

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

Final Report

1 December 2022

© Crown copyright 2022

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW94DU, or email: psi@nationalarchives.gsi.gov.uk.

Members of the Competition and Markets Authority who conducted this inquiry

Kip Meek (*Chair of the Group*)

Jo Armstrong

Robin Cohen

Sir Kenneth Parker

Interim Chief Executive of the Competition and Markets Authority

Sarah Cardell

The Competition and Markets Authority has excluded from this published version of the 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 Some numbers have been replaced by a range.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.

CONTENTS

Summary of final report	7
Final Report.....	15
1. The Reference.....	15
2. The Parties, the Merger and Rationale.....	15
Introduction.....	15
The Products	16
The Parties	16
NECSWS	16
SSS.....	18
The Selling Capita Entities	20
Capita	20
The Merger.....	21
Timeline.....	21
Rationale	22
NECSWS	22
Capita	23
3. Relevant Merger Situation	24
Introduction.....	24
Two or more enterprises.....	24
Ceased to be distinct.....	24
At a time or in circumstances falling within section 24 of the Act.....	25
Share of supply test – nexus with the UK.....	25
Parties’ submissions.....	27
Conclusion on the relevant merger situation	27
4. Counterfactual	27
Introduction.....	27
Framework for our assessment.....	27
The Parties’ and Capita’s views on the counterfactual	30
Our approach	30
Capita’s rationale for the Merger	31
SSS as an investable business	32
Parties’ and Capita’s views	32
SSS’s position.....	32
Our assessment.....	33
Ownership of SSS absent the Merger	34
Capita’s restructuring and alternative scenarios for SSS within Capita absent a sale to NECSWS.....	34
Capita’s sale process and alternative non-Capita owners of SSS	37
Conclusion on the counterfactual	39
5. Nature of Competition	40

Opportunities for competition.....	40
Procurement processes	41
Parameters of competition.....	45
Cloud-based solutions.....	46
On-premise solutions versus cloud-based solutions	46
National strategy and future trends	47
Parties' general view on cloud	48
Police Digital Service (PDS).....	49
Our assessment.....	50
Timeframe for assessment.....	50
Our assessment.....	50
Parties' views	51
Our response to Parties' views	52
6. Competitive Assessment – ICCS	53
Suppliers' offerings.....	53
Market definition	54
Product scope	55
Geographic scope.....	59
Conclusion	60
Competitive assessment overview	60
Market shares	61
Internal documents	64
Recent opportunities	74
Customers' views.....	82
Competitors' views.....	84
Parties' views on current competitive constraints.....	86
Our assessment of current competitive constraints	86
Conclusion on current competition.....	87
Market developments.....	88
Conclusion on future competition.....	106
Conclusion.....	107
7. Competitive Assessment – DUTIES	109
Suppliers' offerings.....	110
Market definition	111
Product scope	111
Geographic scope.....	117
Conclusion on market definition	118
Competitive assessment overview	118
Market shares	120
Internal documents	122
Recent opportunities	126
Customers' views.....	129
Competitors' views.....	130
Market developments.....	130

	Conclusion.....	141
8.	Competitive Assessment – RMS	142
	Suppliers’ offerings.....	143
	Market definition	144
	Product Scope	144
	Geographic Scope	145
	Conclusion on market definition	146
	Competitive assessment overview	146
	Market shares	147
	Our conclusion	150
	Internal documents.....	150
	Recent opportunities	154
	Customer views	157
	Competitor views	158
	Market developments.....	159
	Conclusion.....	171
9.	Countervailing Factors	172
	Countervailing factors: entry and expansion.....	173
	Framework for assessing entry and expansion.....	174
	Barriers to entry or expansion – ICCS	174
	Entry and expansion as a result of the Merger – ICCS	183
	Our conclusion on entry and expansion as a countervailing factor to the SLC in ICCS	186
	Barriers to entry or expansion – Duties.....	187
	Entry and expansion as a result of the Merger – Duties	190
	Our conclusion on entry and expansion as a countervailing factor to the SLC in Duties.....	192
	Countervailing factors: Merger efficiencies.....	193
	Parties’ views	193
	Our assessment.....	194
	Conclusion on countervailing factors	195
10.	Findings on SLC.....	195
11.	Remedies	195
	Introduction.....	195
	Framework for the assessment of remedies.....	196
	Nature of the SLCs	197
	Overview of remedies options	198
	Effectiveness of remedy options.....	200
	NECSWS ICCS [X] Remedy	202
	SSS ICCS [X] Remedy.....	219
	NECSWS Duties [X] Remedy.....	228
	SSS Duties [X] Remedy	237
	Mix and match divestiture	244
	Full divestiture.....	245

Conclusions on remedy effectiveness.....	253
Proportionality	253
Relevant customer benefits.....	254
The proportionality of effective remedies	254
Conclusion on proportionality.....	257
Remedy implementation.....	257
Order or undertakings and restrictions on re-acquisition.....	257
Provision for appointment of a divestiture trustee	258
The role of interim measures during the divestiture process.....	259
Conclusions on divestiture process.....	260
Decision on remedies	260

Appendices

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

Glossary

Summary of final report

Overview of our findings

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by NEC Software Solutions UK Limited (**NECSWS**) of SSS Public Safety Limited and Secure Solutions USA (**SSS** – together the **Parties**), has resulted in, or may be expected to 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. NECSWS has purchased SSS from Capita plc (**Capita**) and we refer to this transaction as the **Merger** (and references related to the future combined business of NECSWS and SSS as the **Merged Entity**).
3. We also looked at one other market, (Records Management Systems software (**RMS**)), where the Parties overlap, but we have found no SLC in that market.
4. Having found that the Merger would give rise to SLCs in ICCS and Duties, we concluded that the sale of NECSWS's ICCS business; and either NECSWS's or SSS's Duties business, would be effective and proportionate remedies to address our concerns. The buyer or buyers of these businesses will need to be approved by the CMA.

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 and rescue services, and ambulance trusts) as well as certain transport customers (such as Transport for London). It is therefore extremely important for public safety.

- (b) Duties which enables the planning, scheduling and shift management of police officers.
- (c) 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.

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 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, to get their views on the impact of the Merger and potential remedies to address the concerns we identified in our Provisional Findings. In particular, we received evidence from the following:
 - (a) Police forces and other emergency services and transport services, including 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 (**ERP**)) who potentially might consider entering the UK ICCS, RMS or Duties markets and/or who may be interested in purchasing these businesses.
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, absent a sale to NECSWS, it is unlikely that Capita would have been able to sell the business, [X]. We were told 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.
14. In light of this, we considered whether it was most likely that SSS would continue to be operated as a going concern with sufficient investment to remain competitive, or whether SSS would have received no further investment or significant underinvestment, such that it would have become significantly weaker.
15. We looked at the financial position of SSS and the incentives to invest in its products. We found that SSS is a profitable business and there was a rationale for further investment, taking into account the financial health of the business, the size of its customer base and its position in the market. While there is limited evidence available, on balance, we consider that, either under the ownership of Capita or having been sold to an alternative buyer, the most likely scenario is that SSS would have remained a going concern and be invested into a degree that would have allowed it to continue to compete.
16. We therefore conclude that if the Merger had not happened, the most likely counterfactual is that SSS would have continued to operate and compete in the relevant markets (either under the ownership of Capita or another purchaser).

... about the effects of the Merger?

17. 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 its price or service quality) compared to the situation if the Merger did not take place.
18. We assessed competition in each of the three markets where SSS and NECSWS overlap, and also how these markets may change in the future, particularly with the expected transition to cloud-based software.

ICCS

19. We looked at the supply of ICCS to emergency services (police forces, ambulance and fire and rescue services) and transport customers in the UK. The market for ICCS is concentrated with six suppliers competing in it. The Parties are two of the three largest ICCS suppliers and are close competitors. Where tender opportunities have arisen in the last few years, typically only a small number of competitors have bid for each one, and our analysis indicates that the Parties bid frequently and are competitive constraints on each other. They also refer to each other in recent internal documents as key competitors and customers frequently mention the Parties as being competitors in this market.
20. We consider the evidence overall shows that the Parties are currently close competitors in a concentrated market and this constraint would be lost as a result of the Merger.
21. We then assessed 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.
22. Many of the opportunities for the supply of ICCS in the next few years are likely to involve consideration of whether the software can operate in the cloud. The evidence suggests that some forthcoming tenders will require a public cloud solution. Where these require immediate public cloud deployment, [X]. However, not all of these will require a public cloud solution to be implemented immediately – 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. This is likely to be enough for the Parties to continue to compete for some opportunities such that they would be a competitive constraint on each other, particularly where they already supply the customer. For those customers who do not yet wish to move to cloud, the Parties will be strong competitors. The Parties will also be well-placed to compete for direct awards and extensions.
23. We consider that NECSWS will be a strong competitor in the market going forward, given its investment plans and that it is in the process of developing its ICCS product. Bearing in mind SSS's large existing customer base, there is also a good case for likely investment in SSS's ICCS product which will make it a more effective competitor in the future, but it will be able to continue to compete for some opportunities in the meantime.
24. With regards to other suppliers, Motorola is well positioned in the market and will remain a strong constraint in the future. Each of Frequentis, Saab and Systel also provide some constraint, but we found that they will either face capacity constraints and/or focus on particular tenders and intend to bid for a limited

number of available opportunities. Given these limitations, we do not consider there are sufficient remaining competitive constraints to counteract the loss of competition resulting from the Merger.

25. Taking all these factors in the round, we therefore 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.
27. There have been very few opportunities to win new customers in the Duties market over the last five years and in particular very few tenders. Although the Parties have not directly competed against each other in any Duties tenders recently, they have been indirect constraints on each other. Furthermore, given the small number of current suppliers, we consider the Parties are likely to compete directly and indirectly in future.
28. We looked at the prospects for each of the Parties' products in future and whether their constraint on each other, and the constraint from other suppliers, may change. [REDACTED]. [REDACTED] NECSWS's current position in the market, its expected profitability over the next few years and ongoing contracts, we have not seen sufficient evidence to consider it likely that [REDACTED]. 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 in 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. With regards to other suppliers, we consider that Crown is well positioned to remain a strong constraint and Totalmobile will also provide a constraint. However we do not consider there are sufficient remaining constraints in the market to counteract the loss of competition resulting from the Merger.
31. We have therefore found that the Merger has resulted, or may be expected to result, in an SLC in the supply of Duties in the UK.

RMS

32. 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 tender opportunities in this market in the last five years, but the Parties have directly competed against each other at times.

33. However, SSS currently has a relatively weak position as a supplier in the RMS market [§]. 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 (in particular Niche, which would remain a strong constraint), and not SSS. We therefore 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?

34. We considered whether there are any actions which customers and/or potential entrants could take to mitigate the SLCs we found in the ICCS and Duties markets in the UK.
35. 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 the importance we understand that customers place on a suppliers' track-record and reputation. Further we have received no evidence of suppliers without an ICCS product planning to enter the ICCS market.
36. We also looked at whether international ICCS suppliers not currently in the UK market would be likely to enter as a result of the Merger. While we note that several non-UK suppliers had entered the market in the recent past (eg Motorola, Frequentis, Saab and Systel), other than Frequentis none have achieved more than 5% share in the market.
37. We considered the barriers to entering the market for international suppliers, 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 concluded that barriers are high. Further we received no evidence that international suppliers intend to enter the UK in the near future in response to the Merger.
38. In relation to the Duties market, we also found that there are significant barriers to entry that will reduce the ability for new competitors to enter.
39. 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). 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.

40. Our conclusion is therefore that entry or expansion, as a result of the Merger, would not be timely, likely and sufficient in order to prevent an SLC arising in the ICCS or Duties markets.
41. We also considered whether efficiencies arising from the Merger constitute a countervailing factor. We examined the efficiencies put forward by the Parties and found that these do not meet the criteria for efficiencies to constitute a countervailing factor.

What have we concluded?

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

How will we address the competition concerns we have found?

43. Where we conclude that a merger has resulted in, or may be expected to result in, an SLC, we are required to decide what, if any, action should be taken to remedy, mitigate or address that SLC, or any adverse effect resulting from the SLC.
44. In assessing possible remedies, we have sought to identify remedies that will be effective in addressing the SLCs we found and then selected the most proportionate remedy that we consider to be effective.
45. In this case, we have decided that the following would be effective and proportionate remedies:
 - (a) sale of the NECSWS ICCS business composed of the divestiture of NECSWS's APD business (including Cortex), CallTouch and its Stream products; and
 - (b) sale of either NECSWS's CARM or SSS's Origin business (ie if NECSWS fail to sell one of these businesses then they must sell the other).
46. We concluded that NECSWS could divest these businesses either to different purchasers or sell them together to the same purchaser. The sale process will be led by NECSWS but the CMA will oversee the process and approve the

purchaser(s). This will ensure the purchaser(s) is suitable, taking into account factors such as its capability to compete and commitment to maintaining the divestiture as a viable and active competitor.

What happens next?

47. The CMA will now take steps to implement the remedies described above. In line with guidance, the CMA will implement its remedy decision within 12 weeks of publication of the final report, which can be extended once by up to six weeks if needed. After this, the businesses will be required to be sold within a certain period of time.

Final Report

1. THE 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 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 21 December 2022.¹
- 1.4 This document, together with its appendices, constitutes the inquiry group's findings. Further information relevant to this inquiry, including non-confidential versions of submissions from parties, can be found on the CMA case page.²

2. THE PARTIES, THE 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;
 - (c) the Selling Capita Entities³ operations and key financial information;

¹ The statutory deadline was extended by eight weeks pursuant to [section 39\(3\)](#) of the Act. For further information, see Appendix B on the conduct of the inquiry.

² See [NEC/Capita Merger case page](#).

³ Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc., both ultimately 100% owned subsidiaries of Capita plc.

- (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**):⁴
 - (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**).⁵ 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 police forces 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 (**FRS**) and ambulance trusts.

The Parties

NECSWS

- 2.5 NECSWS supplies software and associated services primarily to UK public sector bodies.

⁴ More details on market definition can be found in chapters 7–9.

⁵ 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).

- 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).⁶
- 2.7 NECSWS provides its services in the following sectors in the UK:
- (a) Public Safety;⁷
 - (b) Health & Document, Regulatory and Managed Services (**DRMS**);
 - (c) Housing; and
 - (d) Government.
- 2.8 NECSWS's turnover in 2021⁸ was approximately £[REDACTED] million in the UK.⁹ For the same period NEC Corporation's turnover was approximately £22 billion worldwide of which approximately £[REDACTED] million was generated in the UK.¹⁰ As at March 2022, NECSWS had net assets totalling £[REDACTED] million.¹¹
- 2.9 NECSWS's turnover by sector in 2021 was:
- (a) Public Safety (including the Relevant Markets): £[REDACTED] million;
 - (b) Health & DRMS: £[REDACTED] million;
 - (c) Housing: £[REDACTED] million; and
 - (d) Government: £[REDACTED] million.¹²
- 2.10 The revenue of NECSWS in the Relevant Markets from 2019 to 2021 is shown in Table 2-1.

⁶ Final Merger Notice, submitted by the Parties to the CMA on 1 March 2022 (**FMN**), paragraph 3.1.

⁷ Public Safety includes the Relevant Markets, as well as other services such as Computer Aided Dispatch systems, which 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 3.12–3.16.

⁸ This refers to the financial year ending on 31 March 2021.

⁹ FMN, paragraph 3.5.

¹⁰ FMN, paragraph 3.3.

¹¹ NECSWS Internal Document, Annex 008-A to the CMA's request for information (**RFI**) 1, '[REDACTED]', undated.

¹² FMN, paragraph 3.5.

Table 2-1: NECSWS revenue in the Relevant Markets, 2019-2021 (£m)

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

Source: Parties' updated response to the CMA's RFI 1, 20 January 2022, question 21.

Note: the revenues for ICCS in 2020 and 2021 here include additional revenues from certain contracts concerning upgrading ICCS software in anticipation of the new ESN.

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).
- (d) Radio Managed Services, which are an administered service by which police radio devices (handheld and fixed within vehicles) are maintained, issued, and serviced.¹³

¹³ FMN, paragraph 1.8 of the Executive Summary.

- 2.15 The turnover of SSS was £[REDACTED] million in 2021.¹⁴ In 2020 turnover was £[REDACTED] million, with [REDACTED]% of this in the UK.¹⁵
- 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

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

Source: Parties' response to the CMA's RFI of 23 December 2021T, question 21.

- 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.¹⁶
- 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.¹⁷ A timeline of this is shown below:¹⁸
- (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; and
 - (e) 2017: Capita acquires Call Vision Technology, a telephony and wallboard solutions provider.

¹⁴ SSS Internal Document, Annex 036 to the CMA's RFI 1, '[REDACTED]', 26 May 2022, page 3.

¹⁵ FMN, Table 6.2.

¹⁶ 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.

¹⁷ FMN, paragraph 3.28.

¹⁸ SSS's site visit presentation, 13 June 2022, page 9.

The Selling Capita Entities

Capita

- 2.19 Capita is listed on the London Stock Exchange and delivers a variety of consulting, transformation and digital business services in the UK and internationally.¹⁹ Capita is the ultimate parent company of the Selling Capita Entities and, prior to completion, of SSS.²⁰
- 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.²¹ 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].²²
- 2.21 Following Future Capita, Capita is structured with two core divisions and a third non-core division as follows:²³
- (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. Capita plans to reduce debt through disposal of the businesses of the Portfolio division.²⁴
- 2.22 For 2021, Capita's turnover was £3.2 billion worldwide of which £2.9 billion was generated in the UK.²⁵
- 2.23 As of 24 June 2022, Capita had a market capitalisation of £405 million.²⁶

¹⁹ FMN, paragraph 1.3 of the Executive Summary.

²⁰ FMN, paragraph 2.1.3.

²¹ [Capita plc Annual Report 2021](#), pages 9–10 and page 15.

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

²³ [Capita plc Annual Report 2021](#), page 149.

²⁴ [Capita plc Annual Report 2021](#), page 15.

²⁵ [Capita plc Annual Report 2021](#), page 5.

²⁶ Capita plc, [CAPITA PLC CPI Stock | London Stock Exchange](#), last accessed 17 November 2022.

The Merger

- 2.24 On 3 January 2022, NECSWS purchased the entire issued share capital of SSS from Capita.²⁷
- 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 2021.²⁸
- 2.26 The consideration was approximately £62 million,²⁹ 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.
 - (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 29 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:

²⁷ 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.

²⁸ FMN, paragraph 2.4.

²⁹ FMN, paragraph 2.5. Note that the consideration was reduced by approximately £[£X] million, to account for the amount owed by SSS to Capita Secure Information Solutions Limited as a result of the BTA that made SSS a stand-alone entity.

Table 2-3: Timeline of the Merger

Date	Event
Jun 2020	[REDACTED] ³⁰
Jul 2020	Capita begins to prepare for a sale ³¹
Jan 2021	PwC approaches NECSWS to inform it of Capita's sales process for SSS ³²
Jan 2021	Information Memorandum produced ³³
1 Feb 2021	Following entry into an NDA, PwC shares with NECSWS a copy of the Information Memorandum for the sale of SSS ³⁴
Feb/Mar 2021	Bids received ³⁵
5 Mar 2021	NECSWS submits a first offer to Capita, of [REDACTED] ³⁶
Mar-Sep 2021	[REDACTED] ³⁷
26 May 2021	PwC informs NECSWS that Capita wishes to explore the Merger with another bidder ³⁸
Jun 2021	NECSWS prepare a second offer for SSS based on feedback from Capita that the Merger should not be conditional on CMA approval ³⁹
5 Jul 2021	NECSWS submits a second offer to Capita, of [REDACTED] ⁴⁰
7 Jul 2021	Capita informs NECSWS that it wishes to proceed with the second offer and engage exclusively with NECSWS ⁴¹
12 Jul 2021	Capita and NECSWS enter into exclusivity agreement ⁴²
10 Sep 2021	NEC Board approve the Merger ⁴³
Oct 2021	Merger announced ⁴⁴
Jan 2022	Merger completed ⁴⁵

Source: see footnotes below.

Rationale

NECSWS

2.28 NECSWS stated that [REDACTED]. The acquisition [REDACTED].⁴⁶

2.29 NECSWS submitted that the strategic reasons for the acquisition are:⁴⁷

(a) The addition of complementary products to [REDACTED];

(i) [REDACTED];⁴⁸

(ii) [REDACTED];

(iii) [REDACTED].

³⁰ NECSWS's site visit presentation, 16 June 2022, page 10 and NECSWS's response to the CMA's RFI 3, 13 June 2022, page 5.

³¹ SSS's site visit presentation, 13 June 2022, page 21.

³² NECSWS's site visit presentation, 16 June 2022, page 10.

³³ SSS's site visit presentation, 13 June 2022, page 21.

³⁴ NECSWS's response to the CMA's RFI 3, 13 June 2022, pages 5–6.

³⁵ SSS's site visit presentation, 13 June 2022, page 21.

³⁶ NECSWS's response to the CMA's RFI 3, 13 June 2022, pages 5–6.

³⁷ SSS's site visit presentation, 13 June 2022, page 21.

³⁸ NECSWS's response to the CMA's RFI 3, 13 June 2022, pages 5–6.

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

⁴⁰ NECSWS's response to the CMA's RFI 3, 13 June 2022, pages 5–6.

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

⁴² NECSWS's response to the CMA's RFI 3, 13 June 2022, page 7.

⁴³ NECSWS's response to the CMA's RFI 3, 13 June 2022, question 51.

⁴⁴ SSS's site visit presentation, 13 June 2022, page 21.

⁴⁵ SSS's site visit presentation, 13 June 2022, page 21.

⁴⁶ FMN, paragraph 1.5 of the Executive Summary.

⁴⁷ FMN, paragraphs 2.10–2.26.

⁴⁸ NECSWS told us that [REDACTED] (NECSWS's site visit presentation, 16 June 2022, page 9).

- (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]:⁴⁹

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

Capita

2.31 The Parties stated that, [REDACTED].⁵⁰

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 maturities. The proceeds of the Merger are intended to contribute towards this £700 million disposal target.⁵¹

2.33 Capita's reasons and intentions towards disposal are explored further in the counterfactual (chapter 4).

⁴⁹ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 23.

⁵⁰ FMN, paragraph 11.7.

⁵¹ 'Capita plc announces 2020 Full Year Results', [Capita plc announces 2020 Full Year Results | Capita](#), last accessed 16 November 2022; 'Capita agrees to sell Secure Solutions and Services', [Capita agrees to sell Secure Solutions and Services | Capita](#), last accessed 16 November 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 16 November 2022.

3. RELEVANT MERGER SITUATION

Introduction

- 3.1 In accordance with the Act,⁵² 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.⁵³
- 3.3 For the following reasons we have 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'.⁵⁴
- 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.
- 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, we conclude 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.

⁵² Section [35\(1\)\(a\)](#) of the Act.

⁵³ Sections [23\(1\)\(b\)](#) and [23\(2\)\(b\)](#) of the Act.

⁵⁴ Sections [129\(1\)](#) and [129\(3\)](#) of the Act.

- 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, we conclude 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).⁵⁵
- 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.

Share of supply test – nexus with the UK

- 3.15 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.
- 3.16 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.⁵⁶ The description of goods or services identified

⁵⁵ [Section 24](#) of the Act.

⁵⁶ Mergers: Guidance on the CMA’s jurisdiction and procedure ([CMA2](#)), December 2020 (revised), paragraph 4.59.

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.⁵⁷ 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.⁵⁸

- 3.17 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.⁵⁹
- 3.18 In line with the Parties' submissions,⁶⁰ 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.
- 3.19 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.
- 3.20 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 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.^{61,62}
- 3.21 The combined share of supply of the Parties based on revenues in 2021 would be [60-70%] with an increment of [20-30%]⁶³ 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.⁶⁴

⁵⁷ CMA2, paragraph 4.59(a).

⁵⁸ CMA2, paragraph 4.59(b).

⁵⁹ CMA2, paragraph 4.66.

⁶⁰ FMN, paragraphs 14.17.1–14.17.5 and Table 14.1A.

⁶¹ See paragraph 7.6 and Table 6-1 of chapter 6 (Competitive assessment – ICCS).

⁶² 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 7 (Competitive assessment – Duties) 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), see Tables 8-1 (Competitive assessment – RMS).

⁶³ Table 6-2 of chapter 6 (Competitive assessment – ICCS).

⁶⁴ Table 6-2 of chapter 6 (Competitive assessment – ICCS).

3.22 Therefore, we conclude that the share of supply test in section 23(2)(b) of the Act is satisfied.

Parties' submissions

3.23 The Parties did not contest that the Merger resulted in the creation of a relevant merger situation for the purposes of the Act.⁶⁵

Conclusion on the relevant merger situation

3.24 For the reasons set out above we have concluded 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;
- (c) our assessment of the counterfactual; and
- (d) our 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.⁶⁶ Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger: the counterfactual.⁶⁷ 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.⁶⁸ Only events that would have

⁶⁵ FMN, paragraph 5.2.3.

⁶⁶ Merger Assessment Guidelines ([CMA129](#)), paragraph 3.13.

⁶⁷ [CMA129](#), paragraph 3.1.

⁶⁸ [CMA129](#), paragraph 3.1.

happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual.⁶⁹

- 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.⁷⁰ 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).⁷¹ 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.⁷²
- 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.⁷³ The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.⁷⁴
- 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.⁷⁵ Instead, the ‘pre-merger conditions of competition’ refers to the scenario where the firms exert a competitive constraint in broadly the same 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.⁷⁶ The counterfactual assessment will often focus on significant changes affecting competition between the parties.⁷⁷
- 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.⁷⁸ 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

⁶⁹ [CMA129](#), paragraph 3.4.

⁷⁰ [CMA129](#), paragraph 3.13.

⁷¹ [CMA129](#), paragraph 3.13.

⁷² [CMA129](#), paragraph 3.13.

⁷³ 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’.

⁷⁴ [CMA129](#), paragraph 3.2.

⁷⁵ 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).

⁷⁶ [CMA129](#), paragraph 3.7.

⁷⁷ [CMA129](#), paragraph 3.8.

⁷⁸ [CMA129](#), paragraph 3.9.

independent competitor by being acquired by a firm with no current or potential activities in the relevant sector.⁷⁹ 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.⁸⁰ 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.⁸¹ 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.⁸²
- 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.⁸³ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual.⁸⁴
- 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 alternatives to the merger, which may include reviewing evidence of specific plans where available.⁸⁵
- 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 (see chapter 5).⁸⁶ In some markets, relevant developments may not take place for some years.⁸⁷ 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.⁸⁸

⁷⁹ [CMA129](#), paragraph 3.9.

⁸⁰ [CMA129](#), paragraph 3.9.

⁸¹ [CMA129](#), paragraph 3.9.

⁸² [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.

⁸³ [CMA129](#), paragraph 3.14.

⁸⁴ [CMA129](#), paragraph 3.14.

⁸⁵ [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, [Amazon/Deliveroo](#), paragraph 6.201.

⁸⁶ [CMA129](#), paragraph 3.15.

⁸⁷ [CMA129](#), paragraph 3.15.

⁸⁸ See, [Amazon/Deliveroo](#), paragraph 6.202.

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.⁸⁹
- 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].⁹⁰
- 4.15 Submissions from the Parties and Capita on specific points are covered in the relevant sections below.

Our approach

- 4.16 In light of the Parties' and Capita's submissions, we have, in particular, assessed whether absent the Merger:
- (a) SSS would have continued to operate 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, or experienced significant underinvestment, such that it would become a significantly weaker competitor and would have ceased to actively compete for contracts.
- 4.17 Our assessment in this chapter concerns what would have been the most likely scenario for the SSS business absent the Merger, considering all of its operations, including those within and outside the Relevant Markets. We consider the distinct operations and competitive conditions in relation to the ICCS, Duties and RMS components of the SSS business, as part of our assessment of competitive effects in each of the Relevant Markets in chapters 6 to 8.
- 4.18 The CMA considers that for the purposes of our assessment pre-merger conditions of competition are those broad conditions that prevailed when Capita was operating SSS as a going concern with sufficient investment for the business to continue to provide a competitive constraint. 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

⁸⁹ Parties' response to the phase 1 Issues Letter, Counterfactual follow-up paper, 8 April 2022, paragraph 2.

⁹⁰ FMN, paragraph 11.2.

for new contracts, upgrades and renewals. In the period leading up to the Merger, Capita had identified SSS as a target for divestment, begun a sale process, [REDACTED]. The CMA considers that competitive conditions during that time period do not accurately represent pre-merger conditions of competition. However, we acknowledge that Capita had [REDACTED] during the pre-merger period and we have taken this into account in our assessment of the need for investment below (see paragraph 4.57 below), as well as in our competitive assessment in chapters 6 to 8.

- 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 and that this would have resulted in significantly weaker conditions of competition.
- 4.20 As set out in paragraph 4.6 above, 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.⁹¹ Therefore a counterfactual 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 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 two different scenarios for ownership and investment in SSS in order to inform which is the most likely.
- 4.22 We first set out background information on the rationale for Capita's sale of SSS, before considering the scenarios described at paragraph 4.16 above.

