to enter or expand into each market as a result of the Merger, in a manner that will prevent or mitigate the SLC and any adverse effects.
- 9.7 This section is structured as follows:
- (a) We set out our framework for assessing entry and expansion.
 - (b) For each of the supply of ICCS and Duties in the UK:
 - (i) We consider barriers to entry and/or expansion and other market conditions, including the views of the Parties and evidence from third party and internal documents, that may affect the timing, likelihood and extent of entry and expansion following the Merger.

⁶⁸² CMA129, paragraph 8.1.

⁶⁸³ CMA129, paragraph 8.28.

⁶⁸⁴ CMA129, paragraph 8.29.

⁶⁸⁵ CMA129, paragraph 8.30.

⁶⁸⁶ CMA129, paragraph 8.28.

- (ii) We identify potential sources of entry and expansion in the relevant market, looking both at examples of recent entry/expansion and at any evidence of specific entry/expansion plans as a result of the Merger.

Framework for assessing entry and expansion

- 9.8 CMA129 states that in determining whether entry or expansion as a result of the Merger would prevent an SLC, we will consider whether such entry or expansion would be: (a) timely; (b) likely; and (c) sufficient.⁶⁸⁷ In terms of timeliness, the CMA's guidelines indicate that the CMA will look for effective entry to occur within two years and, consistent with this guidance this is the timeframe we adopt unless otherwise stated.⁶⁸⁸
- 9.9 These conditions are cumulative and must be satisfied simultaneously.⁶⁸⁹
- 9.10 CMA129 also states that potential or actual competitors may encounter barriers which reduce or even severely hamper their ability to enter or expand in the market.⁶⁹⁰ Barriers to entry and/or expansion are specific features of a market that give incumbent firms advantages over potential competitors. Where such barriers are low, the merged entity is more likely to be constrained by entry; conversely, this is less likely where barriers are high.⁶⁹¹
- 9.11 We consider in turn entry or expansion in the ICCS and Duties markets in the UK, where we have provisionally found SLCs.

Barriers to entry or expansion - ICCS

- 9.12 In this section we consider whether barriers to entry or expansion exist in relation to the supply of ICCS in the UK.

Parties' views

- 9.13 The Parties submitted that barriers to entry and/or expansion in the ICCS market were low.⁶⁹² In particular the Parties submitted that:
- (a) ESN compatibility – The Parties submitted that ESN is based on an international standard (3GPP); it is therefore readily accessible to established and emerging suppliers.⁶⁹³ They told us that if an international ICCS product

⁶⁸⁷ CMA129, paragraphs 8.31 - 8.37.

⁶⁸⁸ CMA129, paragraph 8.33.

⁶⁸⁹ CMA129, paragraph 8.31.

⁶⁹⁰ CMA129, paragraph 8.40.

⁶⁹¹ CMA129, paragraph 8.5.

⁶⁹² Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.1; Parties' initial Phase 2 Submission, 31 May 2022, paragraph 7.1.

⁶⁹³ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.2.1; Parties' initial Phase 2 Submission, 31 May 2022, paragraphs 2.13 and 7.5.1.

already has Long Term Evolution (**LTE**) capability such that it is ESN compatible, the costs of entry would likely be [§<].⁶⁹⁴

- (b) Existing UK presence – The Parties submitted that the lack of an existing UK presence is not a barrier to entry as demonstrated by the presence of four non-UK suppliers in the ICCS market.⁶⁹⁵ The Parties told us that this indicates that UK customers can be satisfied by established track records and experience in other jurisdictions.⁶⁹⁶
- (c) Security compliance – The Parties submitted that security compliance factors are not a meaningful barrier to entry, for example, because ICCS systems do not hold or process substantial personal information.⁶⁹⁷
- (d) Airwave – The Parties submitted that the need to build Airwave specific technology does not give rise to a meaningful barrier to entry because the transition to ESN will remove this restriction,⁶⁹⁸ and the adoption of the modern IP-based interface currently being rolled out nationally will simplify integration and provide the geographic flexibility to facilitate solutions such as cloud.⁶⁹⁹

9.14 The Parties submitted that incumbency advantage does not constitute a material barrier to entry as customers can and do switch to competing suppliers when they are unhappy with their existing provider. The Parties gave the example of when Motorola won the West Yorkshire Police Northeast Framework (2021). The Parties submitted that Motorola [§<].⁷⁰⁰

9.15 In response to evidence from the CMA's customer researchFigure 9-1 Importance of an ICCS supplier's track record/reputation to ICCS customers, the Parties submitted that:⁷⁰¹

- (a) About 51% of police and fire ICCS customers did not respond to the phase 2 questionnaire. It therefore remains unclear to what extent the responses are representative of customer views across the wider ICCS market;
- (b) The CMA's questions asked customers about issues (eg importance of track record/reputation; importance of UK presence) in isolation, rather than how

⁶⁹⁴ Parties' response to the Countervailing Factors WP, comment on paragraph 12.

⁶⁹⁵ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.2.2; Parties' initial Phase 2 Submission, 31 May 2022, paragraphs 7.4 and 7.5.2.

⁶⁹⁶ Parties' response to the Countervailing Factors WP, comment on paragraph 13.

⁶⁹⁷ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.2.3; Parties' initial Phase 2 Submission, 31 May 2022, paragraph 7.5.3.

⁶⁹⁸ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.2.4; Parties' initial Phase 2 Submission, 31 May 2022, paragraph 7.5.4.

⁶⁹⁹ Parties' response to the Countervailing Factors WP, comment on paragraph 12.

⁷⁰⁰ Parties' response to the Countervailing Factors WP, comment on paragraph 24.

