

**ANTICIPATED ACQUISITION BY
LONDON STOCK EXCHANGE GROUP OF
QUANTILE GROUP LIMITED**

ME/6973/21

RESPONSE TO PROVISIONAL FINDINGS

30 SEPTEMBER 2022

NON-CONFIDENTIAL

1. This submission sets out the response of London Stock Exchange Group plc (“LSEG”) and Quantile Group Limited (“Quantile”) (together, the “Parties”) to the CMA’s provisional findings dated 9 September 2022 (the “Provisional Findings”) concerning LSEG’s proposed acquisition of Quantile (the “Transaction”).
2. The Parties’ welcome and agree with the provisional conclusion reached by the CMA that the Transaction may not be expected to result in a substantial lessening of competition as a result of vertical effects in the supply of multilateral compression services for OTC IRDs in the UK and, in particular, that the Merged Entity would not have the incentive to engage in foreclosure strategies.
3. As provisionally concluded by the CMA, the Parties would have no such incentive given that the likely response from customers would be sufficient to more than offset any benefits of foreclosure. This was supported both by (i) the Parties’ submissions in relation to the sophistication of the Parties’ customers, their detailed involvement in the multilateral compression processes and the significant buyer power they exert; and (ii) by the strong customer feedback that the largest customers value having access to two providers and that they felt they would be able to both effectively detect and deter any foreclosure strategy that may be adopted by the Merged Entity.
4. While the Parties agree with the CMA’s provisional conclusion, there are several key points the CMA addresses in the Provisional Findings with which the Parties disagree. These are addressed briefly in this response and in more detail in the Parties’ Initial Submission, Response to the Issues Statement and Response to the Annotated Issues Statement and Working Papers. For the avoidance of doubt, if the Parties do not comment on a statement contained in the Provisional Findings, it should not be interpreted to mean that they agree with that statement.
5. Whilst the CMA provisionally concludes that LCH has market power in the provision of clearing services for OTC IRDs based primarily on shares of supply, network effects and barriers to switching, the CMA:
 - does not rely on or show any evidence of LCH exercising its market power – and this conclusion appears to be contradicted by the strong buyer power exercised by customers;
 - ignores that the “strong network effects” cited¹ would work against LCH should customers start to move trades away from LCH, as suggested may be the case by a small number of customers themselves².
6. In assessing both market power and the Merged Entity’s incentives to foreclose, the Parties consider that the CMA overstates the barriers to switching CCP and thus the difficulties that customers would face in retaliating. For the reasons explained briefly below and in more detail in previous submissions, this results in both an overstatement of LCH’s market power, as well as an understatement of the costs of foreclosure.
7. In particular, the Parties do not agree that retaliation always requires customers to harm their own immediate commercial interests by moving to alternatives they had previously rejected (or not taking up new services they would have otherwise adopted)³. Indeed, it is possible (and indeed may often be the case) that customers weigh up similar alternatives with comparable benefits to customers and that one option is not materially worse than the other. Consequently, switching providers may not result in material harm to their commercial

¹ Paragraph 5.11 Provisional Findings.

² See e.g. paragraph 5.84 Provisional Findings.

³ See e.g. paragraph 5.65 Provisional Findings.

interests. The Parties operate in highly competitive markets in which a relatively small number of large, sophisticated customers exert significant power and where there are comparable products to those offered by the Parties to which customers could switch with little cost.