Capita's rationale for the Merger

- 4.23 Capita told us that it had '[REDACTED]',⁹² and NECSWS told us that Capita had a [REDACTED].⁹³ This strategy is set out below.
- 4.24 Capita implemented a programme of restructuring with a 'drive for simplification of the business and strengthening the balance sheet'.⁹⁴ This restructuring completed in 2021 and resulted in a new structure of three divisions (as described in paragraph 2.21).⁹⁵

⁹¹ [CMA129](#), paragraphs 3.3 and 3.4.

⁹² Capita's response to the CMA's RFI 2, 13 June 2022, question 43.

⁹³ NECSWS's response to the CMA's RFI 3, 13 June 2022, question 36(e).

⁹⁴ [Capita plc Full Year Results 2021](#), page 12.

⁹⁵ [Capita plc Annual Report 2021](#), pages 3 and 149.

- 4.25 Capita planned to reduce debt through disposal of the businesses of the Portfolio division.⁹⁶ 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.⁹⁷ These disposals were to be from its non-core 'Portfolio' division, which included SSS.

SSS as an investable business

- 4.26 In this section, we consider whether, absent the Merger, SSS would have continued to operate 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 or significant underinvestment, such that it would have become a significantly weaker competitor 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 at a potentially heavily discounted offer.⁹⁸
- 4.28 Capita highlighted that in 2019 it 'had identified SSS as a [REDACTED]'.⁹⁹

SSS's 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 £[REDACTED] million in 2021,¹⁰⁰ and £[REDACTED] million in 2020;¹⁰¹
 - (b) Reported EBIT for SSS was £[REDACTED] million in 2021,¹⁰² and £[REDACTED] million in 2020.¹⁰³
 - (c) As at January 2021, SSS's customer portfolio included:

⁹⁶ [Capita plc Annual Report 2021](#), page 15.

⁹⁷ Capita's response to the CMA's RFI 2, 13 June 2022, question 37.

⁹⁸ Capita's response to the Counterfactual Working Paper (WP), 4 August 2022, paragraph 5.4.

⁹⁹ Capita's response to the Counterfactual WP, 4 August 2022, paragraph 5.5.

¹⁰⁰ SSS Internal Document, Annex 036 to RFI 1 '[REDACTED]', 26 May 2022, page 2.

¹⁰¹ FMN, Table 6.2.

¹⁰² SSS Internal Document, Annex 036 to RFI 1 '[REDACTED]', 26 May 2022, page 2.

¹⁰³ SSS Internal Document, Annex 024 to RFI 1 '[REDACTED]', 26 May 2022.

- (i) [REDACTED] UK Home Office police forces;
- (ii) [REDACTED] ambulance trusts;
- (iii) [REDACTED] UK fire services; and
- (iv) 15 countries of operation.¹⁰⁴

- 4.30 In 2018, SSS had put in place in 2018 plans to invest in SSS's products to '[REDACTED]' as part of its 'Public Safety Platform'.¹⁰⁵ This was costed at £[REDACTED] million and was considered the key contribution to maintaining SSS's competitive position, being described as '[REDACTED]'.¹⁰⁶
- 4.31 When Capita restructured its business as described at paragraph 4.24, [REDACTED]. While SSS had developed its 'Public Safety Platform' plans, including approval to spend £[REDACTED] on its initiation, design and market research,¹⁰⁷ [REDACTED].¹⁰⁸ [REDACTED].¹⁰⁹
- 4.32 Despite [REDACTED], Capita considered that SSS had 'candidate growth opportunities' that could be realised through capital expenditure of approximately £[REDACTED] million 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).¹¹⁰

Our assessment

- 4.33 SSS is a profitable business with many existing customers, therefore it is apparent that SSS is a going concern. We note that the Parties have not argued otherwise, but rather that SSS would need investment in order to continue to compete effectively.
- 4.34 We have considered investment in each of SSS's in-scope products in the Competitive Assessment, including the impact of pre-existing investment levels under Capita's ownership. For the purposes of the Counterfactual we consider the prospects for investment in SSS in the round, having regard to the situation in the various markets in which it operates and nature of the SSS business as a whole. We consider that:
- (a) SSS has the skills and capabilities to compete in the markets in which it operates (as shown by its historic success in developing products, winning

¹⁰⁴ SSS Internal Document, Annex 137 to CMA RFI 3 '[REDACTED]', 13 June 2022, slide 6.

¹⁰⁵ SSS's site visit presentation, 13 June 2022, slide 17.

¹⁰⁶ SSS's site visit presentation, 13 June 2022, slide 17 and Parties' Issues Meeting presentation to the CMA, 6 April 2022, slide 10.

¹⁰⁷ Parties' Issues Meeting presentation to the CMA, 6 April 2022, slide 10.

¹⁰⁸ SSS's site visit presentation, 13 June 2022, slide 17.

¹⁰⁹ Capita's response to the CMA's RFI 2, 13 June 2022, question 63.

¹¹⁰ Capita's response to the CMA's RFI 2, 13 June 2022, question 41, and Capita Internal Document, Annex 6.2 002 to RFI 2 '[REDACTED]', 13 June 2022, slide 29.

contracts and retaining customers, see for example Competitive Assessment paragraphs 6.125, 6.127, 7.83 and 8.67);

- (b) SSS benefits from its established position with a large existing customer base on long-term contracts, including UK and international customers across a diversified portfolio of products (see for example Competitive Assessment Table 6-2, Table 7-2 and Table 8-2); and
- (c) There is an active and open market for new contracts with emergency services and transport customers, providing opportunities for long-term and profitable sales for which SSS is positioned to compete on the basis of its skills and capabilities, and established market position (see for example the range of opportunities in the market which SSS has and can compete for, as set out in paragraphs 6.170 to 6.172, 7.99 and 7.100, and 8.88 and 8.89).

4.35 Taken together the evidence indicates that SSS is a business with relevant and valuable assets and capabilities, operating effectively in a number of commercially attractive markets. Therefore, our view is that there are clear incentives for investment in SSS whether via Capita or an alternative purchaser. We assess these scenarios in the next section.

Ownership of SSS absent the Merger

4.36 The above section considered the incentives for investment in SSS in principle. In this section we consider the routes by which investment could be realised, namely potential alternatives for the ownership and operation of SSS absent the Merger. In particular, we consider whether, absent the Merger:

- (a) Capita might have undertaken further internal restructuring and what alternative scenarios existed for the SSS business within Capita if it had not sold the business; and
- (b) there could have been an alternative non-Capita owner of the SSS business. In this regard we have considered, in particular, evidence related to Capita's sales process and its relevance for the counterfactual.

Capita's restructuring and alternative scenarios for SSS within Capita absent a sale to NECSWS

4.37 As set out in paragraphs 4.24 and 4.25 the sale of SSS formed part of a wider corporate restructuring by Capita, alongside a number of other potential disposals. The CMA has received relatively limited evidence in relation to what the alternative strategy for SSS within Capita would have been if a sale of SSS could not be achieved, which is not unusual as the establishment of a counterfactual is an

inherently uncertain exercise and evidence relating to future developments absent the merger is often difficult to obtain.¹¹¹

- 4.38 One internal document we received 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 [REDACTED].¹¹²
- 4.39 We understand that the reference to '[REDACTED]' means moving SSS within Capita's group structure [REDACTED].¹¹³
- 4.40 We consider that the reference to '[REDACTED]' could have meant that the existing strategy of [REDACTED] would be reviewed.
- 4.41 We asked Capita to explain the meaning of a '[REDACTED]' and were told:¹¹⁴
- (a) 'If the sale of SSS to NEC had not proceeded then Capita would most likely have moved the SSS business into the Public Services division and would have run the business to service the contracts it had at the time'.
 - (b) 'The Public Services division was chosen due to the degree of alignment with and overlap between the customer base of SSS and that of other business units within the Public Services division. This choice would have needed approval from the Capita Exco'.
 - (c) 'Regardless of any move into the Public Services division, Capita's strategy towards SSS would not have changed. SSS had been identified as non-core and this designation would not have changed, so it would only have been operated to serve its existing customer contracts and only minor investments, those necessary for its continuing operation, would have been made. No additional funding would have been made available for further investment and it would not have targeted new business'.
 - (d) 'Whilst Capita will have made investments into "core" businesses that are part of the Capita Public Services division since the completion of the sale of SSS, these other businesses had been identified as "core" and aligning with Capita's wider strategy. As such, this should not be taken as a parameter of any potential investment that would have been made in SSS following failure of the transaction'.

¹¹¹ [CMA129](#), paragraph 3.13.

¹¹² Capita Internal Document, Annex 167 to RFI 2 '[REDACTED]', 13 June 2022, slide 8.

¹¹³ [Capita plc Annual Report 2021](#), page 3 and 'Capita Executive Committee', [Executive committee | Capita](#).

¹¹⁴ Capita's response to the CMA's RFI 4, 14 October 2022, question 87.

- (e) 'There are no examples of other non-core businesses, that had previously been selected and prepared for sale, moving back into one of Capita's other operating divisions'.

- 4.42 We did not receive any other internal documents referring to potential alternative strategies or providing additional explanation for what '[X]' would have entailed. We take Capita's statements set out above into account in our assessment, although we note that they are not supported by contemporaneous evidence and have been given whilst the Merger is under investigation.
- 4.43 It is inherent in the consideration of the counterfactual that the scenarios being assessed did not in fact arise. In the specific context of the Merger, because the sale of SSS went ahead, Capita never had to make a decision about its alternative strategy for SSS under its continued ownership. This is recognised by Capita's submission that 'it never got to the point where it actually needed to consider the actions it would have needed to take in such a scenario'.¹¹⁵ As noted above, there is limited contemporaneous evidence to support what Capita's alternative strategy for SSS would have been if a sale could not be achieved. Therefore, although we take into account Capita's recent statements at paragraph 4.41 above, it is difficult to determine precisely what Capita may have done at that point in time.
- 4.44 Capita also told us that it has invested in businesses within its 'Public Services' division, and that there are no other examples of a designated 'non-core' business moving to the 'Public Services' division. This suggests that a Capita business such as SSS being placed within the 'Public Services' division and yet continuing to be operated as a non-core business (ie not receiving sufficient investment) would have been unique, particularly given that to date all the other businesses within Public Services receive investment.
- 4.45 What is apparent from the available evidence is that a decision on Capita's alternative strategy for SSS had not been taken at the time of the sale and therefore plans for SSS would have needed to be re-evaluated had a sale not gone ahead. Although there is limited evidence, it is important to take into account SSS's financial position and the commercial incentives set out at paragraph 4.34 above. While this re-evaluation could have potentially resulted in a strategy in line with Capita's submissions at paragraph 4.41 above, we also consider that Capita could have decided to [X] its investment in the business [X], in line with its approach to other businesses in that division.
- 4.46 Considering all these factors in the round, we conclude that in the event Capita did not sell SSS to NECSWS, rather than withdrawing investment and 'running down the business',¹¹⁶ it would have been more likely for Capita to adopt a business

¹¹⁵ Capita's response to the CMA's RFI 4, 14 October 2022, question 87(c).

¹¹⁶ Capita's response to the Counterfactual WP, 3 August 2022, paragraph 5.4.

strategy of either making sufficient investment in SSS to enable it to continue to compete or to have sold SSS to an alternative purchaser. Either option would have realised for Capita the value in SSS identified in paragraph 4.34 and as such would likely have been more attractive than simply allowing the business to wind down. We have therefore also assessed whether there might have been an alternative purchaser for SSS in the counterfactual scenario.

Capita's sale process and alternative non-Capita owners of SSS

- 4.47 As set out in paragraphs 4.24 to 4.25 the sale of SSS formed part of a wider corporate restructuring by Capita and, as part of this, Capita conducted a sales process for SSS. This process, ultimately, led to the sale of SSS to NECSWS. In this section we consider whether, absent the sale to NECSWS, SSS could have been bought by another purchaser.
- 4.48 Capita's sale process resulted in two bids for SSS being received:
- (a) an offer from NECSWS (accepted); and
 - (b) an indicative bid from [REDACTED] (rejected).
- 4.49 Capita (through its advisors PwC) contacted a selection of potential purchasers¹¹⁷ directly, rather than launching a public invitation for bids. The initial sale process involved [REDACTED] entities being contacted by PwC and produced NECSWS's bid.¹¹⁸
- 4.50 In March 2021, as part of its announcement of FY2020 results, Capita published that the disposal of SSS was in process.¹¹⁹ As a result of this, [REDACTED], a private equity firm, became aware of the sale.¹²⁰ The disposal plans in general were picked up in the press,¹²¹ but SSS was not mentioned specifically in the press as one of the entities up for sale.
- 4.51 In April 2021, [REDACTED] submitted a first bid for SSS of £[REDACTED] million and followed this up with what it called '[REDACTED]'.¹²² It then sent to Capita's advisors PwC an indicative second offer of [REDACTED] on 2 July 2021, with the [REDACTED] due to its assessment of [REDACTED] uncovered during due diligence.¹²³

¹¹⁷ The CMA spoke to the [REDACTED] 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 a third party, September 2022, paragraph 5.

¹¹⁸ Capita's response to the Counterfactual WP, 4 August 2022, paragraph 2.7.

¹¹⁹ [Capita Full year results 2020](#), slide 22.

¹²⁰ Note of a call with a third party, July 2022, paragraph 4.

¹²¹ For example see Proactive investors, '[Capita takes disposals to £800 million with sale of two more businesses](#)', 16 March 2022, last accessed 23 November 2022; Sky News, '[Capita chief to unveil restructuring and £400 million disposal plan](#)', 16 March 2021, last accessed 23 November 2022; and The Times, '[Capita to split itself in two under £400 million asset disposal plan](#)', 18 March 2021, 23 November 2022.

¹²² Capita Internal Document, Annex 158 to RFI 2 '[REDACTED]', 13 June 2022, page 1.

¹²³ Capita Internal Document, Annex 158 to RFI 2 '[REDACTED]', 13 June 2022, page 1.

- 4.52 PwC told [X] on 7 July 2021¹²⁴ 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).¹²⁵ 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.¹²⁶
- 4.53 Capita told us that it ran a ‘wide-reaching sales process, proactively contacting all parties [X]. [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’.¹²⁷
- 4.54 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’.¹²⁸

Our assessment of alternative non-Capita owners

- 4.55 In the early part 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]¹²⁹ and [X].¹³⁰ 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.¹³¹
- 4.56 We also note that, during the course of our gathering of third-party evidence on possible remedies following publication of our provisional findings, [X] further third parties expressed interest in potentially acquiring a divestment of the whole of SSS.¹³² Of these [X], [X] were approached during Capita’s sale process (see paragraph 4.49) and [X] were not approached.
- 4.57 Although we take into account Capita’s views, we consider that this indicates that alternative interest in purchasing SSS would have existed absent the Merger, including potential interest beyond those contacted in Capita’s sale process.
- 4.58 We also note, as discussed from paragraph 4.33 above, that SSS’s owner would need to provide investment into the business. The following indicates that an

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

¹²⁵ Capita Internal Document, Annex 6.98 044 to RFI 2, ‘[X]’, July 2021.

¹²⁶ Capita Internal Document, Annex 158 to RFI 2 ‘[X]’, 13 June 2022, page 1.

¹²⁷ Capita’s response to the Counterfactual WP, 4 August 2022, paragraph 1.2.

¹²⁸ Capita’s response to the Counterfactual WP, 4 August 2022, paragraph 1.3.

¹²⁹ Note of a call with a third party, June 2022, paragraph 18.

¹³⁰ Note of a call with a third party, June 2022, paragraph 15.

¹³¹ Note of calls with two third parties, June 2022, paragraphs 15 and 18, respectively.

¹³² Note of calls with two third parties, October 2022; Response to the CMA questionnaire from a third party, October 2022, question 7; Third party submission to the CMA, October 2022.

alternative non-Capita owner of SSS would have been incentivised to invest in and maintain SSS:

- (a) As set out above in paragraph 4.34, there are a number of factors suggesting that SSS would have been in broad terms a commercially attractive proposition for an owner to invest in, including its good financial position and revenue earning capabilities, large customer base, skills and capabilities within the business and existing standing in the markets.
- (b) There are also reasonable prospects [REDACTED], see Countervailing Factors chapter 9), which could be taken advantage of by an owner. This may enable a new owner to, at least in part, offset capital outlays on investment and (acknowledging that Capita had [REDACTED]) enable some financial gains to be made in the period before investments to secure SSS's competitiveness come to fruition.
- (c) SSS being sold without any debts remaining outstanding to Capita.¹³³
- (d) SSS [REDACTED].¹³⁴

Conclusion on the counterfactual

4.59 In assessing the most likely counterfactual, the CMA has considered whether (a) SSS would have continued to operate 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, or experienced significant underinvestment, such that it would have become a significantly weaker competitor and would have ceased to actively compete for contracts.

4.60 The evidence indicates that SSS is a profitable going concern and there is a rationale for further investment in SSS, taking into account a number of factors such as the financial health of the business, size of the customer base and its existing position in the market, in order to maintain its overall competitive position. We considered the different routes by which this could be achieved and our view in the round is that, absent the Merger, either Capita would have retained SSS within its 'Public' division and invested in the business (although we recognise there is limited evidence in this regard), or it would have found an alternative purchaser as supported by the evidence indicating that there was, and/or would have been, alternative interest in purchasing SSS and that the purchaser would also have been incentivised to invest in SSS.

¹³³ FMN, paragraph 2.5.2.

¹³⁴ In the FMN, it is stated that '[REDACTED]' (FMN, paragraph 1.20). We understand from SSS that [REDACTED] (SSS's response to CMA queries of 11 November 2022, 14 November 2022).

- 4.61 In light of SSS's commercial position and its potential as a business (ie the rationale for further investment), we consider it most likely that, under the ownership of either Capita or an alternative owner, SSS would have remained a going concern that continued to compete and be invested in. We recognise it is not certain through which route this investment would have arisen (through continued ownership under Capita or via another purchaser), but overall taking both together our view is that it is unlikely that SSS would have not received further investment or ceased to actively compete for contracts. Given this, we do not consider it necessary to conclude which specific entity would own SSS in the counterfactual.
- 4.62 In light of the above, we do not consider the Parties' submitted scenario of weaker conditions of competition to be the most likely counterfactual. Rather the most likely scenario is that SSS would have continued to operate as a going concern with sufficient investment (under either ownership by Capita or another purchaser) to compete in the Relevant Markets.
- 4.63 On this basis we conclude that the appropriate counterfactual is the pre-merger conditions of competition where SSS maintains its competitive strength in the Relevant Markets.

5. NATURE OF COMPETITION

- 5.1 This chapter sets out our assessment of 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 assessment set out in this chapter is important context for our competitive 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.¹³⁵ These rules are designed to encourage competition in procurement processes. They constrain customers’ ability to award contracts directly to suppliers, without a formal competitive tender process governed by the Regulations, by limiting their ability to do so to specific situations.¹³⁶
- 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).¹³⁷ NECSWS submitted that framework agreements typically only last up to four years in length.¹³⁸

¹³⁵ [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.

¹³⁶ 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).

¹³⁷ We have seen examples of frameworks with single or multiple suppliers. For example, NECSWS Internal Document, Annex 2 to the phase 1 s109(3), 24 March 2022.

¹³⁸ NECSWS, main party hearing transcript, 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’.

- (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.¹³⁹ 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. Accordingly, some customers may have access to multiple frameworks.¹⁴⁰
 - (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 5.1(a)). 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.

¹³⁹ [Section 33\(6\) of the Regulations.](#)

¹⁴⁰ [Section 33\(5\) and \(8\)\(a\) of the Regulations.](#)

- 5.8 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 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 described above involve some form of competition:
- (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.¹⁴¹ Customers will assess the options available to them to determine the best way to achieve value for money before deciding that a direct award meets their needs.¹⁴² 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. In addition, direct awards that are awarded under the terms of a framework agreement are the result of an earlier competitive tender process. This is because the establishment of the framework was the result of a supplier winning a competitive tender to be appointed to the framework, which as noted at paragraph 5.9(a) above allows customers to evaluate different potential suppliers against each other before deciding who to appoint.
 - (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.¹⁴³ 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

¹⁴¹ NECSWS, main party hearing transcript, page 17.

¹⁴² NECSWS submitted that 'organisations evaluate their existing supply. They compare that to market offerings' (NECSWS, main party hearing transcript, page 21).

¹⁴³ NECSWS submitted that customers have an 'obligation to test value for money on every one of those contract extensions' (NECSWS, main party hearing transcript, page 21).

evidence that not all extensions are exercised,¹⁴⁴ 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 assessment

- 5.10 Our view is that the Regulations are important context for customers' procurement decisions and set the legal framework in which these decisions are made. Further, the effectiveness of customers' procurement is determined primarily by the number and strength of effective competitors in the market.
- 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 directly award or extend, and pressure from ongoing innovation by competing suppliers) also plays an important role in these markets. By indirect competition, we are referring 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 direct 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, suppliers compete with each other outside of specific opportunities (eg they roadshow their products to a wide pool of customers).

¹⁴⁴ NECSWS's response to CMA queries of 28 July 2022 following NECSWS's main party hearing, 3 August 2022, question 2.

- 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.¹⁴⁵ The Parties also submitted that they agree that indirect competition is a key element of the competitive process. In the context of the CMA's provisional findings on ICCS and Duties, SSS submitted that direct awards and extensions are not indicators of current or future competitive strength but rather are a reflection of historic competition at the time that the framework or contract underpinning the award or extension was awarded.¹⁴⁶

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 assessment is that competition takes place across several aspects of suppliers' offerings:
- (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.¹⁴⁷ Bid price usually makes up 30–40% of the evaluation marks by a customer running a competitive tender.¹⁴⁸ 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 on those occasions is typically less evident. However, we have also seen some evidence that, on occasion, customers negotiate better prices for contract extensions.¹⁴⁹
 - (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.

¹⁴⁵ Parties' response to the AIS, 4 August 2022, paragraph 3.1.

¹⁴⁶ SSS's response to the provisional findings, 7 October 2022, paragraph 10.6 and 13.3.

¹⁴⁷ See Appendix C: Internal Documents (**Appendix C**).

¹⁴⁸ Evaluation criteria vary by tender but typically involve a price and quality/technical component. They can also include criteria for presentation or sustainability.

¹⁴⁹ Third party submission to the CMA, February 2022.

- (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.¹⁵⁰
- (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 and 5.17 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 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.

¹⁵⁰ Note of call with a third party, July 2022, paragraph 3.

- (b) Private cloud (hosted solution)¹⁵¹ – 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 cloud¹⁵² – 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 are 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 connection of private IT services with the public cloud. It may permit tighter controls over sensitive data and processes.¹⁵³

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.¹⁵⁴ 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 in chapter 6).
- 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

¹⁵¹ CMA assessment informed by NECSWS's site visit presentation, 16 June 2022, slide 23.

¹⁵² CMA assessment informed by NECSWS's site visit presentation, 16 June 2022, slide 23.

¹⁵³ NECSWS's site visit presentation, 16 June 2022, slide 23.

¹⁵⁴ For more details about the Government Cloud First Policy, see [Government Cloud First policy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/cloud-first-policy).

execute a nationally coordinated transition to the cloud' and 'adopt a 'cloud first' principle for applications and data, where economical'.¹⁵⁵

- 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 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'.¹⁵⁶

- 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 chapters 6, 7 and 8 of this report.

¹⁵⁵ [National Policing Digital Strategy](#), Digital, Data and Technology Strategy 2020-2030, National Police Technology Council, page 11.

¹⁵⁶ Parties' Initial Phase 2 Submission, 31 May 2022, paragraphs 2.6–2.7.

Police Digital Service (PDS)

- 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.¹⁵⁷ 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.¹⁵⁸
- 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.¹⁵⁹
- 5.28 PDS also submitted that the NPDS is a high-level statement matched against government direction/principle/policy.¹⁶⁰ Services are procured locally (by individual forces) under local decision making and it is for them to make a risk 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.¹⁶¹
- 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.¹⁶² 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.¹⁶³

¹⁵⁷ Response to the CMA questionnaire from a third party, July 2022, question 5.

¹⁵⁸ Response to the CMA questionnaire from a third party, July 2022, question 2.

¹⁵⁹ Response to the CMA questionnaire from a third party, July 2022, question 2.

¹⁶⁰ Note of a call with a third party, April 2022, paragraph 13.

¹⁶¹ Note of a call with a third party, April 2022, paragraphs 14–15.

¹⁶² Response to the CMA questionnaire from a third party, July 2022, question 4.

¹⁶³ Response to the CMA questionnaire from a third party, July 2022, question 4.

Our assessment

- 5.30 Our assessment is that there is a clear national strategy encouraging the adoption of cloud-based solutions, in particular for police forces. However, 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).

Our assessment

- 5.32 The time period over which the CMA will consider a merger depends on the specific facts and circumstances of each case, including the theory of harm and the evidence available. The CMA's guidance does not set out a specific period for our assessment, although it does confirm that merger assessments involve the CMA assessing the likely development of the markets several years into the future.¹⁶⁴
- 5.33 In this case, our competitive assessment is focused on the next few years, ie next two to three years. This timeframe captures relevant competitive developments including forthcoming opportunities and the period over which investments in product developments such as cloud (as described above) may start to be realised (see for example the market developments sections of chapters 6, 7 and 8). We have found that both direct and indirect competition will take place over the next few years. In relation to direct competition, our assessment period covers both the specific opportunities we have identified over the next few years and future opportunities.¹⁶⁵ In relation to indirect competition, our assessment captures 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.
- 5.34 We have also considered longer term trends in these markets where relevant (see for example, discussion of the NPDS above), in order to assess whether there is anything that would significantly affect our findings over the next few years. We

¹⁶⁴ [CMA129](#), paragraph 2.27.

¹⁶⁵ In any event there is a degree of uncertainty around the timing of these identified opportunities and whether there will be others which we and/or competitors and customers have not yet identified.

found they were not likely to do so and it is therefore not necessary to conduct a detailed assessment over a longer period.¹⁶⁶

Parties' views

- 5.35 NECSWS submitted that there is uncertainty and inconsistency in the timeframe for assessment used by the CMA in its provisional findings.¹⁶⁷
- 5.36 NECSWS submitted that a timeframe of 'the next few years' is uncertain, and the provisional findings provide no clear indication of what specifically the CMA means by 'the next few years'.¹⁶⁸ According to NECSWS, this is unreasonable and inconsistent with the CMA's duty to take reasoned decisions. It said that the uncertainty makes it difficult to fully understand, and therefore respond to, the CMA's provisional findings as it is unclear what time-horizon the CMA considers to be relevant for the purposes of its assessment.
- 5.37 SSS submitted that a reference merely to 'a few years' is vague and insufficiently clear to enable the Parties to understand the relevant time frame for the CMA's assessment of dynamic competition.¹⁶⁹ SSS, referring to the Competition Appeal Tribunal's judgment in *Meta v CMA* ([2022] CAT 26), submitted that the time frame of 'a few years' for both the counterfactual and the competitive assessment fails to meet the clarity threshold set down by the CAT.¹⁷⁰
- 5.38 NECSWS also submitted that the timeframe that the CMA adopted throughout its provisional findings had been applied inconsistently.¹⁷¹ It said the inconsistency in the reasoning is such that it is not clear what position the CMA is adopting and thus NECSWS is not being given a fair opportunity to respond to the CMA's position. NECSWS submitted that the CMA:
- (a) referred to evidence collected and considered covering a two-year period (eg in relation to ICCS and Duties competitors' plans to bid for future opportunities), while concluding that constraint from other suppliers 'may increase over the next few years, but not materially so';¹⁷²
 - (b) had set out to look at effective entry over a two-year period, and that therefore it is inappropriate and unreasonable for the CMA to assess an SLC

¹⁶⁶ We also note that there may be insufficient evidence to make any findings over that longer time period.

¹⁶⁷ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

¹⁶⁸ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

¹⁶⁹ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 6.3.

¹⁷⁰ SSS's response to the provisional findings, 7 October 2022, paragraph 6.4, referring to *Meta v CMA* [2022] CAT 26 at paragraph 104.