⁷⁰¹ Parties' response to Customer Evidence WP, comments on page 9-12.

that factor should be weighed against other factors, such as price and capability;

- (c) In relation to how important or unimportant an ICCS suppliers' track/record reputation is:
 - (i) The evidence only indicates at best that all other things being equal, some customers prefer a supplier with a pre-existing reputation and/or track record, which is unsurprising. A number of customers still do not consider a supplier's track record and/or reputation to be particularly important.
 - (ii) Finally, the Parties noted that, if reputation and/or track record were of high importance in the supply of ICCS solutions in the UK, then one might expect SSS (having the highest number of mentions) to win the most tenders. However, SSS has only won [X] out of the 18 ICCS tenders in the Parties' Opportunities data since 2017. When applying the exclusions and separately identifying tenders, direct awards and extensions, SSS has only won [X] out of 15 tenders
- (d) In relation to how important or unimportant a supplier being currently active in the UK is:
 - (iii) The evidence only shows that all other things being equal, customers prefer a UK-based supplier. Notwithstanding the bias the Parties considered was introduced by the CMA's question, the Parties noted that a sizeable number of customers still do not consider a supplier being based in the UK to be particularly important (ie c.31% of the responding ICCS sample).
 - (iv) The evidence does not support a finding of a material barrier to entry and is contradicted by the entry of Motorola, Saab and Frequentis and Systel being non-UK based suppliers.
- (e) In relation to features of the market identified by the CMA, the CMA should however consider whether the evidence presented above provides sufficient evidence of a material barrier to customers switching and/or supplier entry/expansion and not just a barrier to switching and a barrier to expansion. The Parties consider that the data presented above does not provide such evidence.

Third party evidence

Competitors

- 9.16 We spoke to three competing suppliers, all of which indicated that there were a number of barriers to entering the UK market and that overcoming these involved incurring costs.
- 9.17 Two competitors told the CMA that it would be difficult for a non-UK player to enter the market because of the need to develop its solution to work with ESN and that for new organisations a large investment would be needed.⁷⁰² One of these third parties said any new entrant has to go through extensive conformance testing on the Airwave Dimetra and ESN Gateway, which adds a significant cost which makes a new entry to the UK market more of a challenge.⁷⁰³
- 9.18 A competitor said that customers often ask for UK references as part of their procurement processes.⁷⁰⁴
- 9.19 A competitor said that integration of ICCS with other products (such as CAD, Duties and RMS) can act as a barrier to entry, and for competitors not familiar with the UK market it could be difficult to understand the costs involved in supporting integration.⁷⁰⁵
- 9.20 A competitor said it is unlikely that suppliers not currently present in the UK will be able to enter the market for ICCS or unified solutions.⁷⁰⁶

Customers

- 9.21 We have gathered a range of evidence on factors important to customers decision making through our customer questionnaires.
- 9.22 In response to the Parties' submission that many customers did not respond to our questionnaire (see paragraph (a)), we acknowledge that we do not have a full set of responses. However, we consider that the responses we received cover a broad range of customers (sizes, regions, segments) and in particular include some customers with forthcoming procurement processes. As such, we consider it appropriate for us to place weight on this evidence.
- 9.23 In response to the Parties' submission that we have only asked about each factor in isolation (see paragraph (b)), we consider that the qualitative comments provided alongside each customers' ranking provide an explanation of customers'

⁷⁰² Note of a call with [§<], June 2022, paragraph 14 and note of a call with [§<], June 2022, paragraph 8.

⁷⁰³ Response to the CMA questionnaire from [§<], 3 March 2022, question 6.

⁷⁰⁴ Note of a call with [§<], June 2022, paragraph 15.

⁷⁰⁵ Note of a call with [§<], June 2022, paragraph 7.

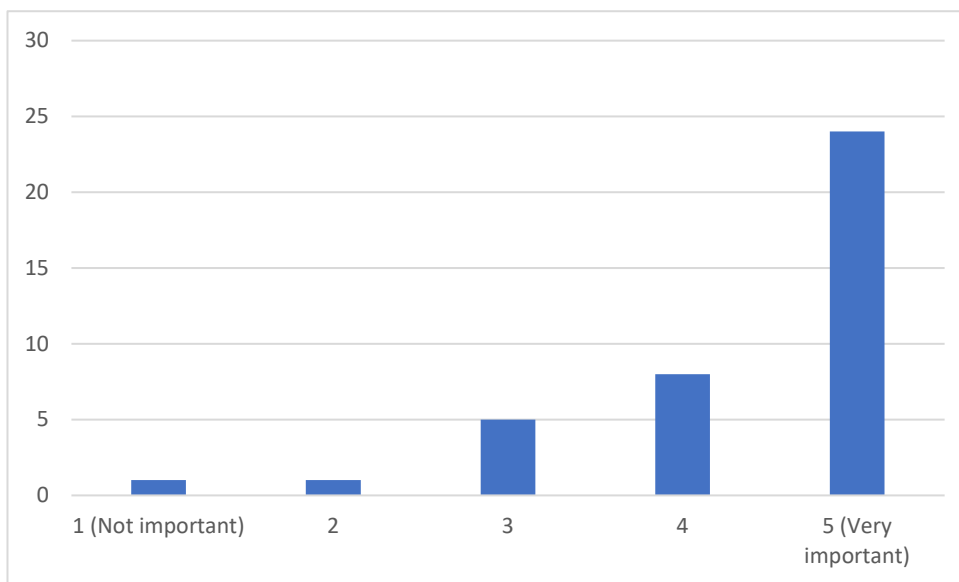
⁷⁰⁶ Note of a call with [§<], July 2022, paragraph 9.

rankings and support the broad findings from the quantitative rankings. We therefore do not consider that material bias has been introduced into the responses from asking about each factor individually.

Importance of track record/reputation

- 9.24 In order to better understand customer procurement choices, we asked ICCS customers to rank the importance of an ICCS supplier's track record/reputation (where one = not important and five = very important) and to provide a supporting explanation.

Figure 9-1 Importance of an ICCS supplier's track record/reputation to ICCS customers



Question: When next deciding on an ICCS product, how important or unimportant will an ICCS suppliers' track record/reputation be for you? (one = not important and five = very important) Please explain your answer.