- a. For the reasons explained in previous submissions, the Parties do not consider that it would be costly for customers to engage in narrow retaliation and do therefore consider that this threat would be realistic (as evidenced by the previous instances of banks switching clearing activities to Eurex that the CMA itself acknowledges⁴). Firstly, as described by a customer⁵, the mere threat of a (significant) pool of liquidity shifting away from the Merged Entity would constrain the Merged Entity's actions, without the need for banks to actually shift liquidity. Moreover, given that a large number of customers would be adversely affected by any hypothetical foreclosure strategy, the Parties do not consider that it would be necessary for customers to agree to move collectively. As explained in previous submissions, the leading banks could switch their clearing of new trades from LCH to one or more rival CCPs in the normal course of business at low cost (both in terms of transitional switching costs and in terms of ongoing costs of doing business). [...] Moreover, given the highly concentrated nature of SwapClear's user base and network effects, one bank or a small number of banks individually starting to clear new trades elsewhere or switching a relatively small number of trades would be perceived by LSEG as a credible threat which could open the floodgates to further switching of activity with serious consequences for LSEG. This is consistent with the evidence received by the CMA, where a clear majority of customers were confident that they could deter switching, yet did not confirm that they would switch a material volume of trades.
 - b. In relation to wider retaliation, Quantile competes with a number of providers, including OSTTRA, Capitolis and Capitalab. As recognised by the CMA, larger customers often multi-home⁶ for optimisation services and, for new services, will often work with a number of providers before selecting those with which they plan to proceed. At least three customers⁷ stated that they would look at services holistically in case of "bad behaviour" with one saying that "*given the availability of alternatives, there would be no reason for it to stick with Quantile*", which does not appear to support the CMA's provisional conclusion that reacting to foreclosure would be detrimental to customers.
 - c. LSEG operates in similarly competitive markets and, as recognised by a customer⁸, LSEG requires a great deal of industry support to launch initiatives. Even one customer moving away or choosing not to adopt a new service would send a signal to the market and could have serious consequences.
8. Further, the Parties do not agree with the provisional conclusion that a combination of the regulatory framework, LCH's own governance mechanisms, open access commitment and OTCD arrangements would not prevent LSEG's ability to engage in foreclosure:
- a. The Parties consider that the CMA takes an overly narrow view of the regulatory framework. Whilst there are limited legally-binding provisions that tackle directly the alleged potential foreclosure mechanisms, the overall regulatory framework within

⁴ See paragraph 5.86 Provisional Findings.

⁵ See paragraph 5.85(a) Provisional Findings.

⁶ See e.g. paragraph 5.47 Provisional Findings.

⁷ See paragraph 5.95-5.96 Provisional Findings.

⁸ See paragraph 5.95(b) Provisional Findings.

which LCH operates substantially constrains its actions. In particular, the Parties believe that the CMA attributes insufficient weight to the IOSCO principles with which LCH must be seen to comply, even though not legally binding. Indeed, it is worth noting that a number of customers said that they would complain to regulators in case of attempted foreclosure⁹. These customers, at least, must expect – as LSEG does – that complaints would have some repercussions.

- b. The CMA fails to give sufficient weight to LCH's own governance framework, as well as its commitment to open access. The Provisional Findings fail to take into account LCH's long-standing track record and public commitment to both and the likely adverse reaction by customers should LCH operate contrary to either of these.
 - c. Similarly, the CMA's conclusion that LSEG's contractual arrangements with the OTCD banks do not create a "*legal block over LCH's freedom of action*" does not take account of the significant influence that these customers have. The existence of OTCD and the SwapClear Consultative Committee mean that foreclosure strategies could not be put in place without SwapClear's largest customers being at least informed. As the CMA's own evidence suggests, any foreclosure attempt would be quickly seen and felt by customers given the transparent nature of the CCP and sophistication of its customers. In that case, the governance and regulatory structures provide quick and obvious escalation routes through various channels, including to iNEDs and User Directors who would challenge any foreclosure strategy taken by LCH.
 - d. The CMA considers each part of the regulatory framework and LCH's governance separately, ignoring that, in practice, these all interact and therefore need to be viewed in the round to understand the business context within which LSEG operates. These result in numerous safeguards that, in particular when taken together, would prevent any foreclosure from occurring.
9. The CMA's evidence shows that customers have a high degree of confidence these channels would be effective in constraining LCH's ability to engage in foreclosure.
10. The Parties would like to thank the CMA inquiry group and staff for their work on the inquiry to date. The Parties remain happy to engage with the CMA in relation to this submission or any other queries the CMA may have in reaching its final conclusions.

⁹ Paragraph 5.77 Provisional Findings.