¹⁷¹ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

¹⁷² NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

over a period of ‘the next few years’ but at the same time, not assess entry and expansion over the same timeframe;¹⁷³ and

- (c) failed to take into account relevant information which falls outside its stated timeframes, for example, the increasing relevance of cloud-based solutions.¹⁷⁴

Our response to Parties’ views

- 5.39 We disagree with the Parties that the timeframe we have adopted is uncertain and inconsistently applied.
- 5.40 The timeframe we have used in our assessment is based on the features of the Relevant Markets (eg forthcoming opportunities and investment in technology) that are relevant to our assessment of competition. Further, we consider that a timeframe defined as a few years is sufficiently clear to the Parties and third parties as to enable submissions on our assessment. In particular, we note that the Parties’ have been able to engage with and respond meaningfully to our assessment. Additionally, whilst we do not consider it necessary to be precise about the timeframe for our assessment, we have explained that, in this case, the next few years can be taken to mean the next two to three years (see paragraph 5.33). Overall, our approach is consistent with the approach the CMA has taken in past cases.
- 5.41 We agree with NECSWS that the timeframe for assessment should be applied consistently across our assessment and decision, including in the counterfactual, our assessment of competition and countervailing factors.
- (a) We have collected evidence from a range of sources. In some instances, this has included evidence relevant to the next two years, including responses to some of our questions to customers and competitors. We note, that in asking questions to third parties we had particular regard to the ability of respondents to engage with and meaningfully respond to our questions, particularly those which were forward looking or hypothetical. We have also received some evidence in relation to a longer-term period, for example during calls with third parties. We do not consider that the use or framing of this evidence is inconsistent with our timeframe.
 - (b) We have assessed countervailing factors over the same timeframe as our competitive assessment, ie the next few years. This assessment has drawn on a range of evidence, including some evidence from competitors in relation to their entry plans. We asked competitors about plans over the next two

¹⁷³ NECSWS’s response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

¹⁷⁴ NECSWS’s response to the provisional findings, 7 October 2022, comments on paragraphs 5.31–5.34.

years, which enabled them to respond to a specific timeframe. Whilst competitors may consider entry beyond this period, the degree of certainty over entry plans decreases as this becomes further in the future. In any case the responses to these questions have been one piece of evidence used alongside others in forming our view on whether entry and expansion could be timely, likely and sufficient to prevent the SLCs.

- (c) We have examined the next few years but also taken into account evidence about potential future developments as relevant context. We note that the longer the period over which the CMA looks ahead, the less foreseeable it is and the less evidence is available.

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 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 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 solution¹⁷⁵ to fire and rescue, police and transport customers.¹⁷⁶ It currently does not have a [X] cloud ICCS solution but can offer [X] and is exploring the potential to develop a [X] cloud ICCS solution.¹⁷⁷
- (b) NECSWS offers a standalone ICCS solution to ambulance, fire and rescue, police and transport customers.¹⁷⁸ Its ICCS solution is not a public cloud offering but NECSWS is in the process of developing its cloud-enabled ICCS solution.¹⁷⁹
- (c) Motorola offers a standalone ICCS solution to fire and rescue, police and transport customers.¹⁸⁰ Its ICCS solution is a public cloud offering.¹⁸¹
- (d) Frequentis offers a standalone ICCS solution to ambulance, fire and rescue, police and transport customers.¹⁸² One version of its ICCS solution is a public cloud offering.¹⁸³
- (e) Saab offers an integrated ICCS and CAD solution to fire and rescue and police customers.¹⁸⁴ Its solution [X].¹⁸⁵
- (f) Systel offers an integrated ICCS and CAD solution but could offer a standalone ICCS solution to fire and rescue customers only.¹⁸⁶ Its ICCS solution is a private cloud offering.

Market definition

6.5 This section sets out our assessment of 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'.¹⁸⁷ An SLC can affect the whole or part of a market or markets.¹⁸⁸

¹⁷⁵ NECSWS does not offer a CAD system and so the Parties do not overlap in the provision of CAD. FMN, paragraph 1.8.1.

¹⁷⁶ FMN, Table 13.1.

¹⁷⁷ See paragraph 6.186-6.191.

¹⁷⁸ FMN, Table 13.1.

¹⁷⁹ See paragraph 6.183.

¹⁸⁰ FMN, Table 13.1.

¹⁸¹ Note of a call with a third party, June 2022, paragraph 3.

¹⁸² FMN, Table 13.1.

¹⁸³ Note of call with a third party, June 2022, paragraph 2.

¹⁸⁴ FMN, Table 13.1.

¹⁸⁵ Note of a call with a third party, July 2022, paragraph 3.

¹⁸⁶ FMN, Table 13.1 and response to the CMA questionnaire from a third party, July 2022.

¹⁸⁷ As regards the Merger, see [section 35\(1\)\(b\)](#) of the Act.

¹⁸⁸ [CMA129](#), paragraph 9.1.

- 6.6 While market definition can sometimes be a useful tool, it is not an end in itself.¹⁸⁹ 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.¹⁹⁰ 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 relevant market, or other ways in which some constraints are more important than others.¹⁹¹
- 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.¹⁹² In identifying what other significant competitive alternatives should be included in the Relevant Market, the CMA will pay particular regard to demand-side factors.¹⁹³ The CMA may also consider supply-side factors.¹⁹⁴
- 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.¹⁹⁵
- 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

¹⁸⁹ [CMA129](#), paragraph 9.4.

¹⁹⁰ [CMA129](#), paragraph 9.4.

¹⁹¹ [CMA129](#), paragraph 9.4.

¹⁹² [CMA129](#), paragraph 9.6.

¹⁹³ [CMA129](#), paragraph 9.6.

¹⁹⁴ [CMA129](#), paragraph 9.6.

¹⁹⁵ Parties' Initial phase 2 Submission, 31 May 2022, paragraph 3.4.

features and functionality of ICCS software supplied to different types of emergency services customers;¹⁹⁶ 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.¹⁹⁷

6.12 Furthermore, the Parties submitted that ICCS transport customers share many of the same characteristics of the Parties' core emergency services customers.¹⁹⁸ 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.¹⁹⁹

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'²⁰⁰ and that the 'fundamental features [are] the same across emergency services'.²⁰¹ 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'.²⁰²

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

¹⁹⁶ FMN, paragraph 13.4.

¹⁹⁷ FMN, paragraph 13.7.

¹⁹⁸ FMN paragraph 13.32.

¹⁹⁹ FMN, paragraph 13.34.

²⁰⁰ Note of a call with a third party, February 2022, paragraph 12.

²⁰¹ Note of a call with a third party, January 2022, paragraph 17.

²⁰² Note of a call with a third party, January 2022, paragraph 8.

progress requiring regular tailoring and updating for all customers, whether they be within the same or a different emergency segment.²⁰³

- 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.²⁰⁴ 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 ICCS to those customers with very few changes needed.²⁰⁵ 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.²⁰⁶
- 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'.²⁰⁷ 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.²⁰⁸

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.²⁰⁹ For example, Frequentis currently supplies police, fire and rescue customers and transport customers and has been awarded a contract to supply ambulance customers, and [X] supplies fire and rescue, and police customers.²¹⁰ 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.²¹¹
- 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

²⁰³ Response to the CMA questionnaire from a third party, March 2022, question 4b and 4d.

²⁰⁴ Response to the CMA questionnaire from a third party, March 2022, question 4d.

²⁰⁵ Response to the CMA questionnaire from a third party, March 2022.

²⁰⁶ Response to the CMA questionnaire from a third party, March 2022.

²⁰⁷ Response to the CMA questionnaire from a third party, March 2022, question 4.

²⁰⁸ Response to the CMA questionnaire from a third party, March 2022, question 4.

²⁰⁹ See, for example, FMN, Table 13.1.

²¹⁰ Response to the CMA questionnaire from two third parties, March 2022, question 2a.

²¹¹ Response to the CMA questionnaire from two third parties, March 2022, question 6.

customers).²¹² 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 rescue, ambulance customers,²¹³ and transport customers. NECSWS started supplying ambulance customers but now also serves police, fire and rescue customers,²¹⁴ and transport customers. [X] has [X] started supplying [X] customers,²¹⁵ 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.²¹⁶ Two competitors noted that significant development time and resources are required to adapt ICCS to supply new types of emergency services customer.²¹⁷
- 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.²¹⁸ 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.

Conclusion on segmentation by customer types

- 6.22 Based on the evidence above, our conclusion 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 customer's 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 conclusion that it is not appropriate to segment the Relevant Market by customer type.

²¹² For example, see FMN, Table 14.1A.

²¹³ FMN, paragraph 13.8.2.

²¹⁴ FMN, paragraph 13.10.

²¹⁵ Response to the CMA questionnaire from a third party, March 2022, question 4.

²¹⁶ Response to the CMA questionnaire from a third party, March 2022, question 4.

²¹⁷ Response to the CMA questionnaire from two third parties, March 2022, question 4b.

²¹⁸ 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.

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.²¹⁹

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.²²⁰ 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.²²¹
 - (b) one third party said that customers generally ask for a recent UK reference as part of their procurement process.²²²
- 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

²¹⁹ FMN, paragraph 13.27.

²²⁰ For example, see NECSWS Internal Document, Annex 1.21 to the phase 1 s109(1), '[§<]'], August 2020, page 31 - separate slides are dedicated to products in Australia.

²²¹ Response to the CMA questionnaire from a third party, March 2022, question 6.

²²² Response to the CMA questionnaire from a third party, March 2022, question 6.

those that operate in the UK despite there being other ICCS providers globally that provide a similar ICCS product.

Conclusion on geographic scope

- 6.29 Based on the evidence above, our conclusion is that the relevant geographic market is the UK only. The potential for entry by international suppliers not currently active in the UK market is considered further in the competitive assessment and our assessment of countervailing factors.

Conclusion

- 6.30 For the reasons set out above, our conclusion is that the Relevant Market is the supply of ICCS to emergency service and transport customers in the UK without any 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 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.²²³ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.²²⁴ The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.²²⁵ 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.²²⁶

- 6.35 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.²²⁷ The more closely the merger firms compete the greater the likelihood of unilateral effects.²²⁸ The concept of close competition is not limited to products or services that have similar characteristics.²²⁹ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.²³⁰ 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.²³¹ 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.²³² 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.²³³

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.²³⁴ The level and stability of market shares are relevant evidence in this regard.²³⁵

²²³ [CMA129](#), paragraph 4.1.

²²⁴ [CMA129](#), paragraph 4.3.

²²⁵ [CMA129](#), paragraph 4.3.

²²⁶ [CMA129](#), paragraph 4.3.

²²⁷ [CMA129](#), paragraph 4.8–4.10.

²²⁸ [CMA129](#), paragraph 4.8.

²²⁹ [CMA129](#), paragraph 4.9.

²³⁰ [CMA129](#), paragraph 4.9.

²³¹ [CMA129](#), paragraph 4.10.

²³² [CMA129](#), paragraph 4.10.

²³³ [CMA129](#), paragraph 4.10.

²³⁴ [CMA129](#), paragraph 4.12(a).

²³⁵ [CMA129](#), paragraph 4.12(a).

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.
- 6.38 NECSWS submitted that revenue can vary significantly during the lifetime of a contract with different suppliers adopting different approaches to reporting annual revenues. As such, NECSWS said it does not seem reliable to give greater weight to shares on a revenue basis as compared to shares on a volume basis.²³⁶
- 6.39 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 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

Source: FMN, table 14.1b.

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

Our assessment

- 6.40 Measures of concentration such as shares of supply can be useful evidence when assessing closeness of competition.²³⁷ 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.
- 6.41 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 conclusion.

²³⁶ NECSWS's response to the provisional findings (annex), 7 October 2022, page 4.

²³⁷ [CMA129](#), paragraph 4.14.

6.42 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.

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]	[X]
SSS	[40-50]	[10-20]	[30-40]	[X]
Parties combined	[60-70]	[20-30]	[50-60]	[X]
Frequentis	[30-40]	[60-70]	[20-30]	[X]
Motorola	[0-5]	[0-5]	[5-10]	[X]
Saab	[0-5]	[0-5]	[0-5]	[X]
Systel	[0-5]	[0-5]	[10-20]	[X]
Total	100	100	100	[X]

Source: CMA calculations based on third party responses to phase 2 questionnaire and FMN, Table 14.1(b).

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 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 broadly similar for previous years. 2019: NECSWS ([5–10%]), SSS ([60–70%]), Frequentis ([20–30%]), Motorola ([0–5%]) and 2020: NECSWS ([10–20%]), SSS ([40–50%]), Frequentis ([30–40%]).

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 [X] and [X] accordingly.

6.43 The market shares estimates show that the market for ICCS is concentrated with 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 acknowledge that revenue can vary over the lifetime of a contract and so we also examined the market shares over the previous two years. In a broad sense (ie considering the order of the three largest suppliers, their size compared to the other three suppliers and the overall level of concentration), shares by revenue are broadly similar to the 2021 shares (see note to Table 6-2). We also 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 therefore this is unlikely to substantially affect comparisons between the other suppliers and they both have small shares across all three of the share metrics. Hence, while we focus on revenue shares, we have examined estimates based on all three metrics used above.

6.44 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%] in 2021 and an increment of [20–30%]. Frequentis is the second largest competitor with a share of [30–40%]. Motorola ([0–5%]), Saab ([0–5%]) and Systel ([0–5%]) are all smaller competitors based on shares by revenue. Shares by number of customers show a broadly similar picture as shares by revenue. In particular, it is a concentrated

market with three larger suppliers (with the same ordering as shares by revenue) and three other smaller suppliers.

- 6.45 Frequentis is the largest competitor based on shares by volume of calls. Frequentis' share is driven by the large sized customers that it has. Specifically, Frequentis has the Ambulance Radio Programme (**ARP**)²³⁸ 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 volume of calls.
- 6.46 Motorola, Saab and Systel are all smaller competitors across all three metrics. All three competitors have below 5% on shares by revenue and shares by volume of calls, and two of these competitors also have below 10% on shares by number of customers.

Conclusion

- 6.47 Our conclusion is that the market for ICCS is concentrated: based on shares by revenue the Parties are the first and third largest competitors and the Merged Entity 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 and the largest competitor based on shares by volume of calls which is largely driven by one large contract (ARP). Motorola, Saab and Systel are all notably smaller competitors based on shares by revenue and volume of calls. Market share estimates based on the number of customers present a broadly consistent picture with the other metrics.

Internal documents

- 6.48 We have reviewed the Parties' internal documents for evidence of their own views of the competitive constraints they face.²³⁹ A description of our methodology is given in 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.

²³⁸ The ARP ran an ICCS tender in 2016 on behalf of all NHS Ambulance Trusts in England, Scotland and Wales and therefore represents the majority of ambulance services in the UK for the purposes of ICCS procurement.

²³⁹ [CMA129](#), paragraph 4.13.

Closeness between the Parties

SSS

NECSWS's views

- 6.49 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].²⁴⁰
- 6.50 NECSWS submitted that there are statements in its internal documents (particularly recent documents) which clearly identify that SSS's ICCS offering has weaknesses and that its current solution is a [REDACTED], and that furthermore the CMA's approach to assessing the evidence in internal documents from the constraint posed by Frequentis and Saab is inconsistent with its assessment of SSS.²⁴¹

Our assessment

- 6.51 We found that NECSWS consistently mentions SSS in the competitor analyses we have seen.²⁴² This includes:
- (a) [REDACTED].²⁴³
 - (b) [REDACTED].²⁴⁴
 - (c) [REDACTED].²⁴⁵
 - (d) [REDACTED].²⁴⁶
- 6.52 While we recognise 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.²⁴⁷
- 6.53 Our view is that NECSWS's documents show that NECSWS considers SSS to be a competitive threat, given the consistency with which SSS appears in these documents and the level and degree of analysis of SSS's offering. However, we

²⁴⁰ NECSWS's response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2(a).

²⁴¹ NECSWS's response to the provisional findings, 7 October 2022, page 6.

²⁴² Appendix C, Documents 1–5 and 7.

²⁴³ Appendix C, Document 3.

²⁴⁴ Appendix C, Document 4.

²⁴⁵ Appendix C, Document 1.

²⁴⁶ Appendix C, Documents 1–2 and 7.

²⁴⁷ Appendix C, Documents 1–2.

acknowledge that NECSWS also considers SSS's competitive threat to have weaknesses, in particular that SSS's current [REDACTED].

Closeness with others

- 6.54 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.²⁴⁸

Motorola

NECSWS's views

- 6.55 NECSWS submitted that it views Motorola [REDACTED].²⁴⁹

Our assessment

- 6.56 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.²⁵⁰ This includes [REDACTED].²⁵¹ NECSWS recognises Motorola for:
- (a) [REDACTED];²⁵²
 - (b) [REDACTED];²⁵³ and
 - (c) [REDACTED].²⁵⁴
- 6.57 Our view is that NECSWS's documents show that NECSWS considers 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].

²⁴⁸ Only one document, Document 3 discusses [REDACTED]. However, we understand that [REDACTED] has no intention of entering the ICCS market in the UK in the next few years (Response to the CMA questionnaire from a third party, question 1(c)).

²⁴⁹ Appendix C, Documents 2–3.

²⁵⁰ Appendix C, Documents 1–3 and 5.

²⁵¹ Appendix C, Document 3.

²⁵² Appendix C, Document 2.

²⁵³ Appendix C, Document 1.

²⁵⁴ Appendix C, Documents 1–2.

Frequentis

NECSWS's views

- 6.58 NECSWS submitted that Frequentis is recognised as a [REDACTED]. Frequentis' significant market presence is noted and [REDACTED].²⁵⁵ NECSWS further submitted [REDACTED],²⁵⁶ referencing an internal document which states this view.²⁵⁷
- 6.59 NECSWS submitted that even assuming Frequentis was expected to bid less often than other competitors, it would be unaware of which bids Frequentis will participate in, meaning that it will still act as a competitive threat across all bids.²⁵⁸

Our assessment

- 6.60 Frequentis is often mentioned in NECSWS's documents.²⁵⁹ Frequentis is recognised for:
- (a) [REDACTED];²⁶⁰
 - (b) '[REDACTED]',²⁶¹ [REDACTED],²⁶² [REDACTED];²⁶³ and
 - (c) [REDACTED].²⁶⁴
- 6.61 One document also highlights the need for NECSWS [REDACTED].²⁶⁵
- 6.62 Notwithstanding that Frequentis has had [REDACTED], NECSWS also notes that:
- (a) [REDACTED];²⁶⁶ and
 - (b) [REDACTED].²⁶⁷
- 6.63 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, in relation to a specific tender requirement, NECSWS also states that Frequentis [REDACTED]. We therefore consider that while Frequentis exerts a competitive constraint on NECSWS, this constraint is

²⁵⁵ NECSWS's response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2(b).

²⁵⁶ NECSWS's response to the Internal Documents WP, 4 August 2022, ICCS slide 10.

²⁵⁷ Appendix C, Document 10.

²⁵⁸ NECSWS's response to the provisional findings, 7 October 2022, page 6.

²⁵⁹ Appendix C, Documents 1 and 4–5.

²⁶⁰ Appendix C, Document 1.

²⁶¹ Appendix C, Document 1.

²⁶² 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.

²⁶³ Appendix C, Document 2.

²⁶⁴ Appendix C, Document 4.

²⁶⁵ Appendix C, Document 9.

²⁶⁶ Appendix C, Document 1.

²⁶⁷ Appendix C, Document 1.

likely to have limitations due to NECSWS's view of the [REDACTED]. With regards to NECSWS's submission that being unaware which bids Frequentis would participate in means that Frequentis acts as a competitive threat across all bids, we recognise there will be some uncertainty around the precise likelihood of Frequentis bidding. However, as set out in paragraphs 6.147 and 6.221 the Parties' expectation of whether Frequentis will bid for any given tender is likely to be impacted by Frequentis' past bidding behaviour. Further, we expect that NECSWS would in some cases be able to form stronger judgements as to the likelihood of a bid from Frequentis based on the type of the contract, including situations where it is anticipated Frequentis is unlikely to bid.

Saab

NECSWS's views

- 6.64 NECSWS submitted that Saab is recognised as [REDACTED].²⁶⁸ NECSWS further submitted that Saab [REDACTED]. [REDACTED]; since its entry into the police segment in 2016 it has won contracts to supply ICCS to [REDACTED]. NECSWS understands from informal market feedback that Saab has likely been designated as preferred bidder in [REDACTED] procurement of ICCS and CAD to replace SSS as incumbent supplier.²⁶⁹

Our assessment

- 6.65 Saab is often mentioned in NECSWS's documents.²⁷⁰ Saab is recognised for:

- (a) [REDACTED];²⁷¹
- (b) [REDACTED];²⁷² and
- (c) [REDACTED].²⁷³

- 6.66 NECSWS's documents also note that:

- (a) [REDACTED];²⁷⁴ and
- (b) [REDACTED].²⁷⁵

- 6.67 We therefore consider that Saab exerts a competitive constraint on NECSWS and is referenced in NECSWS's competitive analyses and benchmarking. However,

²⁶⁸ NECSWS's response to the Internal Documents WP, 4 August 2022, paragraph 1.2.2(b).

²⁶⁹ NECSWS's response to the Internal Documents WP, 4 August 2022, ICCS slide 10.

²⁷⁰ Appendix C, Documents 1–3 and 5.

²⁷¹ Appendix C, Document 9.

²⁷² Appendix C, Document 2.

²⁷³ Appendix C, Document 3.

²⁷⁴ Appendix C, Document 1.

²⁷⁵ Appendix C, Document 1.

Saab has a particular strength in combined CAD and ICCS procurements given its unified offering and this makes Saab a more limited constraint given [REDACTED]. Furthermore, [REDACTED].

Conclusion – NECSWS's documents

6.68 Our conclusion, based on NECSWS's internal documents, is that the market for ICCS is concentrated with five suppliers (with Systel not being mentioned) and that SSS is a key competitor in this market. NECSWS's documents refer to SSS's [REDACTED]. However, NECSWS also regularly refers to and closely monitors SSS, with SSS 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] for particular opportunities; and
- (c) a competitor who [REDACTED].

6.69 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].

Closeness between the Parties

NECSWS

SSS's views

6.70 SSS mentions NECSWS consistently in its internal documents.²⁷⁶ SSS refers to NECSWS's ICCS product as the '[X]' in a document from 2022.²⁷⁷ SSS's documents also recognise NECSWS for:

(a) [X];²⁷⁸

(b) [X];²⁷⁹

(c) [X];²⁸⁰ and

(d) [X].²⁸¹

6.71 However, SSS's documents also recognise that NECSWS has [X] and has had some issues regarding [X].²⁸² One document also ranks NECSWS's ICCS product as '[X]' and overall it is seen as an [X] to both Motorola's and SSS's.

Our assessment

6.72 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 [X]. SSS also recognises some weaknesses of NECSWS's offering including [X].

Closeness with others

6.73 SSS frequently mentions the ICCS competitor set as being Motorola, Frequentis and Saab in addition to the Parties. Systel is typically absent from competitor analyses,²⁸³ while SSS's other four competitors often appear together when comparisons are made.

²⁷⁶ Appendix C, Documents 12, 14, 17, 18, 20, 21, 23, 28.

²⁷⁷ Appendix C, Document 12.

²⁷⁸ Appendix C, Document 17.

²⁷⁹ Appendix C, Document 20.

²⁸⁰ Appendix C, Document 20.

²⁸¹ Appendix C, Document 21.

²⁸² Appendix C, Document 21.

²⁸³ Systel is included in a couple of slides in Document 20 in Appendix C.

Motorola

SSS's views

- 6.74 SSS views Motorola as exerting a [X] on SSS. SSS submitted that Motorola's [X] since 2020/2021.²⁸⁴

Our assessment

- 6.75 Motorola is regularly mentioned in SSS's competitive analyses.²⁸⁵ A qualification review suggests that SSS viewed its own ICCS product and Motorola's as having a [X]. However we note that SSS [X].²⁸⁶ In particular, there is evidence of SSS identifying an increase in Motorola's competitive strength in recent years and Motorola being recognised as [X].²⁸⁷ Motorola is particularly recognised for its [X]. However, SSS also perceives Motorola as being [X] solution.²⁸⁸
- 6.76 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].

Frequentis

SSS's views

- 6.77 In the context of responding to our Internal Documents working paper, SSS submitted that it believes Frequentis to be a [X] competitor.²⁸⁹

Our assessment

- 6.78 Frequentis is regularly mentioned in SSS's competitive analyses.²⁹⁰ Our view is that SSS's assessment of Frequentis appears to have evolved over the years. Two documents, including one from 2018, emphasise Frequentis' competitive [X], describing it as the '[X]' in the ICCS market.²⁹¹ Frequentis is also recognised as having a strong reputation and a '[X]' solution.²⁹²

²⁸⁴ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 3.3.6.

²⁸⁵ Appendix C, Documents 14, 16, 17, 18, 19, 20, 23, 24.

²⁸⁶ Appendix C, Document 17.

²⁸⁷ 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).

²⁸⁸ Appendix C, Documents 17–18.

²⁸⁹ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 3.4.

²⁹⁰ Appendix C, Documents 12–14, 17–18, 20–23.

²⁹¹ Appendix C, Documents 20, 22.

²⁹² Appendix C, Documents 20–21.

- 6.79 However more recent SSS documents note that:
- (a) Frequentis' solution is a [REDACTED].²⁹³
 - (b) Frequentis is [REDACTED];²⁹⁴ and
 - (c) In a recent 2022 email, [REDACTED].²⁹⁵
 - (d) Frequentis' ICCS is recognised as being [REDACTED].²⁹⁶
- 6.80 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 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's.

Saab

SSS's views

- 6.81 SSS submitted that it considers Saab to be a [REDACTED] competitor than the CMA deems it to be.²⁹⁷ To evidence this assessment, SSS referred to recent internal documents which described Saab as a legitimate competitor for ICCS opportunities.

Our assessment

- 6.82 Saab is often mentioned in SSS's competitive analyses.²⁹⁸ Saab is seen as:
- (a) [REDACTED] but its [REDACTED] are thought to be [REDACTED];²⁹⁹
 - (b) having [REDACTED] than SSS on a particular opportunity;³⁰⁰
 - (c) an [REDACTED] threat with a [REDACTED] but with [REDACTED];³⁰¹ and

²⁹³ Appendix C, Document 23.

²⁹⁴ Appendix C, Documents 12, 17.

²⁹⁵ Appendix C, Document 13.

²⁹⁶ Appendix C, Documents 20–21.

²⁹⁷ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 3.3.10.

²⁹⁸ Appendix C, Documents 13–15, 17–18, 23, 25.

²⁹⁹ Appendix C, Document 23.

³⁰⁰ Appendix C, Document 13.

³⁰¹ Appendix C, Document 20.

(d) [REDACTED].³⁰²

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

Systel

SSS's views

- 6.84 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.³⁰³

Our assessment

- 6.85 Systel is only mentioned in a few of SSS's internal documents.³⁰⁴ 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 '[REDACTED]' and appraised as a '[REDACTED]'. One document from 2022 notes that Systel [REDACTED].³⁰⁵ This implies that SSS views it as a weaker constraint for ICCS than its other competitors.
- 6.86 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 108 to 114 in Appendix C.³⁰⁶

Other ICCS competitors

SSS's views

- 6.87 SSS also referred to the inclusion in its competitor watchlist of [REDACTED] or other technology vendors of enterprise 'commercial off the shelf' products, such as Salesforce and Amazon Web Services.³⁰⁷

³⁰² Appendix C, Documents 17–18. In SSS's response to the Internal Documents WP, SSS clarified that Saab now has stand-alone ICCS capabilities.

³⁰³ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 3.3.2.

³⁰⁴ Appendix C, Documents 12, 16, 20.

³⁰⁵ Appendix C, Document 12.

³⁰⁶ Appendix C, Documents 29–30.

³⁰⁷ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 3.7.

Our assessment

- 6.88 SSS's internal documents did not suggest there are additional competitors in the ICCS market. While two other suppliers were mentioned, we do not consider these suppliers to be ICCS competitors. In particular:
- (a) Content Guru is only mentioned in one document.³⁰⁸ We understand that Content Guru does not offer an ICCS product and has no plans to offer an ICCS product;³⁰⁹ and
 - (b) Sopra Steria is occasionally mentioned but it is recognised that Sopra Steria does not offer an ICCS product.³¹⁰

Conclusion – SSS's documents

- 6.89 Our conclusion on the evidence presented in SSS's internal documents is that they suggest the market for ICCS is concentrated with six suppliers and that NECSWS is a key competitor in this market. SSS regularly refers to, and closely monitors NECSWS.
- 6.90 SSS also frequently refers to three other competitors, namely Motorola, Frequentis and Saab:
- (a) Motorola appears to be viewed as [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 a prominently as SSS, Motorola and Frequentis.
- 6.91 Systel is mentioned notably less frequently than the other competitors and appears to be a weaker constraint.

Recent opportunities

- 6.92 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.³¹¹

³⁰⁸ Appendix C, Document 18.

³⁰⁹ Response to the CMA questionnaire from a third party, August 2022.

³¹⁰ Appendix C, Document 18.

³¹¹ [CMA129](#), paragraph 4.13.

6.93 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 supplier's frequency of participation and success rates in opportunities allows us to assess the current competitive constraints being provided by different suppliers.

Parties' views

6.94 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.³¹²

6.95 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.³¹³ 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].³¹⁴ It is therefore important to give greater weight to opportunities awarded more recently.

6.96 Whilst in the Parties' view caution needs to be applied in interpreting the results, the Parties consider an analysis of opportunities to be more informative and carry more evidential weight than market share analysis.³¹⁵

6.97 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.³¹⁶ 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 2019.³¹⁷ SSS also noted that for the [X] tender ([X]), [X].³¹⁸

6.98 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

³¹² Parties' response to the CMA's phase 1 s109(5), 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

³¹³ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 2.

³¹⁴ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 2.

³¹⁵ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 3.

³¹⁶ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 16(a).

³¹⁷ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 20.