Source: 39 customer responses to our phase 2 questionnaire

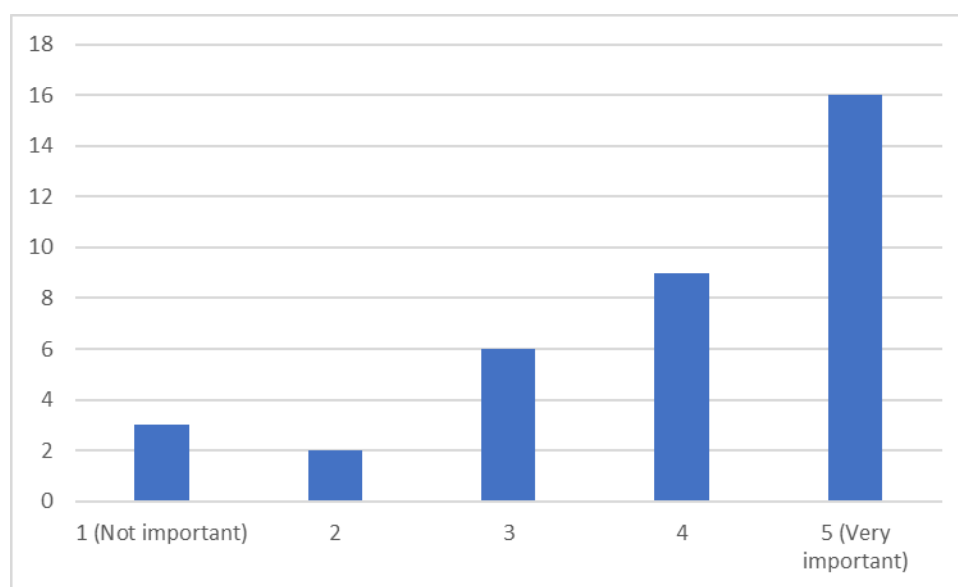
- 9.25 Figure 9-1 shows that the significant majority of ICCS customers (24/39) consider the suppliers' track record/reputation to be very important (score of five) with an additional eight customers scoring the importance as a four. The reasons for it being very important focused on the critical nature of the systems, the need for systems to be available 24/7/365, the need for proof of reliability and having suitable support services in place.
- 9.26 For the minority of customers (7/39) who responded that track record/reputation is less important (replied with a score of 1, 2 or 3) the reasons provided focused on the importance of innovation that needs to be balanced with track record.
- 9.27 Overall, almost all ICCS customers view a supplier's reputation/track record as being an important feature to consider when procuring an ICCS product. This feature of the market is likely to act as a barrier to switching and a barrier to expansion for any new entrants who enter the ICCS market. However, a small number of customers noted that while a product having a proven track record is

important this needs to be balanced with the importance of innovation implying that some customers will consider new entrants.

Importance of a supplier being active in the UK

9.28 We asked customers about the importance of an ICCS supplier being currently active in the UK in our customer questionnaires. We asked ICCS customers to rank the importance of an ICCS supplier currently being active in the UK (where one = not important and five = very important) and to provide a supporting explanation. A summary of responses is shown in Figure 9-2.

Figure 9-2 Importance of an ICCS supplier currently being active in the UK



Question: When next deciding on an ICCS product, how important or unimportant will it be to you that the supplier is currently active in the UK? (from one = not important to five = very important)

Source: 36 customer responses to our phase 1 and phase 2 questionnaires.

9.29 Figure 9-2 shows that just below half of responding ICCS customers (16/36) gave a score of five, showing that they consider that the supplier currently being active in the UK to be very important, with an additional nine customers scoring the importance as a four out of five. The reasons provided for customers for it being very important included:

- (a) reassurance that support of the product would meet the customers' needs/having service personnel present in the UK;⁷⁰⁷
- (b) the need for data storage and security measures to be met;⁷⁰⁸ and

⁷⁰⁷ Response to the CMA questionnaire from [redacted], 26 May 2022, question 15; Response to the CMA questionnaire from [redacted] and from [redacted] 20 May 2022, question 15; Response to the CMA questionnaire from [redacted] and [redacted], 25 May 2022, question 15;

⁷⁰⁸ Response to the CMA questionnaire from [redacted], [redacted], [redacted] and [redacted], 20 May 2022, question 15; Response to the CMA questionnaire from [redacted], 25 May 2022, question 15; Response to the CMA questionnaire from [redacted], 26 May 2022, question 12; Note of a call with [redacted], February 2022, paragraph 22.

- (c) the existence of specific challenges and requirements in the UK that requires local knowledge.⁷⁰⁹

- 9.30 For the minority of customers (5/36) who responded that a supplier being active in the UK is not important (ie ranked it as one or two out of five) the reasons provided varied considerably, including: a lack of choice in the UK market⁷¹⁰; a view that where the technology is developed is not important if there is valid feedback⁷¹¹; and another customer noted that as long as evidence was provided of the product meeting their needs then it did not have to be specifically linked to the UK.⁷¹²
- 9.31 Overall, a significant majority of responding ICCS customers (c.70%) view a supplier being currently active in the UK and having service personnel present in the UK, as being important features to consider when procuring an ICCS product. The evidence from customers indicates that these features of the market are likely to act as barriers to switching and barriers to entry for any new entrants who enter the ICCS market, as they are likely to have additional steps to prove the suitability of their products to emergency service customers.

Parties' internal documents

- 9.32 We have received relatively few internal documents from the Parties which are relevant to barriers to entry in the market for the supply of ICCS in the UK.
- 9.33 An internal document from SSS describes the threat of new entry as [redacted].⁷¹³
- 9.34 We consider that this shows that SSS considers entry to be a high threat, but [redacted].⁷¹⁴ We also consider that even if SSS considers entry to be a threat, it recognises that there are some barriers that hinder this (eg [redacted]).

Provisional assessment of barriers to entry or expansion into ICCS market

- 9.35 Our provisional view is that there are significant barriers to entry into the ICCS market in the UK that will, in particular, reduce new competitors' ability to enter the market (see also our discussion of geographic market definition in chapter 6, paragraphs 6.24-6.27).
- 9.36 We consider that our customer evidence shows that many customers consider a suppliers' track record/reputation to be an important factor when selecting a supplier. This would likely hinder new entrants, particularly those from adjacent markets without any track record in ICCS, from entering the market. It is also

⁷⁰⁹ Response to the CMA questionnaire from [redacted], 26 May 2022, question 15; Response to the CMA questionnaire from [redacted], 20 May 2022, question 15; Note of a call with [redacted], February 2022, paragraph 16.