³¹⁸ SSS, main party hearing transcript, page 7, lines 1–5.

direct awards to extend service and maintenance do so in order to enable them to undertake or complete their procurement process. Whilst SSS has [REDACTED] won contracts from its existing customer base which represents 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.³¹⁹

- 6.99 SSS submitted that the opportunities data showed that the Parties have competed more frequently, as frequently, or only slightly less frequently against other suppliers as they have against each other.³²⁰ Furthermore, the opportunities data shows that competitors are bidding for more or as many opportunities as the Parties.³²¹
- 6.100 SSS stated that each of the three tenders that it has won had exceptional circumstances.³²² In particular:
- (a) The 2017 [REDACTED] tender was for [REDACTED];³²³
 - (b) The 2021 [REDACTED] tender was [REDACTED],³²⁴ [REDACTED];³²⁵ and
 - (c) The 2018 [REDACTED] tender was conducted under its Technology Services framework and was '[REDACTED]'.³²⁶
- 6.101 SSS submitted that the opportunities analysis shows that typically, only a small number of competitors ([REDACTED]) submit a bid for a given ICCS opportunity and so it can be expected that, going forward, on any one opportunity there will remain sufficient competition from the other ICCS suppliers.³²⁷
- 6.102 NECSWS submitted that it is not clear how opportunities have been classified as tenders, direct awards and extensions in the CMA's analysis.³²⁸
- 6.103 NECSWS further submitted that the opportunities data is contrary to the CMA's provisional finding that the Parties are key drivers of competition in the market and that the CMA itself recognises that the Parties have only directly competed with each other a few times.³²⁹

³¹⁹ Parties' response to the Opportunity Analysis WP, 4 August 2022, paragraph 39.

³²⁰ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.14.3.

³²¹ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.19.

³²² SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.2.

³²³ SSS, main party hearing transcript, page 73, lines 1–10.

³²⁴ SSS, main party hearing transcript, page 66, lines 3–4.

³²⁵ SSS, main party hearing transcript, page 66, lines 3–6 and page 80, lines 7–11.

³²⁶ SSS, main party hearing transcript, page 65, lines 3–24.

³²⁷ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 9.4.2.

³²⁸ NECSWS's response to the provisional findings, 7 October 2022, page 7.

³²⁹ NECSWS's response to the provisional findings (annex), 7 October 2022, page 4.

Our assessment

- 6.104 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 involved or invited to the process) alongside other details (eg contract length).
- 6.105 Some direct awards included a market test and these opportunities were not always referred to consistently by the appointed supplier and the customer. In some cases, the appointed supplier referred to the opportunity as a tender while the customer referred to it as a direct award. In these instances, we have used the customer's classification of the opportunity on the basis that customers have the most accurate information on the nature of the opportunity and the suppliers involved. 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.
- 6.106 We have found that since 2017 there have been relatively few opportunities awarded by ICCS customers. In particular, there have been [X] tenders, [X] direct awards and [X] extensions (see Table 6-3). 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).
- 6.107 During this period, typically, only a small number of competitors ([X]) submitted a bid for each given opportunity. We note that in paragraph 6.101, SSS has submitted that this means for any given opportunity post-Merger there will remain sufficient competition from the other ICCS suppliers. We consider that where only a small number of competitors bid for an opportunity, this indicates that there are few competitors to begin with and therefore suggests that the loss of one competitor may be significant.
- 6.108 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 the Parties

6.109 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, the number of tenders the Parties bid for, as well as the number of opportunities won by each of the Parties. We have focused on opportunities where the Parties bid but we have also assessed opportunities that the Parties were involved in.

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 bid in	-	[X]	[X]
Both Parties bid in	-	[X]	[X]
Won	-	[X]	[X]
Direct awards won	[X]	[X]	[X]
Extensions won	[X]	[X]	[X]

Source: CMA analysis of Parties, customer and competitor data.

Note: 'Involved' in means that the Party was at least invited to the opportunity (and may have engaged in informal negotiations, pre-qualification and/or submitted a bid).

6.110 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.

6.111 We consider that in the ICCS market the Parties' success 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, provides 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 these opportunities, in some instances at least, are not purely being used by customers 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 6.98.

6.112 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 submitted a bid in [X]

([REDACTED])/[REDACTED]) tenders. As regards bidding success, NECSWS has won [REDACTED] out of the [REDACTED] tenders that it bid for with [REDACTED] of these dating back to 2017. SSS has only won [REDACTED] of [REDACTED] tenders that it bid for with [REDACTED] of these wins occurring in 2018 and one in 2021. SSS has put forward that each of these tenders (as set out in paragraph 6.100) had a unique set of circumstances. We consider that customers will often have different requirements, and it is therefore difficult to distinguish what is classified as ‘unique circumstances’. Notwithstanding this, the fact that SSS has won a [REDACTED] of the tenders that it has bid for demonstrates that SSS’s offering is a viable option for those customers. We therefore consider that SSS’s presence in the market means it will continue at least in some circumstances to exert a competitive constraint.

- 6.113 Notwithstanding the Parties’ lower success rates in tenders compared to direct awards and extensions, NECSWS and SSS have both been involved in the same opportunity [REDACTED]. At least one of the Parties submitted an bid [REDACTED].³³⁰ [REDACTED]. This demonstrates that the Parties are competitive constraints on each other.
- 6.114 [REDACTED] ([REDACTED]). Additionally, as stated in paragraph 6.110, 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].
- 6.115 Looking forward, a number of SSS contracts are set to end [REDACTED] and so we have also considered 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

- 6.116 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.

³³⁰ The low number of bids in tenders is due to NECSWS having [REDACTED] bid for [REDACTED] tenders since 2017.

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

	<i>Market wide total</i>	<i>Motorola</i>	<i>Frequentis</i>	<i>Saab</i>	<i>Systel</i>
Tenders	[X]	[X]	[X]	[X]	[X]
Party involved in	[X]	[X]	[X]	[X]	[X]
Party bid in	[X]	[X]	[X]	[X]	[X]
Bid in with NECSWS	[X]	[X]	[X]	[X]	[X]
Bid in with SSS	[X]	[X]	[X]	[X]	[X]
Won	[X]	[X]	[X]	[X]	[X]
Direct awards won	[X]	[X]	[X]	[X]	[X]
Extensions won	[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of Parties, customer and competitor data.

Note: 'Involved' in means that the Party was at least invited to the opportunity (and may have engaged in informal negotiations, pre-qualification and/or submitted a bid).

6.117 SSS submitted in paragraph 6.99 that the opportunities data shows that competitors are bidding for more or as many opportunities as the Parties. However, competitors of the Parties have bid for tenders less frequently, or with the same frequency 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 [X];
- (b) Saab has won [X];
- (c) Frequentis has won [X]; and
- (d) Systel has won [X].

6.118 SSS submitted in paragraph 6.99 that the Parties have competed more frequently, as frequently, or only slightly less frequently against other suppliers as they have against each other. However, we note that NECSWS in particular has bid against SSS [X] times, Motorola [X], Frequentis [X] and [X] against Saab and Systel. This indicates that SSS is exerting more direct competitive pressure on NECSWS than any other competitor albeit this is only slightly more than Motorola.

6.119 Motorola and Saab appear to have become stronger competitors in recent years following their wins in 2021 and 2022. However, neither Frequentis nor Systel have [X]. In relation to direct competition with the Parties:

- (a) NECSWS lost [X] to Motorola and [X] to Frequentis; and
- (b) SSS lost [X] to Saab, [X] to NECSWS, [X] to Frequentis, [X] to Systel and [X] to Motorola.

6.120 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 [X]. However, Frequentis and Systel in particular have exerted a lower level of direct competitive pressure in recent years. Notwithstanding this, 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 that require integrated solutions. This means that Motorola in particular, and to some extent also the other competitors, may impose some constraint on the Parties even for opportunities which they do not ultimately bid for.

- 6.121 The Parties' competitors have won only [REDACTED] and [REDACTED] extensions since 2017. Motorola and Saab's [REDACTED] is likely to 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 Motorola and Saab would not have 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].

Conclusion

- 6.122 Our conclusion is that the opportunities analysis demonstrates that the Parties are important competitive constraints on each other.
- 6.123 When considering bids in tenders, the Parties regularly bid in a market where the average number of 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. SSS competed directly with NECSWS in [REDACTED] and lost to NECSWS in [REDACTED] where both bid.
- 6.124 As regards broader involvement in tenders, NECSWS and SSS have both been involved in [REDACTED].
- 6.125 Overall, whilst the Parties have bid and been involved in a large number of tenders they have only won a few tenders ([REDACTED]) but this includes tenders won in the last two years indicating their offerings have been considered viable by customers recently.
- 6.126 However, 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 [REDACTED] and SSS [REDACTED].
- 6.127 Notably, [REDACTED] of SSS's direct awards, and [REDACTED] of SSS's extensions awarded had a [REDACTED] 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.

- 6.128 Motorola provides a strong constraint, particularly in recent years and has [X] in 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

- 6.129 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.³³¹
- 6.130 We have analysed responses to our customer questionnaire to understand customers' views of suitable alternative ICCS suppliers.

Parties' views

- 6.131 The Parties submitted that the evidence set out below in paragraphs 6.134 to 6.138 shows that ICCS customers consider there to be four other large UK-based suppliers of ICCS and confirms the Parties' position that there are a number of credible alternatives to both NECSWS and SSS in the supply of ICCS solutions.³³²
- 6.132 The Parties also stated that while NECSWS and SSS received 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.³³³
- 6.133 As set out in more detail in Appendix D (**Appendix D – Customer questionnaires**), the Parties submitted that the vast majority of customers providing feedback to the CMA did not identify a concern with the Merger and that

³³¹ [CMA129](#), paragraph 4.13.

³³² Parties' response to the Customer Evidence WP, 4 August 2022, paragraph 18.

³³³ Parties' response to the Customer Evidence WP, 4 August 2022, paragraph 18.

our approach to customer views on the Merger does not reasonably consider the potential reasons why there was limited engagement.

Our assessment

- 6.134 Evidence from the Parties' customers supports the view that there are six providers of ICCS namely: NECSWS, SSS, Motorola, Frequentis, Saab and Systel.
- 6.135 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

Source: 22 customer responses to our phase 1 questionnaire.

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).

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.

- 6.136 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.
- 6.137 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 (relating to competition concerns or lack thereof) for their answers.³³⁴ We consider that there are a variety of potential reasons for limited customer engagement. For example, some customers have responded that they are currently unaffected by the Merger in the short-term (because their supplier is not one of the Parties) and they may not have given consideration to the longer-term potential impacts of the Merger on competition. Some customers also stated that their view was conditional on the Merged Entity's plans for its products. We also note that this question requires customers to provide their view on the conduct of the Merged Entity and how this

³³⁴ 35/39 customers ticked that they either did not know what the impact the acquisition will have or thought it would have a neutral impact. See Appendix D for more detail.

would affect them as customers, as opposed to questions which relate directly to their own current requirements (see Table 6-5).

- 6.138 While we have taken this evidence into account, given there are a variety of different potential reasons for the limited engagement and/or limited consideration of competition concerns from customers, we have placed a limited amount of weight on the responses to this question.

Conclusion

- 6.139 Our conclusion 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 customer evidence supports a finding that 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. We note that very few customers have raised concerns about the impact of the acquisition on them, however for the reasons set out above whilst we take this into account we do not place full weight on this evidence.

Competitors' views

- 6.140 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.³³⁵

Parties' views

- 6.141 SSS submitted that its already [REDACTED] in ICCS is being recognised by other suppliers. In particular:³³⁶

- (a) [REDACTED];
- (b) Frequentis ranked SSS as a middling competitor and highlighted its lack of development as a weakness; and
- (c) NECSWS internal documents describe SSS's ICCS product as a '[REDACTED]' and 'considers SSS's competitive threat to have weaknesses, in particular that SSS's current solution [REDACTED].

³³⁵ [CMA129](#), paragraph 4.13.

³³⁶ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.11.

Our assessment

6.142 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.³³⁷ [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 three noting it had a strong ICCS capability but no platform offering and [X] as a one noting it was a strong platform but its offering focused on CAD and its ICCS offering is weak with no hosting capability.³³⁸ [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.³³⁹
- (b) Saab noted that from an ICCS-only perspective, its competitors have traditionally been NECSWS, SSS and Frequentis. [X].³⁴⁰
- (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.³⁴¹ Frequentis ranked NECSWS as 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.³⁴²

6.143 We acknowledge SSS's submission in paragraph 6.141 that competitors have recognised some weaknesses of SSS's ICCS product. However, this evidence shows that the identification of weaknesses in a product alone does not necessarily undermine the competitive constraint that a competitor provides. For example:

³³⁷ Note of a call with a third party, June 2022, paragraph 14.

³³⁸ Response to the CMA questionnaire from a third party, March 2022, question 5.

³³⁹ Note of a call with a third party, June 2022, paragraph 6.

³⁴⁰ Note of a call with a third party, July 2022, paragraph 8.

³⁴¹ Note of a call with a third party, June 2022, paragraph 9.

³⁴² Response to the CMA questionnaire from a third party, March 2022, question 5.

- (a) [X] ranked SSS and NECSWS as its strongest competitors and views them as two of four principal competitors for future bids despite recognising SSS's legacy ICCS capability as a weakness; and
- (b) [X] ranked SSS as a middling competitor, but [X] ranked Motorola and Saab as even weaker competitors.

Conclusion

6.144 Our conclusion, 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.

Parties' views on current competitive constraints

6.145 SSS submitted that for a presumption of closeness of competition between the Parties to apply in the context of ICCS the CMA must conclude that competition 'takes place mainly between a few firms'.³⁴³ It said that the evidence in the provisional findings clearly shows that this is not the case and that competition takes place between six suppliers of ICCS.

6.146 SSS submitted that evidence from internal documents, opportunities data and customer feedback all reflect that Motorola, Frequentis, Saab and Systel (in relation to fire and rescue customers) are all strong competitors and provide a substantial constraint on the Parties.³⁴⁴

Our assessment of current competitive constraints

6.147 The strength of a constraint that any given competitor is likely to exert on the Parties post-Merger depends on two main factors:

- (a) The Parties' perceptions of the strength and weaknesses of a competitor. This is likely to depend on a given customer's tender requirements and the competitor's product offering (including both expected pricing and the quality/specification of the product such as whether it is cloud-based or on-premise, an integrated solution or not and how modern the product is).
- (b) The Parties' expectation of the likelihood of a given competitor submitting a bid for any given opportunity – this will be impacted by (a) but also the historical frequency of bids for certain type of tenders by a competitor.

³⁴³ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 9.3.

³⁴⁴ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.25.

- 6.148 Therefore, we consider that a competitor may have a strong product offering but if it only bids infrequently, then the Parties are unlikely to consider it as strong a constraint as a competitor that has both a strong product offering and frequently bids for opportunities. Similarly, another competitor may have a weaker offering in some respects but if it frequently participates in bids then the Parties are likely to factor that in when they submit a bid.
- 6.149 We consider that, in this case, while there are six suppliers of ICCS products, the nature of their offerings and other evidence (eg market shares, opportunities analysis) shows that these suppliers exercise differing levels of constraint and depending on the opportunity, competition may only take place among a few of these suppliers. The Parties are two of the largest suppliers which, when taken alongside other available evidence (eg internal documents, customer and competitor views), shows that they are close competitors.

Conclusion on current competition

- 6.150 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 hours a day, seven days a week and 365 days a year – 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 six competitors operating within it – and 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 any given contract.
- 6.151 The Parties have historically been important competitors and are currently the largest and third largest suppliers of ICCS on a revenue basis (Frequentis being the second largest). 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.
- 6.152 Recently, the Parties have directly competed with each other a few times, and SSS's recent success rates 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. [REDACTED] SSS [REDACTED] managed to retain a strong customer base through direct awards and extensions. [REDACTED] of SSS's direct awards and extensions which have been awarded since 2020 had [REDACTED] 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 and suggests that SSS's ICCS product still meets customer needs despite it being more outdated than some of its competitors' products.

- 6.153 Motorola has a strong offering and in the recent past has [X] participated in and won tenders. Frequentis is well positioned in terms of its product offering and is the second largest supplier on a revenue basis having won several large contracts. However, Frequentis has [X] since 2017. Saab and Systel also have a credible offering, [X]. Saab and Systel both focus on opportunities for integrated ICCS and CAD solutions and Systel also only focuses on fire and rescue customers, which reduces the competitive constraint they can exercise.
- 6.154 Overall, considering all of the relevant evidence, our conclusion is that the Parties are two of the three largest ICCS suppliers and are currently close competitors.

Market developments

- 6.155 We have assessed whether there are any market developments that could mean that the strength of the competitive constraint the Parties place on each other, and other competitors place on the Parties, may materially change over the next few years.
- 6.156 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). 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

- 6.157 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;³⁴⁵ 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

³⁴⁵ NECSWS's 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.³⁴⁶

6.158 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:³⁴⁷

- (a) SSS has no cloud solution [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]. [REDACTED].

6.159 The Parties have also submitted that they believe that evidence shows in terms of revenue, SSS could reasonably be expected [REDACTED].³⁴⁸

6.160 In addition to SSS's lack of a cloud-enabled ICCS, [REDACTED].³⁴⁹ SSS also stated that its issue with its ICCS is a lack of cloud capability but also [REDACTED].³⁵⁰

PDS strategy

6.161 As set out in paragraph 5.26 (Nature of Competition chapter), 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

6.162 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 (almost all answered between 3–5 on a scale of 1–5 with 1 being not important

³⁴⁶ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 32d.

³⁴⁷ Parties' response to the AIS, 4 August 2022, paragraph 1.4.4.

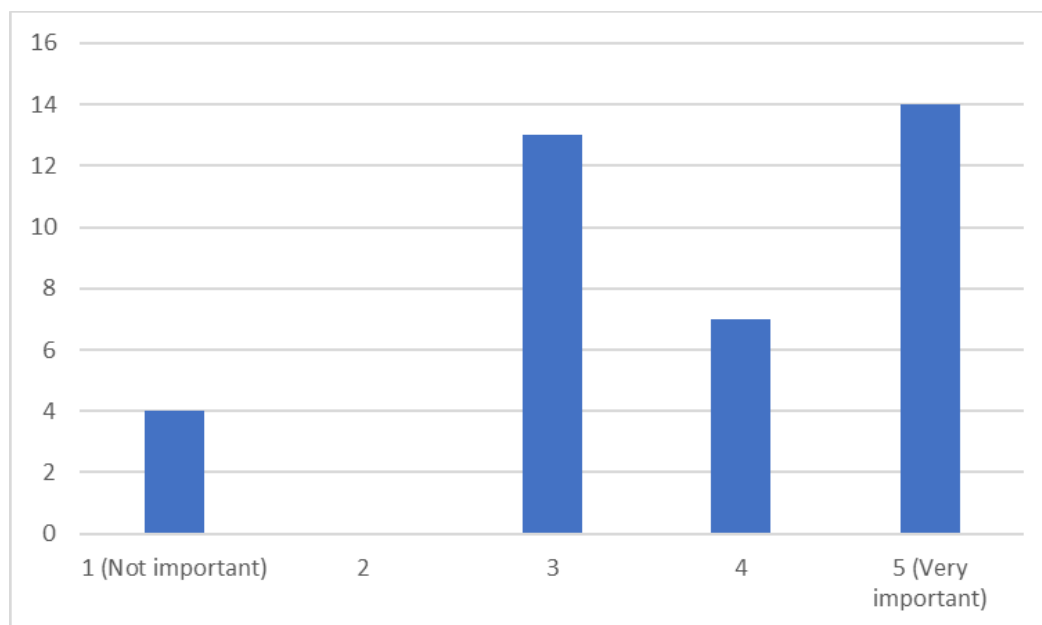
³⁴⁸ Parties' response to the AIS, 4 August 2022, paragraph 4.18.

³⁴⁹ FMN, paragraph 11.6.1(c).

³⁵⁰ SSS, main party hearing transcript, page 13, lines 16–18.

and 5 being very important). More than half (22/39) of customers said that it would be a four or a five (very important).

Figure 6-1: ICCS customers – importance of cloud



Source: CMA analysis of third party data (Question: 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.

6.163 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.³⁵¹ 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;³⁵²
 - (ii) One respondent had already moved to cloud;³⁵³

³⁵¹ Response to the CMA questionnaire from a number of third parties, March–June 2022.

³⁵² Response to the CMA questionnaire from a number of third parties, May 2022.

³⁵³ Response to the CMA questionnaire from a third party, May 2022.

- (iii) Two respondents said they expected to move to cloud but in the more distant future;³⁵⁴ and
- (iv) Nine respondents mentioned that moving to cloud fits with either their own or national strategy.³⁵⁵
- (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;³⁵⁶
 - (ii) Four respondents said they would consider all options and had no strong preference for cloud or on-premise solutions;³⁵⁷
 - (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;³⁵⁸ and
 - (iv) Two respondents said that cloud was not a main or determinative factor in deciding who to appoint as a supplier.³⁵⁹
- (c) Five customers' responses did not indicate their thoughts on cloud-based solutions.

6.164 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.

6.165 We asked additional questions to nine ICCS customers that we had identified as being likely to have an upcoming ICCS procurement to understand more about their requirements for a cloud-based ICCS and their views on the acceptability of non-cloud suppliers providing a roadmap to cloud. We received five responses:

- (a) One noted that it does not currently require a cloud solution for its upcoming procurement, but in the medium-term cloud delivery will be a consideration although they are agnostic on public/private cloud. It stated that a supplier

³⁵⁴ Response to the CMA questionnaire from two third parties, May 2022.

³⁵⁵ Response to the CMA questionnaire from a number of third parties, May 2022.

³⁵⁶ Response to the CMA questionnaire from a number of third parties, May 2022.

³⁵⁷ Response to the CMA questionnaire from a number of third parties, May 2022.

³⁵⁸ Response to the CMA questionnaire from a third party, May 2022.

³⁵⁹ Response to the CMA questionnaire from two third parties, May 2022.

with a cloud roadmap would be considered and evaluated but for the service to be adopted the service will need to be proven.³⁶⁰

- (b) One stated that it is highly likely to require a cloud-based solution when the decision is made to procure a replacement ICCS. However, they have no plans to procure an ICCS within the next two years (rather it will be an ICCS equipment refresh in the next two years). No consideration has been made to compare public vs private cloud-based solution. It submitted that it would consider a supplier with a roadmap to a cloud-based solution during initial enquiries.³⁶¹
- (c) One noted that it has no preference for a cloud-based system and its focus is on the resilience of its control rooms and it would therefore consider a supplier with a roadmap to cloud. However, despite currently having a cloud-based ICCS, this customer has some concerns about cloud-based ICCS products. These concerns include that BT will not route 999 calls directly to third parties and the ability of suppliers to keep the software in step with browser upgrades (which are outside the supplier's control). Consequently, this customer is not set on such architecture as a solution.³⁶²
- (d) One submitted that the force's strategic approach is cloud first, however this is not an absolute position and would need to consider any design and operational constraints as part of a wider assessment. Furthermore, the force would require detailed information as to how any prospective supplier would achieve a compliant public cloud offering.³⁶³
- (e) One responded that it was too early for it to answer these questions.³⁶⁴

6.166 We acknowledge that we only received a small number of responses to our additional questions (albeit these were identified as customers likely to have a forthcoming ICCS procurement)³⁶⁵ and this therefore limits the extent to which we can apply this evidence to the whole market. However, this evidence is consistent with the mixed views expressed by the broader set of customers discussed above and we consider that it shows that while there is a trend towards procuring cloud-based ICCS solutions, there are some customers who will still consider an on-premise solution and/or a supplier with a credible roadmap to a public cloud solution over the next few years. Therefore, this evidence suggests that a

³⁶⁰ Third party submission to the CMA, September 2022.

³⁶¹ Third party submission to the CMA, September 2022.

³⁶² Third party submission to the CMA, September 2022.

³⁶³ Response to the CMA questionnaire from a third party, October 2022.

³⁶⁴ Response to the CMA questionnaire from a third party, October 2022.

³⁶⁵ We recognise that the customer in paragraph 6.165(b) clarified that it would not be procuring an ICCS in the next two years.

competitor who does not yet have a public cloud solution is still likely to be able to compete for some opportunities.

Competitors' views

- 6.167 One competitor³⁶⁶ 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 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.
- 6.168 Another competitor³⁶⁷ 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.
- 6.169 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

- 6.170 We have examined how many future opportunities are likely to arise in the ICCS market suppliers 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.
- 6.171 Evidence from SSS also suggests that there will be more opportunities for ICCS in the next few years compared to the previous five years. In particular, SSS stated

³⁶⁶ Note of a call with a third party, June 2022, paragraph 3.

³⁶⁷ Note of a call with a third party, June 2022, paragraph 4.

that its [REDACTED] over the next few years with one of the key factors being the [REDACTED].³⁶⁸ However, we have also seen one internal document that indicates that [REDACTED].³⁶⁹

- 6.172 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 determine whether the Merger has resulted, or may be expected to result, in an SLC.

Competitiveness of Parties' products

- 6.173 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.

- 6.174 We have considered the Parties' ability to win customers through:

- (a) tenders; and
- (b) direct awards and extensions.

Parties' views

- 6.175 SSS submitted that the provisional findings failed to analyse how the declining number of opportunities for on-premise solutions in the 'few years' period will impact SSS's competitive position. In particular:
- (a) even if SSS had the investment to deploy its ICCS solution into the cloud which SSS considers there is no evidence to support – there would have been a significant period (likely at least two years if not more) before SSS would have been able to compete with a deployable [REDACTED] cloud solution and this would have caused a decline in SSS's market position as a result of being unable to compete for those opportunities that the provisional findings consider will arise in the next 'few years';³⁷⁰ and
 - (b) the extent to which SSS's competitors, which the provisional findings confirm have a 'head-start' on SSS in terms of developing cloud, will further innovate and develop their offering and so increase the gap between SSS and its rivals.³⁷¹

³⁶⁸ SSS, main party hearing transcript, page 74, lines 6–11.

³⁶⁹ Appendix C, Document 12.

³⁷⁰ SSS's response to the provisional findings, 7 October 2022, paragraph 4.20.1.

³⁷¹ SSS's response to the provisional findings, 7 October 2022, paragraph 4.20.2.

- 6.176 SSS submitted that the CMA's analysis suggests that SSS would be well-placed to compete for [redacted]/[redacted] tenders ([redacted]) in the next two years.³⁷² SSS estimated this based on paragraph 6.170 identifying [redacted] total upcoming ICCS per year in 2023 and 2024 and paragraph 6.164 identifying that five customers who expressed reservations about cloud were likely to consider an ICCS procurement process in the next few years.
- 6.177 SSS also submitted that the evidence shows that SSS is [redacted] for opportunities requiring a roadmap for cloud and is [redacted] for on-premise solutions. In particular:
- (a) It may be that customers are open to receiving roadmaps but this does not mean that SSS either has or would in the counterfactual have [redacted]. [redacted]. This is particularly where rivals already have deployable cloud solutions;³⁷³
 - (b) [redacted] also highlighted that SSS's ICCS on-premise product [redacted]. This reflects, as above, that SSS's success rate in winning tenders has declined including for [redacted].³⁷⁴
 - (c) The East Coast and Kent and Essex opportunities [redacted] provide evidence that SSS's ICCS product is [redacted], even where customers are in principle willing to consider non public cloud solutions.³⁷⁵
 - (d) SSS [redacted].³⁷⁶
- 6.178 Consequently, in the time it will take [redacted].³⁷⁷

Ability to compete for tenders

- 6.179 We consider that customers will have a range of requirements in forthcoming opportunities, for example, whether they will require a cloud-based solution (and if so, what type of cloud) or an on-premise solution, and these will typically be specified within the tender documentation. We have therefore considered the Parties' ability to compete for tenders that require public cloud solutions and those that require only an on-premise solution or roadmap to a public cloud solution both in the immediate future and over the next few years. However, we recognise that customers will have other non-cloud related technical requirements and so we have also considered the Parties' ability to meet such requirements.
- 6.180 We acknowledge the Parties' submissions in various paragraphs (including paragraphs 6.158(c), 6.175(a), 6.189 and 6.190) that SSS does not currently have a [redacted] cloud ICCS solution and that it will take between [redacted] to develop one

³⁷² SSS's response to the provisional findings, 7 October 2022, paragraph 10.35.

³⁷³ SSS's response to the provisional findings, 7 October 2022, paragraph 4.22.

³⁷⁴ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 4.23.

³⁷⁵ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.44.

³⁷⁶ SSS's response to the provisional findings (annex), 7 October 2022, paragraph 10.46.

³⁷⁷ SSS's response to the provisional findings, 7 October 2022, paragraph 4.25.

depending on whether any issues arise once development is further progressed. However, on balance considering various submissions from SSS, including the most recent update in paragraph 6.190, we consider that the evidence indicates that SSS is likely to be able to develop a [REDACTED] cloud ICCS [REDACTED] (ie approximately two to three years' time).