⁷¹⁰ Response to the CMA questionnaire from [redacted], 20 May 2022, question 15.

⁷¹¹ Response to the CMA questionnaire from [redacted], 22 May 2022, question 15.

⁷¹² Response to the CMA questionnaire from [redacted], 20 May 2022, question 15.

⁷¹³ SSS Internal Document, Annex 060 to the Phase 1 s109(2), '[redacted]' May 2021, slide 40.

⁷¹⁴ SSS subsequently told us that [redacted]. Parties' response to Countervailing Factors WP, comment on para 17.

consistent with the CMA's guidance on barriers to entry, which states that customers may generally place a high value on the reputation and track record of suppliers, and that this may be especially true where the product or service being provided is important for the customer.⁷¹⁵

- 9.37 We consider that our customer evidence shows that many customers would be unlikely to consider selecting a supplier not currently active in the UK. This would be consistent with a risk-averse customer attitude, given the critical nature of ICCS systems. It also consistent with the CMA's guidance on barriers to entry, which states that customers may generally place a high value on the reputation and track record of suppliers, and that this may be especially true where the product or service being provided is important for the customer.⁷¹⁶
- 9.38 We recognise that an international supplier seeking to enter the UK market would have to overcome a number of technological barriers. In relation to Airwave and ESN compatibility, we consider that the need for compatibility with the current Airwave system and associated accreditation is a current barrier to entry. We acknowledge that ESN-transition may lower the barriers to entry in future by introducing a system using international standards. However, our understanding is that ESN is still under development, with switch-over due to commence in 2024 and completion (ie end of Airwave contract) due for the end of 2026, although The Home Office has stated that changes to programme delivery arrangements may impact timelines.⁷¹⁷ [§].⁷¹⁸ As such, any new entrant seeking an opportunity with a go-live date in the next few years would likely need to have an Airwave compatible product or a product compatible with the Airwave product DCS which is an end-to-end IP product.⁷¹⁹ For opportunities beyond this period until full ESN-transition is complete, suppliers with Airwave compatibility may continue to have an advantage over international suppliers, where their Airwave compatibility acts as a contingency against ongoing uncertainty around the timeline of ESN-transition completion.
- 9.39 The Parties pointed to examples of past international entry as evidence that entry barriers are surmountable (see below, at paragraph 9.44). We agree that these are examples of international entry but note that they have all occurred at least five years ago and no further entry has occurred since. Further, at least one of those competitors entered the UK by purchasing an existing player (Motorola acquired Cyfas). We do not consider that entry by acquisition has the same competitive impact as entry by a new entrant.

⁷¹⁵ CMA129, paragraph 8.41(b).

⁷¹⁶ CMA129, paragraph 8.41(b).

⁷¹⁷ The Minister of State, Home Office, [Emergency Services Mobile Communications Programme parliamentary debate](#), 20 July 2022.

⁷¹⁸ SSS, transcript of main party hearing, 2 August 2022, page 75.

⁷¹⁹ SSS, transcript of main party hearing, 2 August 2022, page 75.

- 9.40 In relation to the Parties' submission that we should consider whether the evidence presented provides sufficient evidence of a material barrier to entry/expansion (see paragraph (e)), we consider that we have found evidence of several barriers, which when taken together (and when combined with other evidence of a lack of clear entry plans and lack of recent entry, see next section), in the round indicates that barriers to entry are high.⁷²⁰

Entry and expansion as a result of the Merger - ICCS

- 9.41 Having provisionally found that barriers to entry are high in relation to the supply of ICCS in the UK in the previous section, in this section we consider whether there will be entry in that same market as a result of the Merger. In relation to expansion, we consider that, in this case, our analysis of competitors constraints and future competitive strength within our competitive assessment (chapter 6) encompasses an assessment of the timeliness, likelihood and extent of expansion in general, and that this also encompasses expansion as a result of the Merger.

Parties' views

- 9.42 The Parties submitted that international entry into the UK ICCS market is a highly plausible source of entry, and there has been a clear pattern of such entry with subsequent growth, citing entry by the French supplier Systel in 2013, Swedish-headquartered Saab in 2015 and US-based Motorola in 2016.⁷²¹ The Parties noted that these suppliers' proportions of recent tender wins generally exceed their historic market shares, indicating that entry has been successful and they are expanding within the UK market.⁷²² The Parties also pointed to successful entry by Motorola and Frequentis, and noted that the shift to cloud presents opportunities.⁷²³
- 9.43 The Parties also submitted that other vendors of enterprise COTS products are winning tenders in respect of products and services which have traditionally been provided by ICCS suppliers.⁷²⁴ The Parties submitted that there was a customer perception that COTS solutions are more advanced, easier to understand and faster to deploy than other ICCS products, and that the global players will encroach on traditional avenues of sale in ICCS, increasing their engagement with ICCS customers, and will promote new technology including further public-cloud based products. The Parties provided the following examples:

⁷²⁰ See CMA129, paragraph 8.42, which describes the prospect of barriers to entry being high where they are present in combination.

⁷²¹ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

⁷²² Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 16.

⁷²³ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 24.

⁷²⁴ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

- (a) US-based cloud native entity Content Guru is providing NHS 111 services, and is in contract to deliver both emergency and non-emergency voice services (999/101) and social media management tools for a number of UK forces including Surrey Police, Sussex Police, the British Transport Police and Police Scotland (the second largest force in the UK);
- (b) Amazon Web Services (**AWS**) is providing 101 non-emergency voice services for Bedfordshire Police; and
- (c) The PDS has procured the services of Salesforce and Orla via the PDS framework for social media management tools.⁷²⁵

9.44 The Parties submitted that international suppliers may be incentivised to enter the market in readiness for LTE-based ESN going live, given that ESN is based on an international standard and will lower barriers to entry. Further, international suppliers will often have transferable experience or capabilities from other markets that they can leverage to establish themselves in the UK ICCS market, making use of their involvement with the international community of law enforcement agencies providing them with credibility and an understanding of similar requirements. The Parties provided examples of international ICCS suppliers who have entered the UK market in the last few years:

- (a) Motorola is the largest supplier of public safety communications technology worldwide;
- (b) Frequentis, prior to UK market entry, developed and supplied communication and information systems for control centres (as well as eg air traffic management and transport sectors) to a global customer base;
- (c) Systel, prior to UK market entry, offered a wide range of software and products in mainland Europe to civil security, fire and emergency medical services including to manage emergency calls and crisis situations and secure available resources;
- (d) Saab is an established global aeronautics, military defence and civil security software supplier.⁷²⁶

9.45 The Parties also told us that international ICCS suppliers such as Atos and Zetron similarly have transferable experience and capabilities and an existing UK presence.⁷²⁷

⁷²⁵ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

⁷²⁶ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

⁷²⁷ Atos, for example, are already live and referenceable in the UK public safety market in 999/101 telephony.

Third party evidence

- 9.46 We contacted potential new entrants suggested by the Parties, but those that responded did not have any plans to enter the ICCS. As such, we did not receive any evidence from third parties indicating that they were either planning, or considering, entering the ICCS market in the UK. We did, however, receive evidence from one third party that it did not have plans to enter the market. We consider that this indicates that both there is no material planned current entry into the ICCS market, and that the prospect of entry occurring as a direct result of the Merger is low, given the lack of current analysis or consideration of entry.
- 9.47 Content Guru told us that it provides Contact Centre as a Service (**CCaaS**) capabilities to the Emergency Services along with voice and data recording capabilities.⁷²⁸ However, they told us that their CCaaS and Recording capabilities are not ICCS products, although there is limited integration to ICCS systems. As such, they do not have plans to bid to supply ICCS to any customer in the UK in future.
- 9.48 One customer told us that ICCS is a 'specialist bit of kit' and it takes a long time to be customised and developed.⁷²⁹ In its view, [X].

Parties' internal documents

- 9.49 Content Guru is included on [X] on SSS's 'Competitor Watchlist', which notes that Content Guru has 'full cloud capabilities with integrated CRM', with an 'interest in public safety' and 'showing appetite for Control Room Telephony'. SSS notes: [X].

Our provisional assessment

- 9.50 We have considered the prospects of additional international entry into the UK ICCS market, since we consider this to be the most plausible source of potential entry.
- 9.51 We acknowledge that past entry into the ICCS market in the UK has occurred. Frequentis, Motorola, Saab and Systel are all international companies and we have examined their entry as a potential precedent for future entry.⁷³⁰ Frequentis has been present in the market for more than a decade and it has grown its market share over this time. It won its largest current customer (Ambulance Radio Programme) in 2016 around a decade after it first entered. The other suppliers have been present in the UK market for a shorter time, but still more than five

⁷²⁸ Response to the CMA questionnaire from [X], 16 August 2022.

⁷²⁹ Note of a call with [X], February 2022, paragraph 15.

⁷³⁰ With regards to the competitive constraints arising from the specific examples raised by the Parties (Motorola, Frequentis, Saab, Systel) themselves, all these examples relate to international suppliers that have entered and been active in the UK market for a significant period of time. As such we have taken into account their role in the market, and potential to expand, in our competitive assessment (chapter 6).

years. None of these other suppliers have achieved a share of supply of more than 5% across emergency services and transport customers, although some of these suppliers have achieved a high share of wins.

- 9.52 Customers placing importance on a suppliers' track record and reputation (see Figure 9-1) make it harder to win new customers.
- 9.53 The CMA has received no evidence that international suppliers intend to enter the UK in the near future in response to the Merger.
- 9.54 Although SSS drew our attention to a Strategy document which suggested Content Guru would be a potential direct competitor in the future, Content Guru told us that it did not have plans to enter the ICCS market to any customer in the UK in future.
- 9.55 We have also considered the scope for entry from adjacent markets. We do not consider suppliers in adjacent UK markets (eg telecommunications) are likely to enter the ICCS market in the near future given this would require developing or modernising an ICCS product and the importance customers place on a suppliers' track-record. Further we have received no evidence of suppliers without an ICCS product planning to enter the ICCS market.
- 9.56 In light of the above, we provisionally consider that there will not be timely, likely and sufficient entry into the market for the supply of ICCS in the UK.

Our overall provisional assessment on entry and expansion as a countervailing factor to the provisional SLC in ICCS

- 9.57 As set out above, our provisional view is that there is evidence of high barriers to entry in ICCS, and these barriers are likely to reduce or severely hamper the ability for entry following the Merger.
- 9.58 The evidence we gathered from third parties, in particular, does not support the view that there are any identifiable firms that have the necessary capabilities or intention to enter or expand in the market in which we found an SLC, in a timely, likely and sufficient manner, as a result of the Merger.
- 9.59 Based on the above, our provisional conclusion is that any entry or expansion, as a result of the Merger, would not be timely, likely and sufficient to prevent an SLC from arising in the ICCS market.

Barriers to entry or expansion – Duties

- 9.60 In this section we consider whether barriers to entry or expansion exist in relation to the supply of Duties in the UK.

Parties' views

- 9.61 The Parties noted that Duties products are not particularly complex or difficult to design. They also submitted that while contracts are of a comparatively lengthy duration, this does not mean that customers are necessarily reluctant to change – they will take steps to make sure they have a solution which is fit for purpose.⁷³¹
- 9.62 The Parties submitted that specialist functionality is not a material barrier to entry – on the contrary, all Duties systems are broadly similar. While the content of the rules for workforces planning will vary according to customer type, there are no material differences in functionality.⁷³²
- 9.63 The Parties submitted that security rules are not a meaningful barrier to entry. Cloud providers are able to address security issues and staff are able to obtain security clearances.⁷³³
- 9.64 The Parties did not consider that the location of data is a barrier to entry. They highlighted that there are alternative solutions where this is an issue, such as deploying software on-premise or onto UK-based data centres.⁷³⁴

Competitors' views

- 9.65 We received mixed views from competitors about the existence of barriers to entry into the UK Duties market.
- 9.66 One competitor did not see any direct barriers to entry into the UK Duties market from other countries. It said police customers are sensitive about data protection, but this would not be a problem so long as the data was hosted in the UK. However, it saw several issues for overseas suppliers to consider in respect of entry including: (i) the complexity of the solution; (ii) the 'stickiness' of customers and their reluctance to change; (iii) the relatively small size of the market.⁷³⁵
- 9.67 Another competitor said that it knew of no barriers to entry to the UK market, although it noted overseas suppliers did not seem to gain any traction with UK police customers.⁷³⁶ This competitor also told us that a specific ERP provider's product was not sufficient on its own, and that therefore it did not consider them to be a serious competitor.⁷³⁷

⁷³¹ Parties' response to the Countervailing Factors WP, 4 August 2022, comment after paragraph 51.