- 6.181 The Parties further submitted (as set out in in paragraphs 6.175(a), 6.175(b) and 6.178) that even within a two to three-year period the fact that some of the Parties competitors already have a [REDACTED] cloud ICCS solution will put them at an advantage over the next two to three years. Notwithstanding the current product offering of SSS and its competitors we consider that:
- (a) As set out in Table 6-2, SSS currently has at least three to four times as many customers as three of its competitors. We therefore consider that even in a worst-case scenario if SSS lost a number of its current customers, and failed to win any new customers while it develops its [REDACTED] cloud ICCS, it would still have a significant number of remaining customers that it would have an incentive to retain going forward.
 - (b) The majority of competitors have referred to having capacity constraints and having an intention to selectively bid over the next couple of years. While we recognise that this may allow competitors to develop their track record, it is unlikely that competitors will build notable scale and that SSS would be left behind. In particular, Motorola has had recent tender success but is starting from a low customer base, Saab also has a low initial customer base [REDACTED] and while Frequentis has scale already we understand that it will bid selectively going forward.

Tenders requiring a cloud-based solution

- 6.182 Some future tenders are likely to require a solution deployed through a public cloud (either immediately or via a roadmap). [REDACTED]. This is likely to limit their ability to compete for opportunities with this requirement over the next few years.
- 6.183 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. [REDACTED].³⁷⁸ This investment will take [REDACTED] years and cost around £[REDACTED] million of investment.³⁷⁹ NECSWS also noted that the investment will [REDACTED] 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.

³⁷⁸ NECSWS, main party hearing transcript, page 44, lines 13–17.

³⁷⁹ NECSWS, main party hearing transcript, page 45, lines 1 and 3.

- 6.184 SSS has submitted that it believes it will take it [REDACTED] to develop a cloud-solution.³⁸⁰ We consider the likelihood and timing of SSS developing a cloud-based ICCS product in the following section. While SSS does not currently have a [REDACTED] cloud based ICCS, it can offer customers a [REDACTED] solution and it has submitted bids with a [REDACTED] offering in recent tenders that had a [REDACTED] cloud requirement.³⁸¹ For example:
- (a) SSS bid and won the [REDACTED]. We note that SSS was the only bidder in this tender.³⁸² Additionally, SSS noted that [REDACTED]. [REDACTED].³⁸³
 - (b) SSS has also bid for an ICCS-only contract with a [REDACTED]. [REDACTED].³⁸⁴
 - (c) SSS has also submitted a bid for a [REDACTED] offer to [REDACTED], for a control solution for CAD and ICCS earlier this year. SSS has been unsuccessful in this bid.³⁸⁵
- 6.185 We note SSS's submission in paragraph 6.177(c) that it lost [REDACTED] of these tenders which it stated illustrated the weaknesses of its ICCS product and credibility of its cloud roadmap. However, SSS won [REDACTED] tenders listed above and was not disqualified for not meeting the criteria in any of the [REDACTED]. We therefore consider that while SSS does not yet have a [REDACTED] cloud solution, it may still be able to provide some constraint, through offering [REDACTED]. SSS's decision to participate in such tenders suggests that it has both the ability and incentive to continue to compete for customers while it develops its [REDACTED] cloud offering and its cloud roadmap. In particular, despite the fact that the [REDACTED] fire and rescue tender has resulted in [REDACTED], SSS has still bid for several other customers with a similar [REDACTED] solution.

Required cloud-related changes in SSS's ICCS product

- 6.186 We have seen evidence that prior to the Merger SSS had planned to develop its ICCS product to make it a [REDACTED] cloud offering:
- (a) One document notes that SSS [REDACTED]. [REDACTED].³⁸⁶
 - (b) Another internal document noted that SSS's short-to-medium term strategy was to [REDACTED].³⁸⁷

³⁸⁰ SSS's response to the CMA's RFI 4, 13 July 2022, paragraphs 71.2 and 72.8.

³⁸¹ 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.

³⁸² SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 73.3.

³⁸³ SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 73.10.

³⁸⁴ SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 73.13.

³⁸⁵ SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 73.14.

³⁸⁶ Parties, Issues Meeting presentation, 6 April 2022, slide 10.

³⁸⁷ Appendix C, Document 28.

6.187 However, [REDACTED].³⁸⁸

6.188 Despite [REDACTED]. [REDACTED].³⁸⁹ [REDACTED].

6.189 SSS estimates that even if it had to rewrite its ICCS software to achieve a cloud-based product that this could be done in [REDACTED].³⁹⁰

6.190 Most recently, SSS has submitted that in August 2022, [REDACTED].³⁹¹

6.191 We note that there is some uncertainty around how long it would take SSS to transition its ICCS product to have [REDACTED] cloud functionality. However, based on the most recent update we consider that SSS is likely to be able to develop a [REDACTED] cloud ICCS by [REDACTED]. In addition, SSS is recognised as having [REDACTED].³⁹² This could support its ability to achieve this.

Viability of investment plans

6.192 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 conclusion 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) A credible pathway to cloud may allow it to win new customers (see paragraph 6.202(a)).
- (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 paragraph 6.190).
- (e) ICCS is considered by SSS to be a '[REDACTED]' product with a contribution margin of [REDACTED]%,³⁹³ which reflects its profitability. Generally, we consider that, as a starting point, a product in which a competitor has been successful and is

³⁸⁸ Parties Initial Phase 2 Submission, 31 May 2022, paragraph 2.5.

³⁸⁹ SSS's response to the CMA's RFI 4, 13 July 2022, paragraphs 72.1 and 72.2.

³⁹⁰ SSS's response to the CMA's RFI 4, 13 July 2022, paragraphs 71.2 and 72.8.

³⁹¹ SSS's response to the CMA's RFI 5, 6 October 2022, paragraphs 82.1, 82.9, 82.15 and 82.16.

³⁹² Appendix C, Documents 2 and 16.

³⁹³ SSS, main party hearing transcript, pages 10–11.

generating [REDACTED] is more likely to be one in which it will consider investing to try and maintain its competitive 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 recognise that SSS could offer its ICCS overseas to spread investment costs; and
- (g) NECSWS noted that the end product for ICCS [REDACTED].³⁹⁴ In particular, NECSWS spoke about taking the [REDACTED].³⁹⁵ This suggests that while SSS's ICCS product requires some investment, it provides an attractive starting product to build on.

6.193 As set out in chapter 4 we consider that SSS was investible under either Capita or a different owner. We consider here the viability of investment in ICCS specifically as a standalone product.

6.194 We note that [REDACTED] suppliers without public cloud functionality are currently in the process of investing in their products to develop it. As discussed in paragraph 6.183, NECSWS is in the process of developing its ICCS product. Saab told us that the transition to cloud is hugely important [REDACTED].³⁹⁶

6.195 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) even with a small customer base there is a business case to make the necessary investment; 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';³⁹⁷

³⁹⁴ NECSWS, main party hearing transcript, page 53, lines 3–6.

³⁹⁵ NECSWS, main party hearing transcript, page 53, lines 3–6.

³⁹⁶ Note of a call with a third party, July 2022, paragraph 3.

³⁹⁷ Note of a call with a third party, 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’;³⁹⁸
- (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’;³⁹⁹ and
- (iv) NECSWS told us that ‘new customers are hard to win. [X].⁴⁰⁰

6.196 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.

6.197 Overall, we recognise 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], even if this may lead to less attractive financial terms for the supplier). However, we consider that it is likely that the Parties would both continue working to develop [X] cloud capability such that they could compete for such tenders with a [X] cloud product in around two to three years’ time. We also consider that they, and other competitors who have not yet developed a full [X] cloud solution, could use their ongoing development plans 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 in the meantime (see below).

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

6.198 As set out in paragraph 6.154, we consider that the Parties are two of the three largest ICCS suppliers and are currently close competitors. As noted above, we recognise that there may be some weakening of the constraint exercised by SSS and NECSWS in the next couple of years due to not being able to effectively compete for tenders with a firm requirement for a [X] cloud solution.

³⁹⁸ Note of a call with a third party, June 2022, paragraph 5.

³⁹⁹ Note of a call with a third party, July 2022, paragraph 7.

⁴⁰⁰ NECSWS, main party hearing transcript, page 25, lines 17–22.

- 6.199 However, given SSS's large existing customer base and our view that SSS is likely to invest in its ICCS product which will allow it to compete for [REDACTED] cloud ICCS opportunities in approximately two to three years' time we do not consider that this would prevent SSS from providing a competitive constraint over the next few years while it develops this functionality. Furthermore, we consider that several factors (eg differentiated customer requirements, capacity constraints of other suppliers and an openness of some customers to on-premise solutions including those who have reservations about moving to a [REDACTED] cloud solution) mean that SSS is likely to be able to compete for at least some opportunities in the meantime.
- 6.200 We have seen evidence that suggests that there are still some customers who are open to considering on-premise solutions and/or who have reservations about moving to a public cloud solution:
- (a) customer evidence as set out in paragraphs 6.163 to 6.165;
 - (b) evidence from competitors as set out in paragraphs 6.167 to 6.169; and
 - (c) one of SSS's internal document states '[REDACTED]'.⁴⁰¹
- 6.201 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 6.161. With regards to SSS's submission in paragraph 6.176, we do not accept that SSS would only be well-placed to compete for [REDACTED]/[REDACTED] tenders in the next two years. Rather we consider that [REDACTED]/[REDACTED] tenders is likely to be the minimum number of tenders that SSS could compete for in the next two years with its current offering given that:
- (a) the customer questionnaire responses and future opportunities estimates do not tie up one-to-one and therefore we do not know exactly how many of the upcoming opportunities will require a [REDACTED] cloud based solution or how many customers will ultimately include a [REDACTED] cloud based solution in their specifications;
 - (b) as set out in paragraph 6.184, there may be some tenders that require a cloud-based solution that SSS can still compete for if the customer is willing to consider a range of proposals; and
 - (c) as set out below in paragraph 6.204, over the next two-year period, SSS is increasingly likely to be able to compete for some cloud-based opportunities with a credible roadmap.

⁴⁰¹ Appendix C, Document 26.

- 6.202 Furthermore, we have seen some evidence that an on-premise solution that is complemented with a credible roadmap to a [REDACTED] 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.⁴⁰² 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.⁴⁰³ [REDACTED]. [REDACTED] 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; and⁴⁰⁴
 - (b) other customer evidence set out in paragraph 6.165.
- 6.203 We consider that the above examples demonstrate that some customers in the next few years may find an on-premise solution with a credible roadmap to [REDACTED] cloud not only acceptable, but preferable, and for such customers it will be a necessity that there are suppliers which are able to offer an on-premise solution.
- 6.204 As set out above, we consider that both NECSWS and SSS are likely to continue to develop their [REDACTED] cloud solutions. Given the tender example, and customer evidence above, we consider that this may allow the Parties to use demonstrable progress towards their [REDACTED] cloud ICCS products as a credible basis for competing in tenders. We note that SSS has submitted, as set out in paragraph 6.177(a), that while customers may be open to receiving roadmaps, this does not mean that SSS either has or would in the counterfactual have a credible roadmap to the cloud [REDACTED]. We acknowledge that in the immediate future SSS may not be a credible threat for tenders that require a roadmap. However, given our view that both Parties are likely to continue to develop their [REDACTED] cloud solutions, and evidence which suggests that both Parties could have a [REDACTED], we consider it likely that SSS will be able to develop a credible roadmap that will increasingly allow it to compete for these type of opportunities between now and the time that its [REDACTED] cloud ICCS is operational.
- 6.205 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 only require an on-premise

⁴⁰² Note of a call with a third party, June 2022, paragraph 6.

⁴⁰³ Note of a call with a third party, June 2022, paragraph 6.

⁴⁰⁴ Third Party submission to the CMA, '[REDACTED]', July 2022.

solution. Although there is some evidence to suggest that an on-premise solution with a credible road-map to cloud may be acceptable (or even desirable) to some customers. For such opportunities, we consider that the Parties are likely, and increasingly likely going forward, to be two of relatively few suppliers that are well placed to compete given their current product offerings and their future plans to develop [REDACTED] cloud ICCS products,

Non-cloud based technical and quality considerations

6.206 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 [REDACTED]:

(a) [REDACTED].⁴⁰⁵

(b) [REDACTED].⁴⁰⁶

(c) [REDACTED].⁴⁰⁷

(d) [REDACTED].⁴⁰⁸

6.207 Although [REDACTED] suggest that SSS's product was [REDACTED] as some of its competitors (supporting competitor's views in paragraph 6.142(a) that SSS's ICCS product is viewed as somewhat of a legacy product), it was not disqualified on technical grounds. Furthermore, SSS was often [REDACTED]. As set out in paragraph 6.177(d), SSS has submitted that [REDACTED]. We recognise that ultimately SSS's pricing did not result in it winning these tenders, nevertheless we consider that SSS would still have exerted some competitive constraint on pricing.⁴⁰⁹

6.208 While we note that SSS has scored lower than other competitors on technical ability in tenders, we also note that one SSS internal document produced in March 2022 described its ICCS system as 'rock solid'.⁴¹⁰ We recognise that this is just one document discussing a market test, however it does indicate that, in this instance, SSS did not view its product as being non-competitive and there is other evidence (including tender, direct award and extension wins in the last five years) to suggest SSS's current product offers an option that some customers consider meets their needs.

⁴⁰⁵ Appendix C, Document 24.

⁴⁰⁶ Appendix C, Document 25.

⁴⁰⁷ SSS, main party hearing transcript, page 7, lines 1–5.

⁴⁰⁸ Response to the CMA questionnaire from a third party, June 2022, question 8.

⁴⁰⁹ For example, see Appendix C, Documents 1, 24 and 25.

⁴¹⁰ Appendix C, Document 13.

6.209 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 conclusion is that this uncertainty is not sufficient to prevent us from considering that SSS will continue to exert a 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

6.210 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 6.110, SSS has a strong track record of winning direct awards and extensions. Our understanding is that given there are relatively few [REDACTED] cloud solutions that have been in place for some time, most extensions to date have been for on-premise solutions.

6.211 As set out in paragraph 6.195(b) we have seen evidence that it is attractive for customers to stay with their current supplier if it meets their requirements (in terms of functionality and value for money) and competitors can find it difficult to win new customers and therefore 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.

6.212 Additionally, one SSS internal document produced in February 2022 indicates that [REDACTED].⁴¹¹

6.213 NECSWS also noted that it would continue to offer a [REDACTED].⁴¹² Furthermore, it expects market demand to accelerate even further towards cloud once ESN is completed and operating.⁴¹³ This indicates that in the next couple of years there are likely to be at least some opportunities for non public cloud products.

6.214 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 compete for such extensions.

⁴¹¹ Appendix C, Document 12.

⁴¹² NECSWS, main party hearing transcript, page 46, lines 2–5.

⁴¹³ NECSWS, main party hearing transcript, page 46, lines 14–16.

Parties' views

- 6.215 SSS submitted that the provisional findings implicitly accept that Frequentis, Saab and Systel will each bid on some opportunities going forward and that where they do bid they will impose a constraint on the Parties. Furthermore, given that the Parties will not know which opportunities Frequentis, Saab and Systel will or will not bid for then they will need to assume that these competitors will bid for an opportunity and take this into account when they bid. This means that even if one or more of Frequentis, Saab and Systel do not in practice bid for a particular opportunity the Parties will not know that and will still be constrained by those rivals.⁴¹⁴
- 6.216 NECSWS submitted that the evidence supports Systel being a credible competitive threat. In particular, evidence from Systel that it intends to bid for six opportunities over the next two years (set out below) demonstrates that Systel will be a credible competitive constraint on the Parties. Further, the Parties do not know which opportunities Systel will bid for, and it will therefore act as a constraint across all tenders.⁴¹⁵

Our assessment

- 6.217 [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.⁴¹⁶ However, it also noted that the level of customer requirements for each contract would, to an extent, determine [X] capacity for future bids.⁴¹⁷
- 6.218 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 ICCS opportunities over the next two years.⁴¹⁸ 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.⁴¹⁹

⁴¹⁴ SSS's response to the provisional findings, 7 October 2022, paragraphs 4.14– 4.16.

⁴¹⁵ NECSWS's response to the provisional findings, 7 October 2022, page 8.

⁴¹⁶ Response to the CMA questionnaire from a third party, May 2022, question 4.

⁴¹⁷ Note of a call with a third party, June 2022, paragraph 15.

⁴¹⁸ Response to the CMA questionnaire from a third party, May 2022, question 4.

⁴¹⁹ Note of a call with a third party, June 2022, paragraph 11.

6.219 [REDACTED].⁴²⁰ [REDACTED].⁴²¹

6.220 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.⁴²² Therefore we consider that Systel is likely to add a further specific, but limited, constraint on the Parties.

6.221 We note that the Parties have submitted in paragraphs 6.215 that given the Parties do not know which opportunities Frequentis, Saab and Systel will bid for, each of them will act as a credible competitive constraint across all tenders. As set out in paragraph 6.120 we recognise that each of these competitors may sometimes provide some constraint in opportunities in which they ultimately do not bid for. However, the Parties' expectations of whether each competitor will bid for any given tender will be impacted by each competitor's past bidding behaviour and this will be taken into account in the extent of the competitive constraint they place on the Parties. In particular, the Parties, when determining their own bid, will likely factor in a lower probability of, Systel or Frequentis bidding compared to Motorola which therefore limits the constraint they will exercise going forward.

Conclusion on future competition

6.222 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.

6.223 We consider that the Parties are not well placed to win opportunities in the next few years which require an immediate [REDACTED] cloud deployment. However, we consider that they will have an incentive to develop these capabilities and are both actively exploring this.

6.224 [REDACTED], 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 sufficient incentives for an investment case to develop a cloud-capable solution.⁴²³ SSS is currently investigating and taking steps to further develop its strategy for potential [REDACTED] cloud enablement. Once this is developed in potentially two-three years time, SSS is likely to be a more effective competitor going forwards.

6.225 The evidence also suggests that it is unlikely that all upcoming tenders will require a [REDACTED] cloud solution to be implemented immediately. A credible roadmap to cloud, or a hybrid solution ([REDACTED]), is likely to be enough to enable the Parties to compete

⁴²⁰ Response to the CMA questionnaire from a third party, May 2022, question 4.

⁴²¹ Note of a call with a third party, July 2022, paragraphs 8 and 11.

⁴²² Response to the CMA questionnaire from a third party, May 2022, question 4.

⁴²³ We recognise that high margins do not necessarily indicate that development costs will be recovered.

for a number of opportunities, particularly where they are the incumbent suppliers. For those customers who do not yet wish to move to cloud, the Parties will be strong competitors.

- 6.226 The Parties will also be well-placed to compete for direct awards and extensions, particularly for their existing customer bases.
- 6.227 The Parties will face some constraint from other suppliers, and this may increase over the next few years. 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. There are only two competitors who can currently offer a [X] cloud offering. Similarly, there are only a limited number of competitors who can (or are willing to) offer an on-premise solution or a roadmap to cloud. Suppliers are therefore likely to exercise differing levels of constraint and depending on the opportunity, competition may only take place among a few of these suppliers. Additionally, 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. On balance, we therefore do not consider that there are sufficient remaining competitive constraints in the market to counteract the loss of competition resulting from the Merger.

Conclusion

- 6.228 We have found that the ICCS market is characterised by a 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 hours a day, seven days a week and 365 days a year – where customers mandate that there can be no single point of failure to avoid having a severe impact on public safety.
- 6.229 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.⁴²⁴ We have therefore considered the evidence of a high degree of concentration, and the importance of the product market,⁴²⁵ alongside the other evidence we have collected.

⁴²⁴ [CMA129](#), paragraph 4.10.

⁴²⁵ The context of a market is a legitimate aspect of assessing whether a SLC arises. As noted in [CMA129](#), paragraph 2.9, in considering whether a lessening of competition is substantial, the CMA may take into account whether the market to which it applies 'is large or is otherwise important to UK customers'. For example, in *Asda/Sainsbury's* the CMA had regard to the fact that groceries were a non-discretionary expenditure that accounted for a significant share of household spend, see Final Report, [Anticipated merger between J Sainsbury plc and Asda Group Ltd](#), 25 April 2019 at paragraphs 8.282–8.283. This does not involve any alteration of the standard of proof, rather it is one of the factors that can legitimately be taken into account in assessing whether an SLC may be expected to arise on the balance of probabilities.

- 6.230 There have been relatively few opportunities in the ICCS market in the last five years. Where tenders have taken place, on average only [X] 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 a competitive constraint in the market.
- 6.231 The internal documents that we have reviewed 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.
- 6.232 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.
- 6.233 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.
- 6.234 We also consider that SSS is in the process of exploring options for transitioning its product to the [X] cloud and there is a good case for likely investment in SSS's ICCS product in order to make it a more effective competitor in the future.
- 6.235 While NECSWS and SSS work on developing their [X] cloud solutions, we consider that they will continue to pose an effective competitive constraint with their on-premise solutions alongside building a credible roadmap to a [X] cloud solution or a hybrid solution ([X]). This is likely to be enough to enable the Parties to compete for a number of opportunities in the meantime, particularly where they are the incumbent suppliers and for those tenders open to considering on-premise solutions, notwithstanding that the Parties are likely to provide a more limited constraint for cloud opportunities particularly in the short term. The Parties will also be well-placed to compete for direct awards and extensions, particularly for their existing customer bases.
- 6.236 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 the second largest competitor and also well positioned in terms of its product offering. However, given 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 which will reduce the

competitive constraint it exerts in the market. We consider that Saab will also provide a constraint given that it has been successful in recent tenders. However, we note that it also bids strategically and focuses on tenders requiring an integrated CAD and ICCS solution and therefore this will also reduce the competitive constraint it exerts. 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. Overall, we therefore consider that each of Frequentis, Saab and Systel either face capacity constraints and/or focus on particular tenders and intend to bid for a limited number of opportunities over the next two years.

- 6.237 In the round, we consider that the evidence shows that the Parties are currently close competitors in a concentrated market. SSS has had less recent tender success but nonetheless continues to impose an important constraint, and we consider there is a good case for likely investment which will make it a more effective competitor in future. Whilst Motorola will remain a strong competitor, given the limitations in the constraint exercised by the other competitors, we do not consider that there are sufficient remaining competitive constraints in the market to counteract the loss of competition resulting from the Merger. Taking all these factors in the round, we have therefore 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 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 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) NECSWS⁴²⁶ – 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).⁴²⁷ [REDACTED].⁴²⁸
- (b) SSS⁴²⁹ – 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 use all, or just some, of these modules. Origin can be deployed on-premise or deployed [REDACTED].⁴³⁰
- (c) Crown⁴³¹ – Crown is a dedicated Duties supplier which offers a Duties system to police forces. Its system can integrate with ERP suppliers. [REDACTED].
- (d) Totalmobile⁴³² – 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) SAP⁴³³ – 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-

⁴²⁶ FMN, paragraphs 12.51–12.53.

⁴²⁷ See paragraph 7.19 for further details as regards ERP solutions.

⁴²⁸ NECSWS's response to the Cloud WP, 4 August 2022, page 40.

⁴²⁹ SSS's site visit presentation, 13 June 2022, slides 60–61.

⁴³⁰ SSS's response to the CMA's RFI 4, 18 July 2022, question 75.1.

⁴³¹ Note of a call with a third party, June 2022, paragraph 3.

⁴³² Note of a call with a third party, June 2022, paragraph 2.

⁴³³ Submission from a third party to the CMA, 19 July 2022.

premise ERP solution that contained elements of shift planning capabilities and some police forces continue to use this solution.

- (f) Zellis⁴³⁴ – 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 assessment of 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’.⁴³⁵ An SLC can affect the whole or part of a market or markets.⁴³⁶
- 7.6 While market definition can sometimes be a useful tool, it is not an end in itself.⁴³⁷ 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.⁴³⁸ 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 relevant market, or other ways in which some constraints are more important than others.⁴³⁹

Product scope

- 7.7 Product market definition starts with the relevant products of the merger firms.⁴⁴⁰ 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.⁴⁴¹ The CMA may also consider supply-side factors.⁴⁴²

⁴³⁴ Response to the CMA questionnaire from a third party, March 2022, question 10.

⁴³⁵ As regards the Merger, see [section 35\(1\)\(b\)](#) of the Act.

⁴³⁶ [CMA129](#), paragraph 9.1.

⁴³⁷ [CMA129](#), paragraph 9.4.

⁴³⁸ [CMA129](#), paragraph 9.4.

⁴³⁹ [CMA129](#), paragraph 9.4.

⁴⁴⁰ [CMA129](#), paragraph 9.6.

⁴⁴¹ [CMA129](#), paragraph 9.6.

⁴⁴² [CMA129](#), paragraph 9.6.

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.⁴⁴³
- (a) Duties software has broadly the same basic functionality regardless of customer type.⁴⁴⁴ 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.⁴⁴⁵
 - (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.⁴⁴⁶
 - (c) There are no significant differences in ongoing customer support provided to different categories of emergency services customers.⁴⁴⁷
- 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 services customer groups as competition takes place 'for the market' in bidding markets such that shares of supply can fluctuate significantly.⁴⁴⁸ NECSWS submitted that the CMA's approach to customer segmentation in its provisional findings in the Duties market was inconsistent with its approach in the ICCS market.⁴⁴⁹ It said that in both markets the CMA had found that not all competitors are active across all customer segments so it was inconsistent to conclude that customer segmentation should apply in Duties but not in ICCS.

Our assessment

- 7.10 The starting point for our assessment is that the Parties supply Duties only to police forces.⁴⁵⁰

⁴⁴³ FMN, paragraph 13.27.

⁴⁴⁴ Parties' response to the phase 1 Issues Letter, paragraph 4.6.1.

⁴⁴⁵ FMN, paragraph 13.16.

⁴⁴⁶ FMN, paragraph 13.21.

⁴⁴⁷ FMN, paragraph 13.24.

⁴⁴⁸ FMN, paragraph 13.22.

⁴⁴⁹ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 7.12 and 6.19.

⁴⁵⁰ FMN, paragraph 13.1.3.

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.⁴⁵¹ For example, according to the Parties' data, [REDACTED]; [REDACTED], [REDACTED] and [REDACTED] only serve fire and rescue customers; and Working Time Solutions only serves ambulance customers.⁴⁵² The Parties' data is consistent with feedback received from competitors during our investigation.^{453,454}
- 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). This evidence differs from the situation in the ICCS market where multiple suppliers, including both of the Parties, provide services across customer segments. Taking this difference into account alongside the evidence on demand and supply-side substitutability discussed below, we disagree with NECSWS's submission (see paragraph 7.9) that our approach to customer segmentation has been inconsistent between the ICCS and Duties markets.

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.⁴⁵⁵ Several (six out of 14) police forces indicated that a solution used by another police force could meet their needs. This

⁴⁵¹ FMN, table 14.3A.

⁴⁵² FMN, table 14.3A.

⁴⁵³ [REDACTED] (response to the CMA questionnaire from a third party, March 2022, question 10). [REDACTED] (response to the CMA questionnaire from a third party, March 2022, question 10 of the CMA's competitor questionnaire March 2022). [REDACTED] confirmed it currently supplies both ambulance and police customers (response to the CMA's questionnaire from a third party, March 2022, question 10).

⁴⁵⁴ 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 (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'. [REDACTED] (response to the CMA questionnaire from a third party, March 2022, question 11).

⁴⁵⁵ 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 three out of 14 respondents said solutions used by other emergency services providers could meet their needs, six out of 14 respondents said that a solution used by another police force could meet their needs, two out of 14 said other solutions couldn't meet their needs and three out of 14 said they didn't know. CMA analysis of 14 responses to our phase 1 questionnaire.

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.⁴⁵⁶ Another customer referred to Duties products for police forces needing to comply with police legislation across the UK and terms and conditions for DMS and that products used by other emergency services are therefore not suitable without reworking.⁴⁵⁷ One supplier also told us that fire and rescue services have different needs to police forces.⁴⁵⁸ 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 [redacted] customers, but indicated that this was proving to be difficult given that [redacted] to tailor its current product to the standards required by other types of emergency services customers.⁴⁵⁹ Another third party indicated that it supplies 'a specialist duty management system for [redacted] market' that it had 'spent over [redacted] building' as part of and along with its [redacted], with a cumulative investment 'in the region of £[redacted] million.'⁴⁶⁰
- 7.16 The Parties' opportunities data shows that the Parties have [redacted] for Duties opportunities for [redacted] ambulance customers (they did not provide information on any opportunities in relation to fire and rescue).⁴⁶¹ Likewise, other suppliers (except Totalmobile) focus on a particular emergency services customer segment (eg [redacted]). For example, in our Opportunities Data (discussed in detail in paragraphs 7.71 to 7.83), 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.⁴⁶²

⁴⁵⁶ Note of a call with a third party, January 2022, paragraph 33.

⁴⁵⁷ Response to the CMA questionnaire from a third party, March 2022, question 13.

⁴⁵⁸ Note of a call with a third party, June 2022, paragraph 10.

⁴⁵⁹ Response to the CMA questionnaire from a third party, March 2022, question 11.

⁴⁶⁰ Response to the CMA questionnaire from a third party, March 2022, question 11.

⁴⁶¹ Parties' response to the CMA's phase 1 s109(5), 24 March 2022, Annex 3.1.