⁷³² Parties' response to the Countervailing Factors WP, 4 August 2022, comment after paragraph 56.

⁷³³ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.3.2.

⁷³⁴ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.3.4; Parties' initial Phase 2 Submission, 31 May 2022, paragraph 7.7.3.

⁷³⁵ Note of a call with [§<], June 2022, paragraph 12

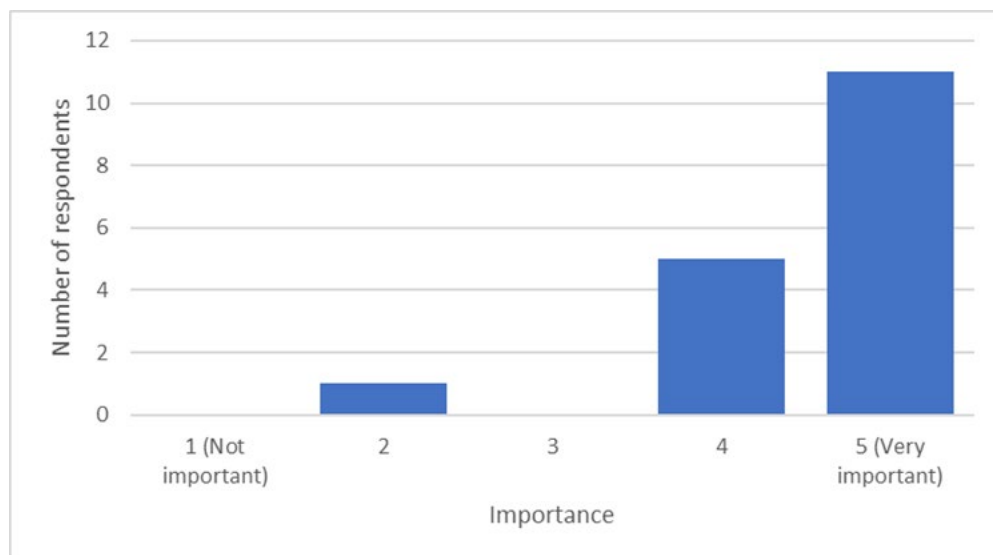
⁷³⁶ Response to the CMA questionnaire from [§<], 15 March 2022, question 15a and c.

⁷³⁷ Note of a call with [§<], June 2022, paragraph 15.

Importance of track-record/reputation

- 9.68 In order to better understand customer procurement choices, we asked Duties customers to rank the importance of a Duties suppliers' track record/reputation (where one = not important and five = very important) and to provide a supporting explanation.

Figure 9-3 Importance of a Duties suppliers' track record/reputation to Duties customers



Question: When next deciding on a Duties product, how important or unimportant will a Duties suppliers' track record/reputation be for you? (from 1= not important to 5=very important) Please explain your answer.

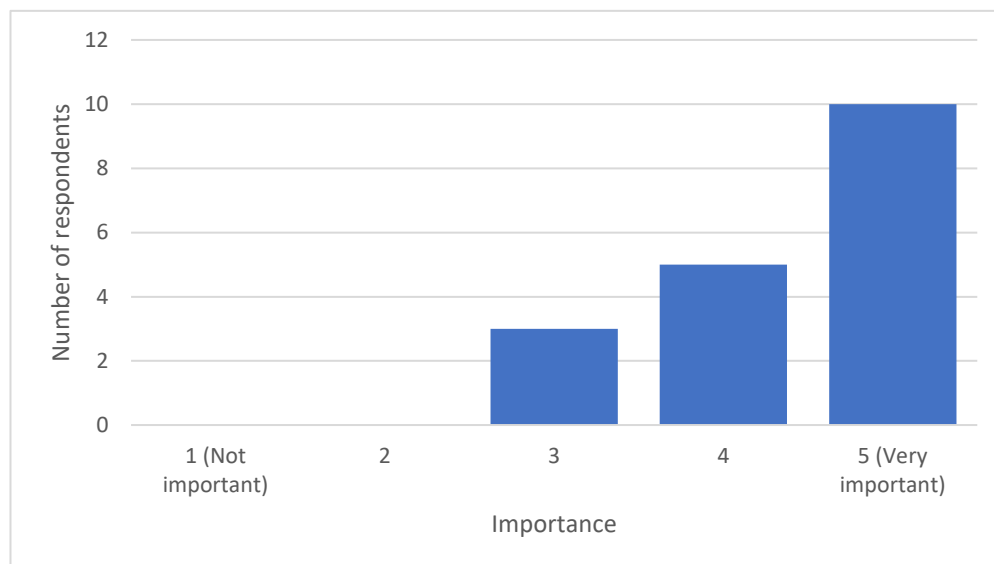
Source: 17 customer responses to our phase 2 questionnaire.

- 9.69 Figure 9-3 shows that the majority of Duties customers (11/17) consider the supplier's track record/reputation to be very important with an additional five customers scoring the importance as a four. The key reason for it being very important focused on it being a critical product for operational requirements and the need for a reliable product. Several customers referred to the nature and complexities of a Duties system as a reason why they would want to see it implemented in other forces.
- 9.70 Overall, it is clear that almost all Duties customers view a supplier's reputation/track record as being an important feature to consider when procuring a Duties product. This feature of the market is likely to act as a barrier to switching and a barrier to expansion for any new entrants who enter the Duties market.

Importance of a supplier being active in the UK

- 9.71 We asked customers about the importance of a Duties supplier being currently active in the UK in our customer questionnaires (see Figure 9-4).