⁴⁶² This is based on three procurements by police forces and four procurements by fire customers.

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 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).⁴⁶³ 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.⁴⁶⁴ 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.

Conclusion on segmentation by customer types

7.18 For the reasons set out above, we conclude 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,⁴⁶⁵ (ie wider enterprise resource planning software that includes 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.⁴⁶⁶

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

⁴⁶³ See Appendix C, Documents 38–46.

⁴⁶⁴ Parties' response to the phase 1 Issues Letter, paragraph 4.7.

⁴⁶⁵ Parties' response to the phase 1 Issues Letter, paragraph 4.8.

⁴⁶⁶ 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.⁴⁶⁷

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.⁴⁶⁸ 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.⁴⁶⁹ Some police forces told the CMA that it is important that their Duties product integrates into wider systems such as their ERP software.⁴⁷⁰
- 7.23 Furthermore, as indicated in paragraph 7.15 above, Duties solutions are highly complex. We asked customers whether ERP solutions could be an alternative to Duties. Several customers (seven out of 17)⁴⁷¹ 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.⁴⁷² These customers emphasised that Duties solutions are highly specialised and offer greater functionality than ERP software.⁴⁷³ 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.⁴⁷⁴ 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'.⁴⁷⁵ Another police customer that had scoped the

⁴⁶⁷ Parties' response to the phase 1 Issues Letter, paragraph 4.8.22.

⁴⁶⁸ We have observed only one such instance in feedback from third parties. [REDACTED].

⁴⁶⁹ We understand [REDACTED] legacy, on-premise ERP solution which includes shift planning capabilities. Of these [REDACTED] and this is for the ERP solution as a whole. Third party submission to the CMA, July 2022.

⁴⁷⁰ For example, see Response to the CMA questionnaire a number of third parties, March 2022, question 10 and question 11.

⁴⁷¹ Four customers considered ERP was an alternative, two said they would consider it and four said 'don't know'.

⁴⁷² We have classified qualitative responses ourselves. The question was '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 four out of 17 respondents said ERP solutions were an alternative to Duties, seven out of 17 respondents said they were not an alternative, two out of 17 said they would consider them and four out of 17 said they didn't know. CMA analysis of 17 responses to our phase 1 questionnaire.

⁴⁷³ Responses to the CMA questionnaire from a number of third parties, March 2022, questions 14 and 15.

⁴⁷⁴ Note of a call with a third party, January 2022, paragraph 32.

⁴⁷⁵ Response to the CMA questionnaire from a third party, 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.⁴⁷⁶

- 7.24 Suppliers of Duties solutions that responded to the CMA’s merger investigation did not consider that they compete with ERP solutions.⁴⁷⁷ A third party described ERP software and Duties solutions as complementary and explained that it ‘[redacted]’.⁴⁷⁸ 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.⁴⁷⁹
- 7.25 We note that one internal SSS document states that while SSS’s main competitor is Crown, and NECSWS (Northgate) is an [redacted], the ERP supplier Oracle is a ‘[redacted]’ to SSS’s Origin product. However, the same document also notes that Oracle [redacted].⁴⁸⁰

Our conclusion 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 provided by specialist suppliers. As such, our conclusion is that the Relevant Market should not include supply of broader ERP solutions.

Our conclusion on product scope

- 7.27 For the reasons set out above, our conclusion is that the relevant product market is the supply of Duties to police forces. We have found 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.⁴⁸¹ The CMA may consider a range of evidence as regards

⁴⁷⁶ Response to the CMA questionnaire from a third party, March 2022, questions 14 and 15.

⁴⁷⁷ Response to the CMA questionnaire from two third parties, March 2022, questions 13 and 14.

⁴⁷⁸ Response to the CMA questionnaire from a third party, March 2022, question 13.

⁴⁷⁹ Response to the CMA questionnaire from a third party, March 2022.

⁴⁸⁰ SSS Internal Document, Annex 10.2.22 to the FMN, ‘[redacted]’, 20 March 2021, slides 24–26.

⁴⁸¹ [CMA129](#), paragraph 9.13.

geographic scope, including the views of market participants on consumer preferences and product characteristics.⁴⁸²

7.29 NECSWS submitted that the narrowest candidate geographic market is the UK.⁴⁸³

7.30 One third party said that overseas suppliers had ‘not gained traction with any UK police services’.⁴⁸⁴ Another third party said non-UK suppliers ‘lack the specialist functionality required’ to supply a Duties solution ‘within sensible timescale, risk and cost parameters’.⁴⁸⁵ 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.⁴⁸⁶ 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’.⁴⁸⁷

Conclusion 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 conclusion is that the appropriate geographic market definition for Duties is the UK.

Conclusion on market definition

7.32 For the reasons set out above, our conclusion 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;

⁴⁸² [CMA129](#), paragraph 9.13.

⁴⁸³ FMN, 13.27. This submission was made across the Relevant Markets and applies also to Duties.

⁴⁸⁴ Response to the CMA questionnaire from a third party, March 2022, question 15.

⁴⁸⁵ Response to the CMA questionnaire from a third party, March 2022, question 15.

⁴⁸⁶ Note of a call with a third party, June 2022, paragraph 12.

⁴⁸⁷ Response to the CMA questionnaire from a third party, 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 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.⁴⁸⁸ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.⁴⁸⁹ The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.⁴⁹⁰ 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.⁴⁹¹

7.37 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.⁴⁹² The more closely the merger firms compete the greater the likelihood of unilateral effects.⁴⁹³ The concept of close competition is not limited to products or services that have similar characteristics.⁴⁹⁴ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.⁴⁹⁵ 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.⁴⁹⁶ 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.⁴⁹⁷ 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

⁴⁸⁸ [CMA129](#), paragraph 4.1.

⁴⁸⁹ [CMA129](#), paragraph 4.3.

⁴⁹⁰ [CMA129](#), paragraph 4.3.

⁴⁹¹ [CMA129](#), paragraph 4.3.

⁴⁹² [CMA129](#), paragraphs 4.8–4.10.

⁴⁹³ [CMA129](#), paragraph 4.8.

⁴⁹⁴ [CMA129](#), paragraph 4.9.

⁴⁹⁵ [CMA129](#), paragraph 4.9.

⁴⁹⁶ [CMA129](#), paragraph 4.10.

⁴⁹⁷ [CMA129](#), paragraph 4.10.

elimination of competition between them would raise competition concerns, subject to evidence to the contrary.⁴⁹⁸

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.⁴⁹⁹ The level and stability of market shares are relevant evidence in this regard.⁵⁰⁰

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.⁵⁰¹

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.⁵⁰² NECSWS submitted that very little (if any) insight relevant to the CMA's investigation can be derived from the CMA's revenue-based market share analysis.⁵⁰³

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 2021.⁵⁰⁴ 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.

⁴⁹⁸ [CMA129](#), paragraph 4.10.

⁴⁹⁹ [CMA129](#), paragraph 4.12(a).

⁵⁰⁰ [CMA129](#), paragraph 4.12(a).

⁵⁰¹ Parties' response to the Market Shares WP, 4 August 2022, paragraph 1.

⁵⁰² Parties' response to the Market Shares WP, 4 August 2022, paragraph 1.

⁵⁰³ NECSWS's response to the provisional findings, 7 October 2022, comment on paragraph 7.46 of the provisional findings.

⁵⁰⁴ 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.⁵⁰⁵ 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 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]	[3X]
SSS	[50-60]	[20-30]	[30-40]	[3X]
Parties Combined	[60-70]	[50-60]	[40-50]	[3X]
Crown	[20-30]	[20-30]	[20-30]	[3X]
Totalmobile (GRS)	[5-10]	[10-20]	[30-40]	[3X]
SAP	[-]	[5-10]	[5-10]	[3X]
Zellis	[0-5]	[0-5]	[0-5]	[3X]
In House	[-]	[5-10]	[0-5]	[3X]
MidlandHR/Unverified	[-]	[0-5]	[0-5]	[3X]
Total	100	100	100	48

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.

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

⁵⁰⁵ [CMA129](#), paragraph 4.14.

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.⁵⁰⁶ 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%] to [60–70%] with a minimum increment from the Merger of [10–20%].

Conclusion

- 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 and on all metrics, the Parties are two of the three largest competitors.

Internal documents

- 7.49 We have reviewed the Parties' internal documents for evidence of their own views of the competitive constraints they face.⁵⁰⁷ We have found and therefore 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 (approximately [X%] of NECSWS's UK revenues and approximately [X%] 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 ([X%]) were not considered suitable by the Metropolitan Police.⁵⁰⁸

⁵⁰⁶ 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.

⁵⁰⁷ [CMA129](#), paragraph 4.13.

⁵⁰⁸ NECSWS's response to the 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].⁵⁰⁹
- 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]).
- 7.53 NECSWS submitted that the Parties' internal documents clearly evidence that NECSWS and SSS focus far more on other competitors than on each other and that these documents cannot, therefore, reasonably support a finding the Parties are close competitors in the supply of Duties.⁵¹⁰

Our assessment - NECSWS's documents

Response to NECSWS's views

- 7.54 We acknowledge that the documents we have reviewed primarily focused on consideration of a historical Metropolitan Police opportunity. Nevertheless 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 with the Metropolitan Police, 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 7.120 below.
- 7.55 In relation to NECSWS's submissions at paragraph 7.52 we consider the point about opportunities at paragraph 7.75, future plans for CARM at paragraph 7.120 and the similarities with other products at paragraphs 7.10 to 7.27.
- 7.56 In response to NECSWS's submission at paragraph 7.53, we acknowledge that NECSWS's and SSS's documents show that they regard [REDACTED] as a competitor, but they also show that the Parties consider each other to be competitors (see paragraphs 7.57 to 7.58 below).

⁵⁰⁹ NECSWS's response to the Internal Documents WP, 4 August 2022, paragraph 1.4.1(b).

⁵¹⁰ NECSWS's response to the provisional findings, 7 October 2022, comment on paragraphs 7.57 and 7.68.

Closeness between the Parties

- 7.57 NECSWS mentioned and analysed [X] as a possible competitor when it considered the previous Metropolitan Police opportunity.⁵¹¹ NECSWS saw [X] as having a similar Duties offering to itself.⁵¹²

Closeness with others

- 7.58 NECSWS regularly mentions [X] and considers that [X] has a stronger offering than its own offering.⁵¹³ NECSWS mentioned [X] once and did not conduct a detailed assessment of its offering (unlike with [X]).⁵¹⁴ NECSWS mentioned [X] once but noted that its offering is not typically used by the police.⁵¹⁵

Conclusion

- 7.59 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

- 7.60 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'.⁵¹⁶
- 7.61 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.⁵¹⁷ Even in the absence of specific references in SSS's internal documents, SSS submitted that it considers Totalmobile as providing a strong constraint.⁵¹⁸
- 7.62 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].⁵¹⁹

⁵¹¹ Appendix C, Documents 32 and 34.

⁵¹² Appendix C, Document 34.

⁵¹³ Appendix C, Documents 32–34 and 38.

⁵¹⁴ Appendix C, Document 34.

⁵¹⁵ Appendix C, Document 34.

⁵¹⁶ SSS's response to the Internal Documents WP, 4 August 2022, paragraphs 2.2 and 2.5.

⁵¹⁷ We note that we have seen one reference to Totalmobile under the name of GRS which it acquired. See Appendix C, Document 41.

⁵¹⁸ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 5.2.1.

⁵¹⁹ SSS's response to the Internal Documents WP, 4 August 2022, paragraph 5.2.2.

Response to SSS's views

- 7.63 In relation to SSS's submissions set out at paragraph 7.60, we recognise these are historical documents and have taken their context into account when determining how much weight to place on them as evidence.
- 7.64 With regards to the submissions set out at paragraphs 7.61 and 7.62, we have not seen evidence within SSS's documents demonstrating it views Totalmobile as a strong constraint, although we have seen other evidence (eg opportunities data, customer and competitor views set out later in the chapter) that Totalmobile plays a role as a competitor in this market.

Closeness between the Parties

- 7.65 SSS regularly mentions NECSWS in its documents⁵²⁰ and sees it as the [X] competitor in the Duties market (after Crown and itself).⁵²¹ While SSS sees NECSWS [X] of its mentions of NECSWS show that it sees NECSWS as a competitor.⁵²²

Closeness to other suppliers

- 7.66 SSS describes the Duties market in the UK as having intense rivalry, with only three main suppliers (Crown, NECSWS and itself).⁵²³ It has described itself in some documents as being the [X] and has in a recent document [X], than both Crown and NECSWS.⁵²⁴
- 7.67 SSS regularly analyses Crown when assessing competitors.⁵²⁵ SSS recognises Crown as one of two major suppliers in the UK (the other being SSS itself).⁵²⁶ SSS sees Crown's product as being [X] than SSS's,⁵²⁷ but considers that Crown [X].⁵²⁸ This shows that SSS considers Crown as a [X] competitive constraint.
- 7.68 SSS mentions Totalmobile in one of its documents but note that it is not aware of it having recent success.⁵²⁹ This indicates that SSS views Totalmobile only as a [X] constraint.

⁵²⁰ Appendix C, Documents 38, 40, 42, 43–45.

⁵²¹ Appendix C, Document 38.

⁵²² Appendix C, Document 40.

⁵²³ Appendix C, Document 45.

⁵²⁴ Appendix C, Document 38.

⁵²⁵ Appendix C, Documents 38, 41, 43, 44–46.

⁵²⁶ Appendix C, Document 38.

⁵²⁷ Appendix C, Documents 38 and 44.

⁵²⁸ Appendix C, Document 45.

⁵²⁹ Appendix C, Document 41.

7.69 SSS mentions Oracle in one document but only to note it has no Duties capability.⁵³⁰ SAP is not referenced in any of SSS's documents.

Conclusion

7.70 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

7.71 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.⁵³¹

7.72 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

7.73 The Parties submitted their own estimates of recent opportunities covering their understanding of the type of opportunity, which suppliers bid and which supplier was successful.⁵³² They submitted that this analysis was clear evidence that the Parties were not close competitors in Duties.⁵³³ They submitted:

(a) [X]; and

(b) [X].

7.74 In relation to direct awards and extensions, SSS submitted that the provisional findings provided no evidence to support a view that the Parties' presence in the Duties market meant they placed an indirect constraint on each other. SSS submitted:⁵³⁴

⁵³⁰ Appendix C, Document 43.

⁵³¹ [CMA129](#), paragraph 4.13.

⁵³² Parties' response to the CMA's phase 1 s109(5), 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

⁵³³ Parties' initial phase 2 Submission, 31 May 2022, paragraph 4.10.

⁵³⁴ SSS's response to the provisional findings, 7 October 2022, paragraph 12.7.

- (a) direct awards and extensions reflect competition at the time of the original framework or contract award;
- (b) extensions are typically an interim measure taken before a customer is ready to go out to a full tender; and
- (c) the Parties' ability to secure awards and extensions will decrease as customers' requirements increasingly include [X] solutions, which the Parties currently [X].

Our assessment

7.75 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 the Duties market since 2017 (see Table 7-3). We have seen evidence of only one completed tender process,⁵³⁵ although we note that we have seen evidence of four tender/framework processes that were commenced and subsequently were either cancelled, delayed or deferred.⁵³⁶ 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.⁵³⁷ We have also seen evidence of [X] extensions.

Table 7-3: Duties opportunities since 2017

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

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

Note: 'Involved in' means that the Party was at least invited to the opportunity (and may have engaged in informal negotiations, pre-qualification and/or submitted a bid).

7.76 There have also been very few examples of customers changing suppliers. Almost all of the opportunities have been awarded to the incumbent supplier.

Closeness between the Parties

7.77 [X]. [X], both Parties have won direct awards and extensions over this period. SSS has won [X] direct awards and [X] extensions. NECSWS has won [X] direct awards and [X] extensions. For both Parties, these [X] have been entirely

⁵³⁵ 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.

⁵³⁶ Response to the CMA questionnaire from a third party, June 2022, question 3.

⁵³⁷ 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.

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.

- 7.78 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 (only one completed tender process since 2017). However the Parties' presence in the market means they have placed some indirect constraint on each other at the point of award for the other opportunities discussed above.

Closeness with others

- 7.79 The tender we have identified in the market was for a wider package of software, of which Duties was only one component. SSS won this contract [REDACTED]. The customer identified other bidders for the contract, but we consider these bidders were unlikely to be able to provide the Duties component themselves, given no other evidence suggests they have a presence in the Duties market.⁵³⁸
- 7.80 Outside the one tender since 2017 the most active alternative supplier was Crown, which won [REDACTED] direct awards and [REDACTED] extensions. While direct awards and extensions are not 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].

Conclusion

- 7.81 Our opportunities analysis shows that there are relatively few opportunities in the market and tender opportunities are particularly rare.
- 7.82 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.
- 7.83 Overall, the opportunities data shows little evidence of strong direct 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 direct constraint on each other through tender opportunities;

⁵³⁸ Smartek21 Ltd, Pretium Change Management, Agilisys, Cloud Logik and DBaaS all submitted a 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 a third party, February 2022).

nonetheless, we consider that their ability to win direct awards and extensions indicates that they placed some indirect competitive constraint on each other. We accept SSS's submission that direct awards and extensions reflect historic competition to an extent. However, at the point of awarding an extension or direct award, the customer may also consider the alternative options and suppliers available to them and has the option of switching to another supplier (even if they do not ultimately choose to switch). As explained in chapter 5 Nature of Competition, we therefore consider that the ability to win direct awards and extensions also means that a supplier continues to exert an indirect competitive constraint.

Customers' views

- 7.84 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.⁵³⁹
- 7.85 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.

Table 7-4: Number of mentions of Duties suppliers

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

Source: Eight customer responses to the CMA phase 1 questionnaire.

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).

- 7.86 Eight customers answered this question, out of 15 that responded to our phase 1 questionnaire (and out of 48 police forces in the UK).
- 7.87 Crown was mentioned the most times (mentioned by seven of eight respondents) as a supplier that could meet the needs of customers. Only two forces commented on its strengths and weaknesses.
- 7.88 NECSWS was mentioned twice but neither of the respondents discussed NECSWS's strengths or weaknesses.⁵⁴⁰
- 7.89 SSS was mentioned three times. Only one force listed SSS's strengths and weaknesses.⁵⁴¹

⁵³⁹ [CMA129](#), paragraph 4.13.

⁵⁴⁰ Response to the CMA questionnaire from two third parties, March 2022, question 16.

⁵⁴¹ Response to the CMA questionnaire from a number of third parties, March 2022, question 16.

7.90 Totalmobile was mentioned twice but neither of the respondents discussed Totalmobile's strengths or weaknesses.⁵⁴²

7.91 SAP was mentioned once as a suitable supplier.⁵⁴³

Conclusion

7.92 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, though 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

7.93 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.⁵⁴⁴

7.94 [REDACTED].

7.95 Totalmobile⁵⁴⁵ submitted that SSS (Capita) and Crown are its main competitors⁵⁴⁶ 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.

Conclusion

7.96 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

7.97 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 over the next few years.

7.98 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

⁵⁴² Response to the CMA questionnaire from two third parties, March 2022, question 16.

⁵⁴³ Response to the CMA questionnaire from a third party, March 2022, question 16.

⁵⁴⁴ [CMA129](#), paragraph 4.13.

⁵⁴⁵ Note of a call with a third party, June 2022, paragraph 10.

⁵⁴⁶ 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.

whether, and how fast, there may be a change in customer requirements towards public cloud solutions (see paragraphs 5.16 to 5.30).

Number of opportunities

- 7.99 We have examined how many future opportunities are likely to arise in the Duties market. Suppliers 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).⁵⁴⁷
- 7.100 Our competitive assessment has taken account of these identified opportunities for competition, as well as being aware that other competitive opportunities may arise and also that indirect competition continues to occur. We have taken account of all of these to determine whether the Merger has resulted, or may be expected to result, in an SLC.

Future transition towards cloud-based services

Parties' views

- 7.101 The Parties submitted that it is now essential for suppliers to be able to offer a cloud-based solution in Duties.⁵⁴⁸ 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.
- 7.102 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.⁵⁴⁹ 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

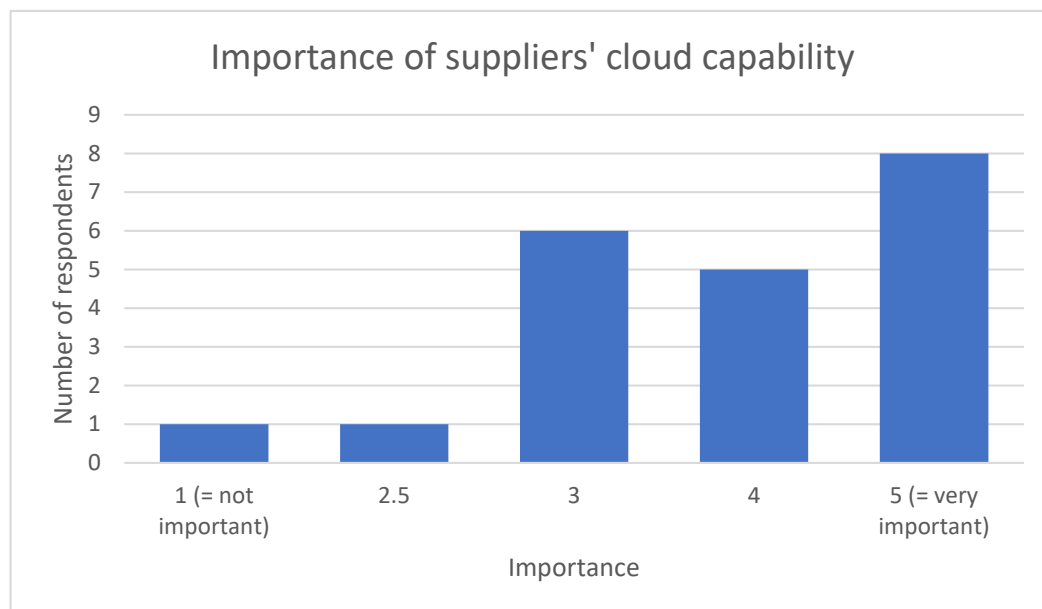
- 7.103 We asked customers to indicate how important they expected cloud-based services to be in future. Figure 7-1 below shows that most Duties customers answered that cloud would be important in future (13 out of 21 answered that it was between four and five in importance on a scale of one to five,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

⁵⁴⁷ Response to the CMA questionnaire from a third party, June 2022, question 4.

⁵⁴⁸ Parties' response to the Market Developments WP, 4 August 2022, page 40.

⁵⁴⁹ Parties' response to the Market Developments WP, 4 August 2022, page 40.

Figure 7-1: Duties customers – importance of cloud



Source: CMA analysis of third-party data (Question: When next deciding on a Duties product, how important or unimportant will a Duties suppliers' cloud capability be for you?).

Note:

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

2. Base: 21 police forces.

7.104 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;⁵⁵⁰
- (b) Four respondents said cloud-services would be important because of their benefits;⁵⁵¹
- (c) Five respondents said they would carefully balance any decision on cloud against the risks or that they were currently considering cloud;⁵⁵²
- (d) Two respondents said cloud was a consideration but not vital; and⁵⁵³
- (e) Two respondents said they were already actively moving towards cloud.⁵⁵⁴

7.105 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

⁵⁵⁰ Response to the CMA questionnaire from a number of third parties, May 2022.

⁵⁵¹ Response to the CMA questionnaire from a number of third parties, May 2022.

⁵⁵² Response to the CMA questionnaire from a number of third parties, May 2022.

⁵⁵³ Response to the CMA questionnaire from two third parties, May 2022.

⁵⁵⁴ Response to the CMA questionnaire from two third parties, May 2022.

privately hosted solution would likely be sufficient (as opposed to a public cloud solution).⁵⁵⁵

Competitors' views

- 7.106 We spoke to two competitors that had differing views as to how long on-premise solutions would remain viable.
- 7.107 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.⁵⁵⁶
- 7.108 One competitor told us that it is now essential for suppliers to offer a cloud-based solution.⁵⁵⁷ It considered that purely on-premise solutions will no longer be a viable proposition.

Conclusion

- 7.109 We have found 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

- 7.110 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 finding set out at paragraph 7.102 above that an ability to offer a cloud solution will be increasingly important.

NECSWS's views - CARM

- 7.111 NECSWS submitted that [REDACTED].⁵⁵⁸

Current customers

- 7.112 [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.⁵⁵⁹

⁵⁵⁵ Note of a call with a third party, September 2022, paragraph 13.

⁵⁵⁶ Note of a call with a third party, June 2022, paragraph 7.

⁵⁵⁷ Note of a call with a third party, June 2022, paragraph 3.

⁵⁵⁸ Parties' response to the AIS, 4 August 2022, paragraph 1.4.6.

⁵⁵⁹ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5(a)–(b).

Metropolitan Police

7.113 [REDACTED].⁵⁶⁰

7.114 [REDACTED].⁵⁶¹

7.115 [REDACTED].⁵⁶²

7.116 [REDACTED].^{563, 564} [REDACTED].⁵⁶⁵

7.117 [REDACTED].

Marketing of CARM and opportunities for CARM

7.118 NECSWS last won a new customer for CARM in [REDACTED].⁵⁶⁶ [REDACTED].

7.119 [REDACTED]:⁵⁶⁷

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].

7.120 [REDACTED]:⁵⁶⁸

(a) [REDACTED];

(b) [REDACTED].⁵⁶⁹ [REDACTED].⁵⁷⁰ [REDACTED].⁵⁷¹

(c) [REDACTED].

Plans for CARM

7.121 [REDACTED].⁵⁷²

⁵⁶⁰ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12(b).

⁵⁶¹ FMN, paragraph 15.65.

⁵⁶² NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12(b)–(d).

⁵⁶³ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5.

⁵⁶⁴ NECSWS, main party hearing transcript, page 94.

⁵⁶⁵ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12.

⁵⁶⁶ Parties' response to the AIS, 4 August 2022, paragraph 1.4.6.

⁵⁶⁷ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5(c).

⁵⁶⁸ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5(c).

⁵⁶⁹ FMN, paragraphs 15.69 and 15.70 and NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12(e).

⁵⁷⁰ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12.

⁵⁷¹ NECSWS's response to the CMA's RFI 2, 30 May 2022, question 12(e).

⁵⁷² NECSWS's response to the AIS, 4 August 2022, paragraph 6.1.

7.122 [REDACTED].⁵⁷³ [REDACTED].⁵⁷⁴ Specifically, NECSWS referred to the following documents:

(a) [REDACTED].⁵⁷⁵

(b) [REDACTED].⁵⁷⁶

(c) [REDACTED].⁵⁷⁷

(d) [REDACTED].⁵⁷⁸

7.123 In response to the provisional findings, NECSWS submitted that the CMA had disregarded this documentary evidence and the oral submissions made at the Main Party Hearing.⁵⁷⁹

CARM's financial position

7.124 [REDACTED].⁵⁸⁰

Cloud-capability

7.125 NECSWS submitted that [REDACTED].⁵⁸¹

Third party views - CARM

7.126 One customer told us that CARM has been its primary resource management system for the last 15 years.⁵⁸² 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.⁵⁸³ 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 two to three years of life.⁵⁸⁴ It noted that CARM also has a version 5 which is an advanced product and very different to version 4.7.

⁵⁷³ NECSWS, main party hearing transcript, page 99.

⁵⁷⁴ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5(d).

⁵⁷⁵ NECSWS internal document, Annex 189 to the CMA queries of 28 July following main party hearing '[REDACTED]', 5 July 2021, slides 2–5.

⁵⁷⁶ NECSWS Internal Document, Annex 18.1.27 to the DMN, '[REDACTED]', 23 September 2021, page 11.

⁵⁷⁷ NECSWS Internal Document, Annex 190 to the response CMA queries of 28 July following main party hearing '[REDACTED]', 23 September 2021, slide 4.

⁵⁷⁸ NECSWS Internal Document, Annex 191 to the CMA queries of 28 July following main party hearing '[REDACTED]', 31 March 2021.

⁵⁷⁹ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 7.135–7.140.

⁵⁸⁰ NECSWS's response to CMA queries of 28 July following main party hearing, 3 August 2022, question 5(e).

⁵⁸¹ NECSWS's response to the Market Developments WP, 4 August 2022, page 40.

⁵⁸² Third party submission to the CMA, 26 August 2022, question 4.

⁵⁸³ Note of a call with a third party, September 2022.

⁵⁸⁴ Note of a call with a third party, September 2022.

- 7.127 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.
- 7.128 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).
- 7.129 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 Solution Providers Framework 2 (**SPF2**) for such a procurement.
- 7.130 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.⁵⁸⁵ Due to several back-office systems and process reviews it thought it would not be cost effective to ‘compete the contract’ at the last procurement point. A direct award was agreed with the supplier to avoid additional framework charges.
- 7.131 One customer told us that at its next procurement - expected around September 2023 – it would be seeking a product [REDACTED].⁵⁸⁶
- 7.132 One supplier told us that it understands that NECSWS’s CARM product is [REDACTED].⁵⁸⁷

Our assessment – CARM

- 7.133 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.
- 7.134 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.

⁵⁸⁵ Response to the CMA questionnaire from a third party, June 2022, question 42.

⁵⁸⁶ Response to the CMA questionnaire from a third party, June 2022, questions 45 and 51.

⁵⁸⁷ Note of a call with a third party, June 2022, paragraph 12.

- 7.135 With regards to existing customers, NECSWS has had mixed success in retaining its current Duties customers. [REDACTED].
- 7.136 We consider that following [REDACTED] cancellation of its recent procurement, its future intentions for contracting a Duties supplier are highly uncertain. [REDACTED]. [REDACTED] (see paragraph 7.117) while it reviews its future strategy (see paragraph 7.114). If [REDACTED] 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 [REDACTED] prior comments on the suitability of CARM [REDACTED]. However, in its latest submission to us, [REDACTED] 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 [REDACTED] to make it more attractive.
- 7.137 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 [REDACTED]% in FY22, and a positive gross margin for the preceding [REDACTED] financial years (although before accounting for 'Cap Dev' it earned [REDACTED] in FY20 and FY22).⁵⁸⁸ We acknowledge that the [REDACTED] contract [REDACTED]. [REDACTED].
- 7.138 One of NECSWS's existing customers ([REDACTED]) currently uses CARM v5.⁵⁸⁹ [REDACTED], [REDACTED]. We consider that the existence of v5 (for which development costs have already been incurred), [REDACTED], is evidence NECSWS is continuing to develop and actively promote CARM [REDACTED].
- 7.139 We acknowledge NECSWS's submission that [REDACTED]. 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.⁵⁹⁰ The documents contain limited references to NECSWS's future intentions for CARM and three of the four documents refer to [REDACTED]. One of the documents, which contains a proposal to [REDACTED].⁵⁹¹

⁵⁸⁸ NECSWS's response to the CMA queries of 28 July 2022 following NECSWS's main party hearing, 3 August 2022, question 1.

⁵⁸⁹ NECSWS's response to the CMA's RFI 4, 6 October 2022, question 84.

⁵⁹⁰ See [CMA129](#), paragraph 2.29(a).

⁵⁹¹ NECSWS Internal Document, Annex 189 to the CMA queries of 28 July following main party hearing '[REDACTED]', 5 July 2021, slide 4.

- 7.140 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 7.114 to 7.115 above, NECSWS has undertaken some activity to promote CARM in the last few years and, as noted at paragraph 7.115, it has won extensions for some of its existing Duties contracts with its current CARM product.
- 7.141 Further, other internal documents, while also not conclusive, suggest that NECSWS planned to continue to promote CARM, although NECSWS has submitted that these two documents are more than two years out of date and [REDACTED]:
- (a) [REDACTED],⁵⁹² and
 - (b) [REDACTED].⁵⁹³
- 7.142 Our view is that the documents highlighted to us by NECSWS do not sufficiently demonstrate that it is likely that NECSWS [REDACTED]. Contrary to NECSWS's submissions, we have not disregarded this evidence, nor have we disregarded NECSWS's oral and written submissions regarding its intention to [REDACTED]. Rather we have taken into account the context of this evidence and considered it alongside the other evidence available to us.
- 7.143 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];
 - (d) has short-term profitability for CARM, [REDACTED];
 - (e) has developed a new version of CARM (v5) in the last few years which at least one of its customers is using; and
 - (f) [REDACTED].
- 7.144 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.

⁵⁹² NECSWS Internal Document, Annex 5.11 to the phase 1 s190(1) '[REDACTED]', slides 8 and 52.

⁵⁹³ NECSWS Internal Document, Annex 9.2.2 to the FMN, '[REDACTED]', July 2020, slide 11.

SSS's views – Origin

- 7.145 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].⁵⁹⁴
- 7.146 SSS submitted that [REDACTED].⁵⁹⁵ [REDACTED].
- 7.147 SSS submitted that competitors which, [REDACTED], already have a public cloud solution will have an even greater competitive advantage in future.⁵⁹⁶

Our assessment – Origin

- 7.148 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) [REDACTED]; and
 - (c) whilst we acknowledge that it likely requires [REDACTED], we consider it is credible that SSS will achieve this and note that SSS has [REDACTED].⁵⁹⁷ In the interim it may be able to develop a credible road-map to customers expecting to require [REDACTED] in future.

Future competitiveness of competitors' products

Competitors' views

- 7.149 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.
- 7.150 Crown submitted that [REDACTED].⁵⁹⁸ 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].⁵⁹⁹

⁵⁹⁴ Parties' response to the AIS, 4 August 2022, paragraph 1.4.6.

⁵⁹⁵ SSS's response to the provisional findings, 7 October 2022, paragraph 12.12.

⁵⁹⁶ SSS's response to the provisional findings, 7 October 2022, paragraph 58.

⁵⁹⁷ SSS's response to the CMA's RFI 4, 13 July 2022, paragraph 77.4.

⁵⁹⁸ Response to the CMA questionnaire from a third party, June 2022, question 4.

⁵⁹⁹ Note of a call with a third party, June 2022, paragraph 3 and 8.

- 7.151 Totalmobile submitted that [REDACTED].⁶⁰⁰ 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.⁶⁰¹
- 7.152 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.⁶⁰²
- 7.153 Zellis submitted that it has no plans to bid for future opportunities in the Duties market.⁶⁰³
- 7.154 MidlandHR submitted that [REDACTED].⁶⁰⁴

Our assessment – competitors' products

- 7.155 Among the Parties' competitors, Crown and Totalmobile have [REDACTED] 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.

Conclusion

- 7.156 We recognise that there is uncertainty [REDACTED]. Our conclusion is that NECSWS would continue to supply CARM and it would continue to be a competitive proposition in the Duties market in the next few years (see paragraphs 7.127 to 7.128).
- 7.157 As set out in paragraph 7.132, we consider that Origin would remain a strong competitive constraint in the market. We recognise it may require some development, but consider that this investment is likely to be made, particularly given the incentives around its current large customer base.
- 7.158 We consider that broadly, other current suppliers (Crown and Totalmobile) will remain constraints in the market, and it is not likely that suppliers in adjacent markets will become competitors in the time period of our assessment, given their lack of existing plans to enter.
- 7.159 We recognise that customers will increasingly require [REDACTED] cloud based solutions in future, but do not consider that a movement towards cloud materially affects our competitive assessment, since all main suppliers currently have a form of cloud capability (private or public cloud or the ability for their solution to be deployed into cloud infrastructure by a customer) and there is the potential to develop this further

⁶⁰⁰ Response to the CMA questionnaire from a third party, June 2022, question 4.

⁶⁰¹ Note of a call with a third party, June 2022, paragraph 2.

⁶⁰² Third party submission to the CMA, 19 July 2022.

⁶⁰³ Response to the CMA questionnaire from a third party, June 2022, question 4.

⁶⁰⁴ Third party submission to the CMA, August 2022.

or win opportunities with either privately-hosted cloud solutions or public cloud solutions.

Conclusion

- 7.160 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.
- 7.161 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.⁶⁰⁵ We have therefore considered the evidence of a high degree of concentration in the Duties market alongside all of the other evidence we have collected.
- 7.162 There have been very few opportunities to win contracts in the Duties market over the last five years and in particular very few tenders. [X] have been indirect constraints on each other. Despite the 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 and indirectly.
- 7.163 We have found and therefore 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 also considered each other to be competitors. Competitors and customers also told us that the Parties were among a small number of suppliers in the market.
- 7.164 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.
- 7.165 NECSWS has [X]. We recognise that there is uncertainty [X]. However, given NECSWS's current position in the market, its expected profitability over the next few years 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 the next few years.
- 7.166 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

⁶⁰⁵ [CMA129](#), paragraph 4.10.

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.

- 7.167 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, absent the Merger, Crown and SSS are likely to be the leading suppliers in the Duties market and NECSWS and Totalmobile will be credible (albeit less strong) competitors.
- 7.168 Therefore, absent the Merger we consider that in the next few years NECSWS and SSS would be likely to remain competitors in the market and place a direct or indirect competitive constraint on each other. We do not consider that there are sufficient remaining competitive constraints in the market to counteract the loss of competition resulting from the Merger.
- 7.169 In view of our assessment above, we therefore 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 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 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).⁶⁰⁶ 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).⁶⁰⁷ [REDACTED]. It is tailored to Greater Manchester Police's (**GMP's**) requirements,⁶⁰⁸ but this customer has since stated that it will move away from PoliceWorks.⁶⁰⁹ 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.⁶¹⁰ Neither PoliceWorks nor UNIFI are cloud-enabled.⁶¹¹
 - (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.⁶¹² Most CONNECT customers currently use a private-cloud version, [REDACTED] (see chapter 5 for definitions).⁶¹³
 - (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.⁶¹⁴ Its product is cloud-enabled as an Infrastructure-as-a-Service (**IaaS**)⁶¹⁵ offering.⁶¹⁶

⁶⁰⁶ FMN, paragraph 1.7.2.

⁶⁰⁷ SSS, PoliceWorks, undated, page 2.

⁶⁰⁸ Parties' Issues Meeting presentation (confidential version), 6 April 2022, slide 20.

⁶⁰⁹ ['Update on PoliceWorks computer system from Chief Constable Stephan Watson'](#), Greater Manchester Police's News, 21 March 2022, (last accessed 22 August 2022).

⁶¹⁰ FMN, paragraph 15.55.

⁶¹¹ Parties' response to the Issues Statement, 28 June 2022, paragraph 5.1.2(d).

⁶¹² FMN, paragraphs 12.58– 12.61.

⁶¹³ NECSWS's response to the Market Developments WP, 4 August 2022, page 22.

⁶¹⁴ Note of a call with a third party, June 2022, paragraph 1.

⁶¹⁵ IaaS refers to a cloud service where the supplier manages the infrastructure, but the customer manages the software and apps.

⁶¹⁶ Note of a call with a third party, June 2022, paragraph 2.

- (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.⁶¹⁷ Its RMS solution offers five core capabilities: Report Writing, Case Management Investigations, Property and Evidence, Stat Reporting and Crime Analysis, and Booking and Jail. Mark43 describes itself as cloud-native.⁶¹⁸
- (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 assessment of 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’.⁶¹⁹ An SLC can affect the whole or part of a market or markets.⁶²⁰
- 8.7 While market definition can sometimes be a useful tool, it is not an end in itself.⁶²¹ 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.⁶²² 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 relevant market, or other ways in which some constraints are more important than others.⁶²³

Product Scope

- 8.8 Product market definition starts with the relevant products of the merger firms.⁶²⁴ 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.⁶²⁵
- 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

⁶¹⁷ Response to the CMA questionnaire from a third party, June 2022, question 1.

⁶¹⁸ Response to the CMA questionnaire from a third party, June 2022, question 1.

⁶¹⁹ As regards the Merger, see [section 35\(1\)\(b\)](#) of the Act.

⁶²⁰ [CMA129](#), paragraph 9.1.

⁶²¹ [CMA129](#), paragraph 9.4.

⁶²² [CMA129](#), paragraph 9.4.

⁶²³ [CMA129](#), paragraph 9.4.

⁶²⁴ [CMA129](#), paragraph 9.6.

⁶²⁵ FMN, paragraph 13.14.

context of police forces (see Appendix C) which supports a product market definition focused on police forces.

- 8.11 For the reasons set out above, our 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.⁶²⁶ The CMA may consider a range of evidence as regards geographic scope, including the views of market participants on consumer preferences and product characteristics.⁶²⁷
- 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.⁶²⁸
- 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 suppliers are mentioned they are typically analysed and considered in substantially less detail.⁶²⁹
- 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.⁶³⁰ 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.⁶³¹
- 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

⁶²⁶ [CMA129](#), paragraph 9.13.

⁶²⁷ [CMA129](#), paragraph 9.13.

⁶²⁸ FMN, paragraph 13.27.

⁶²⁹ Appendix C, Documents 34–35.

⁶³⁰ Response to the CMA questionnaire from a number of third parties, March 2022, question 21.

⁶³¹ Response to the CMA questionnaire from a third party, June 2022, question 1(c).

the above evidence in the round, our assessment is that the appropriate geographic market definition for RMS is the UK.

Conclusion on market definition

8.17 For the reasons set out above, our conclusion 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 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 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.⁶³² The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to.⁶³³ The main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.⁶³⁴ 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.⁶³⁵

⁶³² [CMA129](#), paragraph 4.1.

⁶³³ [CMA129](#), paragraph 4.3.

⁶³⁴ [CMA129](#), paragraph 4.3.

⁶³⁵ [CMA129](#), paragraph 4.3.

8.22 In our assessment of whether horizontal unilateral effects arise, we review closeness of competition.⁶³⁶ The more closely the merger firms compete the greater the likelihood of unilateral effects.⁶³⁷ The concept of close competition is not limited to products or services that have similar characteristics.⁶³⁸ A firm may be a close competitor if it represents a significant competitive force or exerts a strong constraint on other firms.⁶³⁹ 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.⁶⁴⁰ 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.⁶⁴¹ 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.⁶⁴²

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.⁶⁴³ The level and stability of market shares are relevant evidence in this regard.⁶⁴⁴

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.⁶⁴⁵

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.

⁶³⁶ [CMA129](#), paragraphs 4.8–4.10.

⁶³⁷ [CMA129](#), paragraph 4.8.

⁶³⁸ [CMA129](#), paragraph 4.9.

⁶³⁹ [CMA129](#), paragraph 4.9.

⁶⁴⁰ [CMA129](#), paragraph 4.10.

⁶⁴¹ [CMA129](#), paragraph 4.10.

⁶⁴² [CMA129](#), paragraph 4.10.

⁶⁴³ [CMA129](#), paragraph 4.12(a).

⁶⁴⁴ [CMA129](#), paragraph 4.12(a).

⁶⁴⁵ Parties' response to the Market Shares WP, 4 August 2022, paragraph 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.

Third party views

8.26 The Athena Consortium of nine police services commented on the suitability of different metrics for estimates of RMS market shares.⁶⁴⁶ It said that:

- (a) shares by revenue are a helpful indicator of market share;
- (b) it doubted whether the number of police forces was a good basis for market shares given the differing size of police forces; and
- (c) shares by volume of recorded crimes may have merit as it links RMS to a recorded statistic.

8.27 In addition, the third party said that the share of police officers would also provide a valid and appropriate way to assess market share. It submitted its own estimates using this metric, in which it estimated that NECSWS currently has a [40–50%] share and Niche a [40–50%] share.

Our assessment

8.28 Measures of concentration such as shares of supply can be useful evidence when assessing closeness of competition.⁶⁴⁷ 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.

8.29 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 view.

⁶⁴⁶ Athena Consortium of Police Services response to the provisional findings, 7 November 2022, paragraphs 22–24.

⁶⁴⁷ [CMA129](#), paragraph 4.14.

8.30 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).

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]	[X]
SSS	[10-20]	[10-20]	[5-10]	[X]
Parties Combined	[70-80]	[40-50]	[30-40]	[X]
Niche	[10-20]	[40-50]	[50-60]	[X]
In-house	-	[5-10]	[0-5]	[X]
Memex	-	[0-5]	-	[X]
EDS CRIS	-	[0-5]	-	[X]
ABM	[5-10]	[0-5]	-	[X]
RedSigma	-	[0-5]	-	[X]
Sopra	-	[0-5]	-	[X]
Mark43	-	-	[0-5]	[X]
Total	100	100	100	48

Sources: CMA calculations based on third party responses to phase 2 questionnaire.

Notes:

1. Shares by revenue: we have calculated revenue shares by collecting revenue information from suppliers active in the market. [X] and [X] did not submit any revenue data and hence have been omitted. Our understanding is that these two, (along with [X] and [X]), 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. [X] has not been included as we understand this is not a true RMS solution.
 2. 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.

8.31 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.^{648,649,650} Hence, we have examined estimates based on all three metrics used above. We have not made our own estimates based on the share of police officers but note that the estimates submitted by a third party (see paragraph 8.27) are within the range of our estimates under other metrics.

8.32 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 on any of the basis we have made ourselves and higher still on the third party estimate based on the share of police officers. Niche is the largest competitor based on the volume of recorded crimes and number of police forces

⁶⁴⁸ [X] submitted that its [X]. [X]. (Response to the CMA's questionnaire from a third party, June 2022, question 1).

⁶⁴⁹ 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.

⁶⁵⁰ We note that there is a degree of [X].

whereas NECSWS is the largest competitor by revenue. SSS is the third largest supplier with a share of [5–10%]–[10–20%].

- 8.33 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.
- 8.34 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 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.

Our conclusion

- 8.35 Our conclusion 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.
- 8.36 However, for the reasons noted at paragraph 8.29 above, we place limited weight on the market share estimates in this case, and consider them alongside other evidence that relates to current and future constraints in reaching our conclusion below in paragraphs 8.151 to 8.159.

Internal documents

- 8.37 We have reviewed the Parties' internal documents for evidence of their assessment of the competitive constraints they face.⁶⁵¹ 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

- 8.38 We have found and reviewed one relevant NECSWS document relating to a specific RMS opportunity (Appendix C, Document 47). We have also reviewed a

⁶⁵¹ [CMA129](#), paragraph 4.13.

strategy document that discusses suppliers' positions in the RMS market over time (Appendix C, Document 48).

Closeness between parties

- 8.39 NECSWS is aware of SSS's historical position in supplying the market and that it remains a supplier as of 2021.⁶⁵² In relation to a specific opportunity, [REDACTED].⁶⁵³

Closeness with others

- 8.40 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 '[REDACTED]'.⁶⁵⁴ [REDACTED].⁶⁵⁵
- 8.41 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.⁶⁵⁶

NECSWS's views – NECSWS's documents

- 8.42 NECSWS submitted that although SSS was the incumbent for the [REDACTED] tender, this was with UNIFI which is not an integrated RMS, and [REDACTED].⁶⁵⁷ NECSWS told us that [REDACTED]. NECSWS considered Niche to be the competition.⁶⁵⁸

Our response to NECSWS's views

- 8.43 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,⁶⁵⁹ 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.
- 8.44 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

⁶⁵² Appendix C, Document 48, slide 13.

⁶⁵³ Appendix C, Document 47, slide 6.

⁶⁵⁴ Appendix C, Document 47, slides 3–4.

⁶⁵⁵ Appendix C, Document 47, slide 11.

⁶⁵⁶ Appendix C, Document 47, slide 6.

⁶⁵⁷ NECSWS's response to the Internal Documents WP, 4 October 2022, page 3.

⁶⁵⁸ NECSWS's response to the Internal Documents WP, 4 October 2022, page 3.

⁶⁵⁹ NECSWS Internal Document, Annex 1.10 to the phase 1 s109(5), '[REDACTED]', 21 July 2021.

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 view below.

Our conclusion – NECSWS’s documents

- 8.45 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 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

- 8.46 We have found and reviewed several SSS documents relating to RMS.

Closeness between the Parties

- 8.47 One document states that, in reference to NECSWS, ‘[REDACTED]’.⁶⁶⁰ Another internal document compares SSS’s products against NECSWS.⁶⁶¹ SSS acknowledges that there is intense rivalry in the market for RMS with only three main suppliers – Niche, NECSWS and itself.⁶⁶²
- 8.48 One internal document shows a [REDACTED] assessment by SSS of its own products in comparison to NECSWS and Niche.⁶⁶³ The same document also states that SSS [REDACTED].⁶⁶⁴
- 8.49 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

- 8.50 SSS regularly mentions Niche in several documents as a strong competitor.⁶⁶⁵ In one internal document SSS ranks Niche as the [REDACTED].⁶⁶⁶ We consider that the

⁶⁶⁰ Appendix C, Document 51, page 21.

⁶⁶¹ Appendix C, Document 50, pages 114–115.

⁶⁶² Appendix C, Document 52, slide 1.

⁶⁶³ Appendix C, Document 50, pages 114–115.

⁶⁶⁴ Appendix C, Document 50, page 108.

⁶⁶⁵ Appendix C, Documents 50, 35, 36 and 37.

⁶⁶⁶ Appendix C, Document 51, page 21.

documents show that SSS sees Niche as an established RMS provider and a significant competitor.

- 8.51 In one document SSS sees Mark43 as a '[REDACTED]' threat. It is listed as having the ability to scale but does not have as high competitiveness as NECSWS and Niche.⁶⁶⁷ 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.
- 8.52 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 focused.⁶⁶⁸ SSS sees Axon Records to have its sights set on the UK policing market [REDACTED].⁶⁶⁹ 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

- 8.53 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.⁶⁷⁰ 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.⁶⁷¹ 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]'.⁶⁷²
 - (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].⁶⁷³
 - (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].⁶⁷⁴

⁶⁶⁷ Appendix C, Document 51, page 21.

⁶⁶⁸ Appendix C, Document 51, page 21.

⁶⁶⁹ Appendix C, Document 51, page 21.

⁶⁷⁰ Appendix C, Document 51, page 21.

⁶⁷¹ SSS's response to the Internal Documents WP, 4 October 2022, paragraph 4.3.1.

⁶⁷² SSS's response to the Internal Documents WP, 4 October 2022, paragraph 4.3.1.

⁶⁷³ SSS's response to the Internal Documents WP, 4 October 2022, paragraph 4.3.2.

⁶⁷⁴ SSS's response to the Internal Documents WP, 4 October 2022, paragraph 4.3.3.

8.54 SSS submitted that it is an understatement to say that SSS is [REDACTED].⁶⁷⁵ For example:

(a) A portfolio review document states '[REDACTED]'.⁶⁷⁶

(b) A strategy document describes [REDACTED].⁶⁷⁷

(c) A board report confirms that an '[REDACTED]'.⁶⁷⁸

Our response to SSS's views

8.55 In relation to SSS's submissions at paragraph 8.51 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 view below (see paragraphs 8.150 to 8.158).

8.56 In relation to SSS's submissions on further internal documents which indicate [REDACTED] (paragraph 8.53), we recognise that these documents indicate [REDACTED] uncertainty regarding the future [REDACTED] of SSS's RMS products and consider this further in our discussion of market developments below.

Our conclusion – SSS's documents

8.57 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 [REDACTED], to the extent that its RMS products are likely [REDACTED].

Recent opportunities

8.58 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.⁶⁷⁹

8.59 We have analysed customer data on opportunities (tenders, direct awards and extensions) since 2017 in the RMS market. These opportunities allow suppliers to

⁶⁷⁵ SSS's response to the Internal Documents WP, 4 October 2022, page 4.4.

⁶⁷⁶ SSS's response to the Internal Documents WP, 4 October 2022, page 4.4.1.1.

⁶⁷⁷ SSS Internal Document, Annex 522 to the FMN '[REDACTED]', April 2021, slide 16.

⁶⁷⁸ SSS Internal Document, Annex 709 to the FMN '[REDACTED]', August 2020, slide 8.

⁶⁷⁹ [CMA129](#), paragraph 4.13.

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

- 8.60 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.⁶⁸⁰
- 8.61 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.⁶⁸¹ 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.⁶⁸²

Our assessment

- 8.62 We have found that there have been a small number of opportunities since 2017.
- 8.63 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.
- 8.64 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	[X]	-	-
<i>Party invited to tender</i>	-	[X]	[X]
<i>Both Parties invited to tender</i>	-	[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	[X]	[X]	[X]
Extensions	[X]	[X]	[X]

Source: CMA analysis of Parties, customer, and competitor data.

Note: Data from 2017 until June 2022.

⁶⁸⁰ Parties' response to the CMA's phase 1 s109(5), 24 March 2022, Annex 3.1 and Parties' Note on analysis of bidding data, 21 March 2022.

⁶⁸¹ Parties' Initial phase 2 Submission, 31 May 2022, paragraph 5.8.

⁶⁸² Parties' response to the phase 1 Issues Letter, paragraph 7.4.

Closeness between the Parties

- 8.65 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 since 2017.
- 8.66 NECSWS submitted a bid in [X] tenders. It won [X] 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.
- 8.67 SSS submitted a bid in [X] identified tenders and won [X] in 2019 (see 8.61). SSS also secured [X] extensions ([X]). The [X] of these was for a customer [X], the other [X] customers are [X].^{683, 684} There is therefore some evidence that SSS's success in winning these extensions does not reflect its future competitive strength, which has likely weakened.
- 8.68 Overall, the Parties have historically had some direct competitive interaction in the market. However, there is also some evidence that SSS's past successes do not reflect its likely future competitive strength in the market.

Closeness with others

- 8.69 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 2017.⁶⁸⁵
- 8.70 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.
- 8.71 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.

⁶⁸³ Note of a call with a third party, June 2022, paragraph 7.

⁶⁸⁴ Response to the CMA questionnaire from a third party, June 2022, question 9.

⁶⁸⁵ [X] does not feature in our analysis as we have not included [X] recent appointment of this supplier, due to lack of full details.

Our conclusion

- 8.72 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.
- 8.73 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.

Customer views

- 8.74 When assessing closeness of competition between merger parties, the CMA often gathers the views of customers.⁶⁸⁶

Our assessment

- 8.75 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.
- 8.76 The Parties submitted that because only five forces answered our question to identify viable alternative suppliers, very little evidential weight (if any) can be placed on the responses.⁶⁸⁷ 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 view (see paragraphs 8.151- 8.159).
- 8.77 Amongst the five forces who responded, Niche, NECSWS and SSS were all mentioned as viable competitors by at least one respondent.⁶⁸⁸
- 8.78 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.⁶⁸⁹
- 8.79 [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

⁶⁸⁶ [CMA129](#), paragraph 4.13.

⁶⁸⁷ Parties' response to the Customer Evidence WP, 4 August 2022, page 20.

⁶⁸⁸ 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.

⁶⁸⁹ Note of a call with a third party, June 2022, paragraphs 8–9.

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.⁶⁹⁰

Our conclusion

- 8.80 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 significant alternative suppliers to the Parties besides from Niche, and indicating some issues with SSS and the PoliceWorks product.

Competitor views

- 8.81 When assessing closeness of competition between merger parties, the CMA often gathers the views of competitors.⁶⁹¹
- 8.82 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 Mark43.⁶⁹²
- 8.83 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.⁶⁹³ Niche submitted that it is aware of two upcoming UK opportunities for RMS, and it considers NECSWS and SSS to be its key competition for these opportunities.⁶⁹⁴
- 8.84 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.⁶⁹⁵

Our conclusion

- 8.85 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

⁶⁹⁰ Note of a call with a third party, June 2022, paragraph 8– 9.

⁶⁹¹ [CMA129](#), paragraph 4.13.

⁶⁹² Note of call with a third party, June 2022, paragraph 7.

⁶⁹³ Note of call with a third party, June 2022, paragraph 7.

⁶⁹⁴ Note of call with a third party, June 2022, paragraph 9.

⁶⁹⁵ Note of call with a third party, June 2022, paragraph 8.

has also recognised that SSS has suffered reputational harm due to the poor performance of its PoliceWorks product.

Market developments

- 8.86 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 over the next few years.
- 8.87 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 8.16 to 8.30).

Number of opportunities

- 8.88 We have examined how many future opportunities are likely to arise in the RMS market. Suppliers identified [X] opportunities over the period 2022 to 2024.⁶⁹⁶
- 8.89 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 determine whether the Merger has resulted, or may be expected to result, in an SLC.

Competitiveness of SSS's RMS products

- 8.90 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

- 8.91 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.
- 8.92 SSS submitted that [X].⁶⁹⁷ This is based on the following considerations:⁶⁹⁸
- (a) SSS has suffered substantial reputational damage as a result of its issues with GMP (see paragraph 8.113 below) in a market in which reputation is important.

⁶⁹⁶ CMA analysis of competitor data.

⁶⁹⁷ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 1.4.

⁶⁹⁸ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraphs 1.3–1.3.7.

- (b) [REDACTED].
- (c) [REDACTED].
- (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.
- (g) [REDACTED].

8.93 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:⁶⁹⁹

- (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 [REDACTED].⁷⁰⁰

8.94 [REDACTED].⁷⁰¹

SSS's internal documents – future plans for RMS

8.95 We have reviewed SSS's internal documents for evidence of its views and plans about the future viability of its products.

PoliceWorks

8.96 SSS comments on PoliceWorks's position in two internal documents.

8.97 In one document, SSS identified the strengths and weaknesses of version 3 of its PoliceWorks product,⁷⁰² namely:

⁶⁹⁹ SSS's response to the CMA's RFI 2, 30 May 2022, question 19, paragraph 19.7.

⁷⁰⁰ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

⁷⁰¹ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 1.4.

⁷⁰² Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

- (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**).
- (b) Identified weaknesses included its lack of web capability (Windows Presentation Foundation), its [REDACTED], and its tailoring to GMP's specific RMS needs.

- 8.98 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 2022.⁷⁰³
- 8.99 This shows that SSS was aware of weaknesses in the PoliceWorks product and, in particular, saw it as a declining product [REDACTED].

UNIFI

- 8.100 SSS comments on UNIFI in several documents.
- 8.101 In one document, SSS identified the strengths and weaknesses of its UNIFI product,⁷⁰⁴ namely:
- (a) [REDACTED].
 - (b) [REDACTED].
- 8.102 In another document, [REDACTED]. [REDACTED], 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:⁷⁰⁵
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].⁷⁰⁶
- 8.103 This shows that SSS was aware of weaknesses in the UNIFI product and, [REDACTED]. However, [REDACTED].