Figure 9-4 Importance of a Duties supplier currently being active in the UK



Question: When next deciding on a Duties product, how important or unimportant will it be to you that the supplier is currently active in the UK? (from one= not important to five= very important)

Source: 17 customer responses to our phase 2 questionnaire.

9.72 Overall, the majority of Duties customers (around 83%) view a supplier being currently active in the UK, and having service personnel present in the UK, as being an important feature to consider when procuring a Duties product. This feature of the market is likely to act as a barrier to switching and barrier to entry for any new entrants who enter the Duties market as they are likely to have additional steps to prove the suitability of their products to emergency service customers.

Parties' internal documents

9.73 An internal document from SSS indicates that the threat of new entry is low because of 'complex regulatory environment resulting in high cost of entry [and] large minimum viable product (MVP) including significant interfacing regs needing high up-front investment.'⁷³⁸ Another internal document from SSS also highlights customer stickiness stating that it is a '[v]ery slow moving market. Contract terms 10+ years. Customer change suppliers as part of a wider back-office restructuring exercise'.^{739, 740}

Provisional assessment of barriers to entry or expansion into the Duties market

9.74 Our provisional view is that there are significant barriers to entry into the Duties market in the UK that will, in particular, reduce new competitors' ability to enter the market (see also our discussion of market definition in chapter 7).

⁷³⁸ SSS, Internal Document, Annex 060 to the Phase 1 s109(2), '[§<]', May 2021, slide 103.

⁷³⁹ SSS, Internal Document, Annex 10.2.31 to the FMN, '[§<]', undated, slide 2.

⁷⁴⁰ SSS told us that both documents referred to in this paragraph were prepared in contemplation of the transaction.

- 9.75 We consider that our customer evidence shows that many customers consider a suppliers track record/reputation to be an important factor when selecting a supplier. This would likely hinder new entrants, particularly those from adjacent markets without any track-record in Duties, from entering the market. It is also consistent with the CMA's guidance on barriers to entry, which states that customers may generally place a high value on the reputation and track record of suppliers, and that this may be especially true where the product or service being provided is important for the customer.⁷⁴¹
- 9.76 We consider that our customer evidence also shows that many customers would be unlikely to consider selecting a supplier not currently active in the UK. This would be consistent with a risk-averse customer attitude, given the critical nature of Duties systems. It also consistent with the CMA's guidance on barriers to entry, which states that customers may generally place a high value on the reputation and track record of suppliers, and that this may be especially true where the product or service being provided is important for the customer.⁷⁴²
- 9.77 We also consider that there is a need for specialist functionality in supplying police forces. Some competitors have told us this acts as a barrier to entry.
- 9.78 Taking this evidence in the round, our provisional view is that barriers to entry in the Duties market are high.

Entry and expansion as a result of the Merger - Duties

- 9.79 Having provisionally found that barriers to entry are high in relation to the supply of Duties in the UK in the previous section, in this section we consider whether there will be entry in that same market as a result of the Merger. In relation to expansion, we consider that, in this case, our analysis of competitors constraints and future competitive strength within our competitive assessment (chapter 9) encompasses an assessment of the timeliness, likelihood and extent of expansion in general, and that this also encompasses expansion as a result of the Merger. We do not discuss expansion further in this chapter
- 9.80 We have considered the prospects for international entry into the UK market and entry from adjacent or related markets (such as Duties supply to non-emergency services customers or entry by ERP suppliers), since we consider both of these to be plausible sources of potential entry.

⁷⁴¹ CMA129, paragraph 8.41(b).

⁷⁴² CMA129, paragraph 8.41(b).

Parties' views

- 9.81 The Parties submitted that large international ERP suppliers have supplied Duties to police customers and that other Duties suppliers are based outside the UK.⁷⁴³ They told us that large international software companies have supplied Duties in the UK even though this has not necessarily been a core commercial focus for them. The Parties provided the examples of [X], and SAP has been the longstanding Duties supplier for the [X], demonstrating that ERP providers are actual and credible competitors in the supply of Duties. The Parties also told us that such suppliers will typically be able to invest more on product development than narrow Duties providers like NECSWS, [X].⁷⁴⁴
- 9.82 The Parties submitted that overseas suppliers are likely to exert an increasingly strong competitive constraint.⁷⁴⁵ They noted that international suppliers and other potential entrants are still considered and contracted by UK customers, as demonstrated by supply from ERP providers like Oracle and SAP, while the Parties believe there have been numerous instances of Duties suppliers moving into supplying emergency services customers using their prior non-emergency services experience (for example Allocate Software, Zellis and Midland HR).⁷⁴⁶

Competitors' views

- 9.83 We contacted potential new entrants suggested by the Parties, but those that responded did not have any plans to enter the Duties market or provide direct supply of duties management services to any emergency services customer in the UK in the next two years (see paragraph 7.143).⁷⁴⁷
- 9.84 [X].⁷⁴⁸ [X].

Provisional assessment of entry and expansion into the Duties market

- 9.85 As set out above, our provisional view is that there is evidence of high barriers to entry in Duties, and these barriers are likely to reduce or severely hamper the ability for entry following the Merger.
- 9.86 The evidence we have seen to date, particularly that from third parties, suggests that the incentives to enter the UK Duties market may be weak.

⁷⁴³ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.3.1; Parties' initial Phase 2 Submission, 31 May 2022, paragraph 7.6.1; Parties' response to the Issues Statement, 28 June 2022, paragraph 5.1.5(d).

⁷⁴⁴ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 51.

⁷⁴⁵ Parties' response to the Phase 1 Issues Letter, 8 April 2022, paragraph 9.3.2.

⁷⁴⁶ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 52.

⁷⁴⁷ We note that we contacted Oracle at phase 1 and at phase 2. We did not receive a response at phase 1 and at phase 2 our contact responded that the request was not relevant to them. In light of this and the absence of any other evidence suggesting that Oracle may enter the Duties market, we do not consider it likely that they would do so as a result of the Merger.

⁷⁴⁸ [X] submission to the CMA, 7 September 2022.

- 9.87 With regards to international entry, the view of a majority of customers that a supplier being proven in the UK was a relevant factor for their decision on supplier will make it more difficult for international suppliers to enter the UK. Further, given the limited opportunities within the Duties market it would take several years for a new entrant to expand significantly.
- 9.88 With regards to entry from adjacent markets, we note that several large software companies in adjacent markets would appear to have the capacity and resources to enter the Duties market if they wished, but we have not seen evidence of them doing so, instead noting that they typically partner with specialist Duties suppliers. Further, one potential reason for the lack of intended entry into the market is that revenues from Duties products are relatively low. The low value of the Duties market would be taken into account by any new entrant and considered alongside the costs of entry.
- 9.89 Based on the above, our provisional conclusion is that any entry or expansion, as a result of the Merger, would not be timely, likely and sufficient to prevent an SLC from arising in the Duties market.

Countervailing factors: Merger efficiencies

- 9.90 In this section we assess whether efficiencies arising from the Merger constitute a countervailing factor.
- 9.91 In some instances, mergers can give rise to efficiencies.⁷⁴⁹ Rivalry-enhancing efficiencies change the incentives of the merger firms and induce them to act as stronger competitors to their rivals—for example, by reducing their marginal costs giving them the incentive to provide lower prices or a better quality, range or service.⁷⁵⁰ They may prevent an SLC by offsetting any anti-competitive effects.⁷⁵¹
- 9.92 Cost and revenue synergies often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in merger proceedings.⁷⁵² Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.⁷⁵³
- 9.93 Most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms. Therefore, it is for the Parties to demonstrate that the Merger will result in efficiencies.⁷⁵⁴

⁷⁴⁹ CMA129, paragraph 8.2.

⁷⁵⁰ CMA129, paragraph 8.3(a)

⁷⁵¹ CMA129, paragraph 8.4.

⁷⁵² CMA129, paragraph 8.6.

⁷⁵³ CMA129, paragraph 8.6.

⁷⁵⁴ CMA129, paragraph 8.7.

- 9.94 When assessing whether merger efficiencies mean that a merger does not result in an SLC, the following criteria must be met. The SLC must:
- (a) enhance rivalry in the supply of those products where an SLC may otherwise arise;
 - (b) be timely, likely and sufficient to prevent an SLC from arising;
 - (c) be merger-specific; and
 - (d) benefit customers in the UK.⁷⁵⁵

Parties' views

- 9.95 The Parties submitted during the CMA's phase 1 investigation that NECSWS expected to realise cost synergies from the Merger. NECSWS submitted that the realisation of these cost synergies will allow it 'to build a more successful public safety business and provide a more attractive and competitive offering to public safety customers in the UK and internationally' and which will allow it 'to be more competitive by offering a combination of improved products, better customer service and more competitive pricing'.⁷⁵⁶
- 9.96 NECSWS anticipates a cost synergy programme which by FY24 delivers [REDACTED] of annual ongoing savings across the UK businesses. Specifically, NECSWS anticipates cost synergies in the following areas as a result of the Merger:⁷⁵⁷
- (a) [REDACTED].
 - (b) [REDACTED].
- 9.97 [REDACTED].⁷⁵⁸
- 9.98 [REDACTED].⁷⁵⁹

Our provisional assessment

- 9.99 Our provisional view is that the efficiencies put forward do not satisfy the criteria the CMA uses when it assesses whether merger efficiencies mean that the merger does not result in an SLC:
- (a) For efficiencies to be accepted as a countervailing factor they must be expected to enhance rivalry. The CMA will generally view reductions in the

⁷⁵⁵ CMA129, paragraph 8.8.

⁷⁵⁶ FMN, paragraphs 1.5 and 1.6; Parties' response to the Issues Statement, 28 June 2022, paragraph 2.6.

⁷⁵⁷ NECSWS response to the CMA's RFI 2, 30 May 2022, question 23; Parties' response to the Issues Statement, 28 June 2022, paragraph 2.6.

⁷⁵⁸ Parties' response to Countervailing Factors WP, comment after paragraph 62.

⁷⁵⁹ Parties' response to Countervailing Factors WP, comment after paragraph 62.

merger firms' marginal or variable costs as being more likely to result in an incentive to reduce price or make short-run improvements in quality than reductions in fixed costs.⁷⁶⁰ The cost efficiencies anticipated by NECSWS have not been shown to be substantially related to marginal or variable costs.

- (b) We have not seen any evidence that the claimed efficiencies would be timely, likely and sufficient to prevent the SLC from arising.
- (c) Although NECSWS has submitted that it is in a strong place to take advantage of [X], the cost efficiencies identified by NECSWS are not merger specific. In particular we have not seen evidence that the cost efficiencies related to [X] could only be achieved through the Merger. Similarly, NECSWS's submissions on [X] do not provide evidence that such improvements could only be carried out by NECSWS and therefore could only arise as a result of the Merger.
- (d) It is also not clear how the anticipated cost efficiencies will translate to benefits to customers in the UK. NECSWS has not provided any verifiable evidence to support its claims that it will be able to be more competitive as a result of the anticipated efficiencies being realised, as it described the purchase of SSS as presenting an opportunity for cost synergies that would drive [X].⁷⁶¹ This indicates that, if the Merger enhanced profitability for NECSWS as claimed, such financial headroom would be used to improve margins and returns to shareholders. Following this, we consider that we have not received evidence that timely, rivalry-enhancing customer benefits would be likely to arise.

Provisional conclusion on countervailing factors

9.100 For the reasons set out above, the CMA's provisional conclusion is that there are no countervailing factors which would prevent an SLC from arising as a result of this Merger in the markets in which we have provisionally found an SLC.

10. PROVISIONAL FINDINGS

10.1 For the reasons set out in the preceding chapters, the Inquiry Group appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to section 35(1) of the Act:

- (a) a relevant merger situation has been created as a result of the Merger;

⁷⁶⁰ CMA129, paragraph 8.10.

⁷⁶¹ NECSWS Internal Document, Annex 9.2.4 to FMN '[X]', February 2021, slide 4.

- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition as a result of horizontal unilateral effects in the supply of ICCS in the UK, and the supply of Duties in the UK.

10.2 We invite any parties to make representations to us on these provisional findings by no later than Friday 7 October 2022. Parties should refer to the Notice of Provisional Findings for details of how to do this.