⁷⁰³ Capita SSS Internal Document, Annex 056 to the FMN, [REDACTED], December 2019, page 6.

⁷⁰⁴ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 114.

⁷⁰⁵ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 108.

⁷⁰⁶ Capita SSS Internal Document, Annex 056 to the FMN, [REDACTED], December 2019, page 6.

Revitalised or new RMS product

- 8.104 We have also looked for evidence of whether SSS considered either revitalising PoliceWorks or UNIFI or developing a new RMS product.
- 8.105 In a 2021 internal document, SSS recommended to [REDACTED] into its UK RMS product and instead to focus on [REDACTED]. In the absence of further investment:
- (a) PoliceWorks was predicted to become [REDACTED].
 - (b) UNIFI was predicted to [REDACTED].⁷⁰⁷
- 8.106 In an internal document, [REDACTED].⁷⁰⁸
- 8.107 This indicates that SSS did not have a clear strategy as regards [REDACTED]. Some of the internal document evidence indicates that SSS had an [REDACTED], whereas other evidence indicates that it intended to [REDACTED] in RMS and [REDACTED]. However, we also recognise that these documents are from a period when the Merger was under consideration.

SSS's views

- 8.108 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 [REDACTED].⁷⁰⁹

Our assessment

- 8.109 Overall, the internal documents referenced above suggest that SSS did not have a clear strategy as regards to [REDACTED]. The documents suggest that SSS [REDACTED] PoliceWorks and UNIFI [REDACTED], 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

- 8.110 SSS currently provides PoliceWorks to [REDACTED] customers: GMP, [REDACTED]. We have received views from these customers on the suitability of PoliceWorks for their needs, now and in the future.

⁷⁰⁷ Capita SSS Internal Document, Annex 10.2.23 to the FMN, [REDACTED], May 2021, page 124.

⁷⁰⁸ Capita SSS Internal Document, Annex 10.2.32 to the FMN, [REDACTED], undated, page 1.

⁷⁰⁹ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 4.1.

- 8.111 [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.⁷¹⁰ In response to being asked whether [X] expects any changes in the ability of NECSWS and/or SSS's RMS products to meet its requirements for RMS, [X] stated that both are mature products that change relatively slowly.⁷¹¹ 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.
- 8.112 Moreover, GMP made a public statement that after reviewing PoliceWorks and the alternative options on the market, it 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'.⁷¹² GMP's current contract with PoliceWorks is up for renewal in June 2023.
- 8.113 GMP previously commissioned EY to review how PoliceWorks had performed. [X]:⁷¹³
- (a) [X];
 - (b) [X];
 - (c) [X];
 - (d) [X]; and
 - (e) [X].
- 8.114 [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 (**CPS**). [X] confirmed that it had a number of issues when it went live with PoliceWorks in 2014 and in 2017 [X], but that the relationship with Capita to resolve the issues was very good.⁷¹⁴
- 8.115 [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].⁷¹⁵
- 8.116 [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,

⁷¹⁰ Response to the CMA questionnaire from a third party, May 2022, Question 21.

⁷¹¹ Response to the CMA questionnaire from a third party, May 2022, Question 20.

⁷¹² [Update on PoliceWorks computer system from Chief Constable Stephan Watson](#), Greater Manchester Police's News, 21 March 2022 (last accessed 17 November 2022).

⁷¹³ EY, Review of GMP's PoliceWorks System Performance, September 2021, commissioned by GMP, pages 3–4.

⁷¹⁴ Note of a call with a third party, July 2022, paragraph 2.

⁷¹⁵ Note of a call with a third party, July 2022, paragraph 2.

[X] submitted that [X].⁷¹⁶ [X] has signed a contract with Mark43 to replace its RMS after their current contract with SSS ends.⁷¹⁷

- 8.117 [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].⁷¹⁸ [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

- 8.118 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.⁷¹⁹

Our assessment

- 8.119 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.
- 8.120 We therefore consider that current customers do not consider that PoliceWorks is likely to be an effective competitive option in future.

Current UNIFI customers

- 8.121 We have considered the situations of customers that are currently using UNIFI.

⁷¹⁶ Note of a call with a third party, July 2022, paragraph 3.

⁷¹⁷ Response to the CMA questionnaire from a third party, June 2022, question 31.

⁷¹⁸ Note of a call with a third party, June 2022, paragraph 7.

⁷¹⁹ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.14.

- 8.122 One customer is using UNIFI and has a long-term contract with options for extension until 2029.⁷²⁰ SSS with UNIFI was the only supplier that met the mandatory requirements of the customer's tender process.
- 8.123 One customer has recently extended its contract, but this is in advance of going to tender for a wider suite of products soon.⁷²¹
- 8.124 Two current or former UNIFI customers have recently appointed new suppliers.⁷²²

Our assessment

- 8.125 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

- 8.126 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.⁷²³ This indicates that there is perception among potential customers that SSS's products are weak.
- 8.127 The Athena Consortium submitted that it understands that [X] is currently preparing for or are re-tendering its RMS requirements.⁷²⁴ Athena Consortium said that [X], it represents one of the few current realistic opportunities in England and Wales for other/new RMS providers, who might be inclined to develop an application programming interface (**API**) to enable interfaces between police forces, to get a foothold in the RMS market.⁷²⁵

Investment and implementation costs

- 8.128 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

⁷²⁰ Response to the CMA questionnaire from a third party, June 2022, question 35.

⁷²¹ Response to the CMA questionnaire from a third party, June 2022, question 9.

⁷²² [X].

⁷²³ Response to the CMA questionnaire from a third party, May 2022, question 34.

⁷²⁴ Athena Consortium's response to the provisional findings, 7 November 2011, paragraph 19.

⁷²⁵ Athena Consortium said that in order for RMS to be fully effective it is necessary that the RMS enables the information it contains to be shared between different Police Services. It said that an API would facilitate this but that neither NECSWS nor Niche have API (or equivalent) capability. It also said that the Merger would reinforce NECSWS's incumbency advantage and further diminish any incentive on its part to develop any API (or equivalent functionality) (Athena Consortium's response to the provisional findings, 7 November 2011, paragraphs 12, 16 and 21). Our view is that the issue of lack of incentives to develop APIs is not materially impacted by the Merger.

that it would need to undertake investment to make the products [REDACTED] cloud-based.⁷²⁶

- 8.129 SSS submitted that a number of key [REDACTED] changes would be required to be made to PoliceWorks in order to provide it to a new customer.⁷²⁷ [REDACTED].⁷²⁸
- 8.130 SSS estimated that the key changes for PoliceWorks required would take around [REDACTED] on the basis of two teams working on the product full-time, while also delivering at least two maintenance releases per annum containing problem report fixes.⁷²⁹
- 8.131 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 [REDACTED] required to convert PoliceWorks from an on-premise to cloud-based solution [REDACTED]. [REDACTED].⁷³⁰
 - (b) SSS submitted that it would take an investment of £[REDACTED] million to make UNIFI a cloud-enabled product. [REDACTED].⁷³¹
- 8.132 In light of the above, SSS submitted that [REDACTED].⁷³²
- 8.133 [REDACTED].⁷³³
- 8.134 NECSWS submitted that the CMA is inconsistent across its analyses of the ICCS and RMS markets with regards to its view of investment in these products in the counterfactual. NECSWS said that the CMA seems to accept that, in the counterfactual, SSS would not receive significant investment it requires to develop a cloud-based RMS solution, whereas it reaches the opposite conclusion for ICCS.⁷³⁴

Our assessment

- 8.135 Overall, we recognise that there is some uncertainty as to the future of SSS's RMS products, including uncertainty as to if they would have been invested in absent the Merger. Having considered the evidence in relation to RMS in the round, our judgement is that SSS is unlikely to have engaged in material investment to

⁷²⁶ SSS's response to the CMA's RFI 2, 15 June 2022, question 18(a)–(b).

⁷²⁷ SSS's response to the CMA's RFI 2, 15 June 2022, question 18(a)–(b).

⁷²⁸ SSS's response to the CMA's RFI 2, 15 June 2022, question 18(a)–(b).

⁷²⁹ SSS's response to the CMA's RFI 2, 15 June 2022, question 18(a)–(b).

⁷³⁰ SSS's response to the CMA's RFI 2, 30 May 2022, paragraph 18.11.

⁷³¹ Parties' response to the phase 1 Issues Letter, 8 April 2022, paragraph 7.9.

⁷³² SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.39.

⁷³³ SSS's response to the Viability of SSS's RMS Products WP, 4 August 2022, paragraph 2.39.3.

⁷³⁴ NECSWS's response to the provisional findings, 7 October 2022, comment on paragraph 8.145.

develop either its current, or a new, RMS product absent the Merger. This is informed by the following evidence:

- (a) the failure of SSS's past attempts to invest in and develop a new RMS product, as evidenced by PoliceWorks;
- (b) future investment in the existing product(s) would need to overcome reputational damage associated with the poor performance of PoliceWorks – a factor not present for other suppliers;
- (c) the limited and declining number of customers currently using PoliceWorks and UNIFI;
- (d) the limited number of future opportunities over which to recover investment costs which limits the incentive to invest; and
- (e) the cost estimates for the investments necessary are high in comparison to the possible available contract values in the short term.

8.136 We have carefully considered NECSWS's submission in relation to the consistency of our assessment of investment incentives in RMS and ICCS; however, we consider that each market is characterised by its own set of facts, and for the reasons set out above, there is no inconsistency in our assessment or conclusion. In particular, we highlight that SSS's current customer base in ICCS (and its associated market share) is substantially larger than in RMS, as are the number and timeliness of future competitive opportunities. Both of these factors point towards a greater potential for SSS to recover investment costs in ICCS compared to RMS.

8.137 We acknowledge Athena Consortium's submission in relation to the future provision of RMS to [X] (see paragraph 8.127), but we consider that the Merger itself does not affect the likely degree of future competition for the [X] contract. [X] has said that SSS's PoliceWorks product cannot meet its needs and that it intends to move away from it, therefore NECSWS would be unable to successfully offer this product to [X] in future. Given this NECSWS is unlikely to gain any material advantage in relation to [X] from the acquisition of PoliceWorks.

Conclusion – competitiveness of SSS's RMS products

8.138 Overall, there is evidence that PoliceWorks will be a weak competitive constraint in the future. This is because:

- (a) current customers [X] and [X] is considering other options in light of issues with the product and concerns regarding its long-term viability;
- (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.

8.139 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) [REDACTED]; and
- (c) its high cost of implementation due to its complex configurability, which make it an expensive solution compared to competitors' products.

Future transition towards cloud-based services

8.140 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

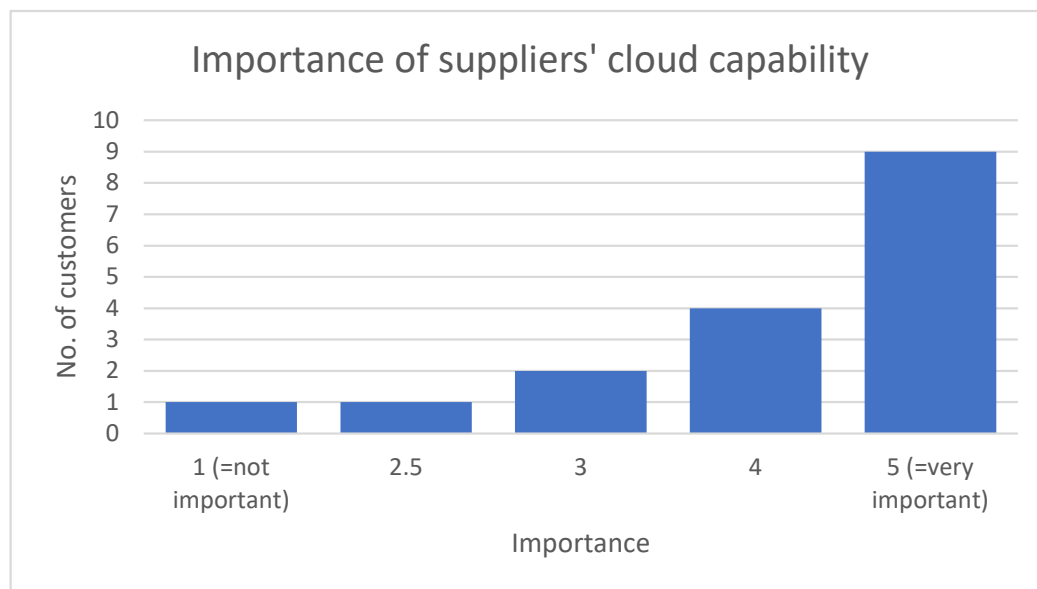
8.141 The Parties submitted that the industry has passed a 'tipping point' in relation to cloud-based solutions, and that this will only accelerate further with increased adoption in the future.⁷³⁵

Customers' views

8.142 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).

⁷³⁵ Parties' response to the Market Developments WP, 4 August 2022, page 19.

Figure 8-1: RMS: Importance of cloud



Source: CMA analysis of third-party data (question 29: When next deciding on an RMS product, how important or unimportant will an RMS suppliers' cloud capability be for you?).

Base: 17 police forces.

8.143 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

8.144 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.⁷³⁶

- 8.145 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’.⁷³⁷

Competitiveness of competitors’ products

- 8.146 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.
- 8.147 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.⁷³⁸ Niche also submitted that it is continually upgrading its RMS.⁷³⁹
- 8.148 Mark43 submitted that it is the only cloud-native RMS technology currently available in the UK.⁷⁴⁰ 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.

Our assessment

- 8.149 On the basis of the evidence above and paragraphs 5.16 to 5.30, our 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 cost considerations).

⁷³⁶ Note of a call with a third party, June 2022, paragraph 6.

⁷³⁷ Response to the CMA’s questionnaire from a third party, June 2022, question 2.

⁷³⁸ Note of a call with a third party, June 2022, paragraph 2.

⁷³⁹ Note of a call with a third party, June 2022, paragraph 16.

⁷⁴⁰ Response to the CMA’s questionnaire from a third party, 29 June 2022, question 1.

On-premise solutions may therefore still exert some competitive pressure over the next few years.

- 8.150 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 we have concluded is unlikely to have the incentive to develop it (see paragraph 8.131).

Conclusion

- 8.151 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.
- 8.152 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.⁷⁴¹ We have therefore considered the evidence of a high degree of concentration alongside all of the other evidence we have collected.
- 8.153 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.
- 8.154 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.
- 8.155 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 [✂] view of SSS's RMS products.

⁷⁴¹ [CMA129](#), paragraph 4.10.

- (c) SSS has recently [REDACTED]. Regarding PoliceWorks, of the [REDACTED] current customers, only [REDACTED] ([REDACTED]) has not publicly announced that it is moving, or intends to move, away from the product. This would leave SSS without [REDACTED].
- (d) SSS has suffered reputational damage from public statements by current customers about issues with PoliceWorks.
- (e) Internal documents [REDACTED].
- (f) SSS's products have high implementation costs and require significant investment. [REDACTED] (see paragraphs 8.128 to 8.133).

8.156 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.

8.157 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.

8.158 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.

8.159 In view of our assessment above, we therefore 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 looking at 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 assessment of whether countervailing factors may prevent or mitigate the SLCs we have identified.

9.2 We have 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 assessment of countervailing factors on the ICCS and Duties markets, looking at:

- (a) first, entry or expansion by third parties; and

(b) second, efficiencies.⁷⁴²

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.⁷⁴³ The CMA therefore considers the possibility of entry and/or expansion as a countervailing measure to what might otherwise be an SLC finding.⁷⁴⁴
- 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).⁷⁴⁵
- 9.5 In our competitive assessment chapters, we take account of evidence relating to entry and expansion in each of the Relevant Markets that would have occurred irrespective of the Merger.⁷⁴⁶
- 9.6 In this section, for each market where we have 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; and
 - (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; and

⁷⁴² [CMA129](#), paragraph 8.1.

⁷⁴³ [CMA129](#), paragraph 8.28.

⁷⁴⁴ [CMA129](#), paragraph 8.29.

⁷⁴⁵ [CMA129](#), paragraph 8.30.

⁷⁴⁶ [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.⁷⁴⁷ These conditions are cumulative and must be satisfied simultaneously.⁷⁴⁸
- 9.9 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.⁷⁴⁹ 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.⁷⁵⁰
- 9.10 We consider in turn entry or expansion in the ICCS and Duties markets in the UK, where we have found SLCs.

Barriers to entry or expansion – ICCS

- 9.11 In this section we consider whether barriers to entry or expansion exist in relation to the supply of ICCS in the UK.

Parties' views

- 9.12 The Parties submitted that barriers to entry and/or expansion in the ICCS market were low.⁷⁵¹ In particular:
- (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.⁷⁵² They told us that if an international ICCS product already has Long Term Evolution (LTE) capability such that it is ESN compatible, the costs of entry would likely be [~~low~~].⁷⁵³

⁷⁴⁷ [CMA129](#), paragraphs 8.31–8.37.

⁷⁴⁸ [CMA129](#), paragraph 8.31.

⁷⁴⁹ [CMA129](#), paragraph 8.40.

⁷⁵⁰ [CMA129](#), paragraph 8.5.

⁷⁵¹ 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.

⁷⁵² 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.

⁷⁵³ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 12.

- (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.⁷⁵⁴ The Parties told us that this indicates that UK customers can be satisfied by established track records and experience in other jurisdictions.⁷⁵⁵
- (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.⁷⁵⁶
- (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,⁷⁵⁷ 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.⁷⁵⁸

9.13 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 [redacted].⁷⁵⁹

9.14 In response to evidence from the CMA's customer research (see Figure 9-1 and Figure 9-2), the Parties submitted that:⁷⁶⁰

- (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 that factor should be weighed against other factors, such as price and capability. NECSWS also submitted that this meant the responses to the CMA's customer questionnaire cannot be used as a basis to find that barriers

⁷⁵⁴ 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.

⁷⁵⁵ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 13.

⁷⁵⁶ 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.

⁷⁵⁷ 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.

⁷⁵⁸ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 12.

⁷⁵⁹ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 24.

⁷⁶⁰ Parties' response to the Customer Evidence WP, comments on pages 9–12.

to entry are high because asking about factors in isolation introduces material bias.⁷⁶¹

- (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 [X] 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 [X] tenders.
- (d) In relation to how important or unimportant a supplier being currently active in the UK is:
 - (i) 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).
 - (ii) 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.

9.15 In response to our provisional findings, NECSWS also submitted that:

⁷⁶¹ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 9.21–9.31 and paragraphs 9.68–9.72 of the provisional findings.

- (a) it was inappropriate for the CMA to discount entry by Motorola merely because this was achieved via acquisition;⁷⁶²
- (b) there was clear and contemporary evidence in SSS's internal documents which describe the threat of entry in the supply of ICCS in the UK as high;⁷⁶³ and
- (c) it is incorrect to state that barriers to entry and expansion are high because of certification requirements.⁷⁶⁴

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.⁷⁶⁵ 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.⁷⁶⁶
- 9.18 A competitor said that customers often ask for UK references as part of their procurement processes.⁷⁶⁷
- 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.⁷⁶⁸
- 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.⁷⁶⁹

⁷⁶² NECSWS's response to the provisional findings, 7 October 2022, comments on paragraphs 9.21–9.31 and paragraphs 9.68–9.72.

⁷⁶³ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraph 9.38.

⁷⁶⁴ NECSWS's response to the provisional findings, 7 October 2022, comments on paragraph 9.38.

⁷⁶⁵ Note of a call with a third party, June 2022, paragraph 14 and note of a call with a third party, June 2022, paragraph 8.

⁷⁶⁶ Response to the CMA questionnaire from a third party, March 2022, question 6.

⁷⁶⁷ Note of a call with a third party, June 2022, paragraph 15.

⁷⁶⁸ Note of a call with a third party, June 2022, paragraph 7.

⁷⁶⁹ Note of a call with a third party, July 2022, paragraph 9.

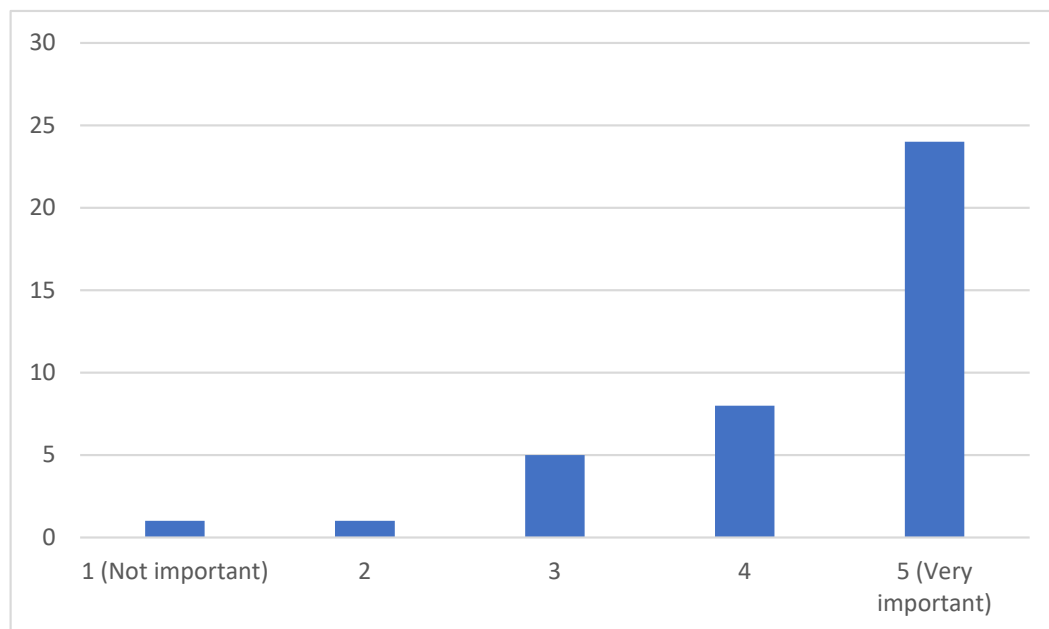
Customers

- 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 9.14(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 9.14(b)) we consider that the qualitative comments provided alongside each customers' ranking provide an explanation of the rankings chosen by customers 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. In addition, where customers' responses have indicated that individual factors create high barriers to entry (eg importance of reputation) this is consistent with other evidence (eg customers remaining with the same supplier for long-periods, including through extensions, competitors views of existence of barriers).

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



Source: 39 customer responses to our phase 2 questionnaire.

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.

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 one, two or three) the reasons provided focused on the importance of innovation that needs to be balanced with track record.

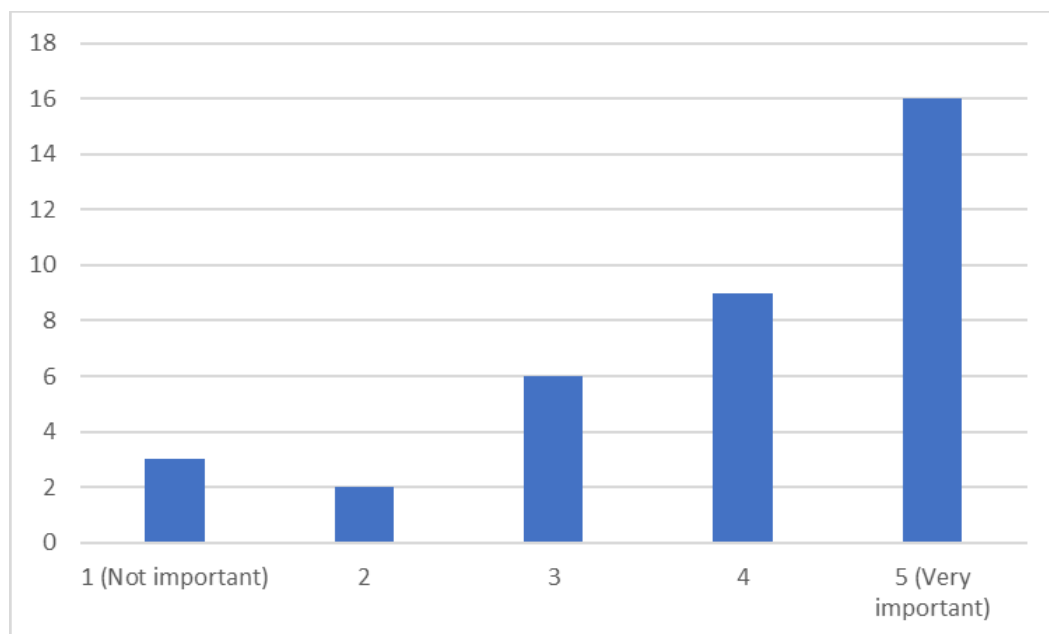
9.27 Overall, almost all ICCS customers view a supplier's reputation/track record as being an important feature to consider when procuring an ICCS product. This feature of the market is likely to act as a barrier to switching and a barrier to expansion for any new entrants who enter the ICCS market. 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



Source: 36 customer responses to our phase 1 and phase 2 questionnaires.

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).

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;⁷⁷⁰
- (b) the need for data storage and security measures to be met;⁷⁷¹ and
- (c) the existence of specific challenges and requirements in the UK that requires local knowledge.⁷⁷²

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 market;⁷⁷³ a view that

⁷⁷⁰ Response to the CMA questionnaire from a number of third parties, May 2022, question 15.

⁷⁷¹ Response to the CMA questionnaire from a number of third parties, February 2022 and May 2022. Note of a call with a third party, February 2022, paragraph 22.

⁷⁷² Response to the CMA questionnaire from two third parties, May 2022, question 15; Note of a call with a third party, February 2022, paragraph 16.

⁷⁷³ Response to the CMA questionnaire from a third party, May 2022, question 15.

where the technology is developed is not important if there is valid feedback;⁷⁷⁴ 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.⁷⁷⁵

- 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].⁷⁷⁶
- 9.34 We consider that this shows that SSS considers entry to be a high threat, but [REDACTED].⁷⁷⁷ We also consider that even if SSS considers entry to be a threat, it recognises that there are some barriers that hinder this. We note that [REDACTED] is mentioned by SSS as a potential barrier in one document, however we have not seen or received other evidence to corroborate whether or not [REDACTED] itself is a material barrier to entry.

Our assessment of barriers to entry or expansion into ICCS market

- 9.35 Our assessment 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 to 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 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

⁷⁷⁴ Response to the CMA questionnaire from a third party, May 2022, question 15.

⁷⁷⁵ Response to the CMA questionnaire from a third party, May 2022, question 15.

⁷⁷⁶ SSS Internal Document, Annex 060 to the phase 1 s109(2), [REDACTED], May 2021, slide 40.

⁷⁷⁷ SSS subsequently told us that [REDACTED] (Parties' response to the Countervailing Factors WP, comment on paragraph 17).

suppliers, and that this may be especially true where the product or service being provided is important for the customer.⁷⁷⁸

- 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.⁷⁷⁹
- 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 and that this was SSS's view as demonstrated in its documents. 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.⁷⁸⁰ [✂].⁷⁸¹ 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.⁷⁸² 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 9.42). 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). Entry via acquisition does not alter the structure of the market or the number of competitors within it and therefore we do not consider that entry by

⁷⁷⁸ [CMA129](#), paragraph 8.41(b).

⁷⁷⁹ [CMA129](#), paragraph 8.41(b).

⁷⁸⁰ The Minister of State, Home Office, [Emergency Services Mobile Communications Programme parliamentary debate](#), 20 July 2022.

⁷⁸¹ SSS, main party hearing transcript, page 75.

⁷⁸² SSS, main party hearing transcript, page 75.

acquisition (as in the case of Motorola) has the same competitive impact as entry by a new entrant.

- 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 9.14(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.⁷⁸³

Entry and expansion as a result of the Merger – ICCS

- 9.41 Having found that barriers to entry are high in relation to the supply of ICCS in the UK, in this section we consider whether there will be entry in that same market as a result of the Merger. In relation to expansion, 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. Therefore, we have not considered ICCS expansion further in this chapter.

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 2016.⁷⁸⁴ 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.⁷⁸⁵ The Parties also pointed to successful entry by Motorola and Frequentis, and noted that the shift to cloud presents opportunities.⁷⁸⁶
- 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.⁷⁸⁷ The Parties submitted that there was a customer perception that COTS solutions are more advanced, easier to understand and

⁷⁸³ See [CMA129](#), paragraph 8.42, which describes the prospect of barriers to entry being high where they are present in combination.

⁷⁸⁴ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7 and NECSWS's response to the provisional findings, 7 October 2022, comment on paragraph 9.39.

⁷⁸⁵ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 16 (referring to Table 4 of the Opportunity Analysis WP) and NECSWS's response to the provisional findings, 7 October 2022, comment on paragraph 9.51.

⁷⁸⁶ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 24.

⁷⁸⁷ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

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:

- (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.⁷⁸⁸

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; and
- (d) Saab is an established global aeronautics, military defence and civil security software supplier.⁷⁸⁹

⁷⁸⁸ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

⁷⁸⁹ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 7.

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.⁷⁹⁰

Third party evidence

9.46 We contacted potential new entrants suggested by the Parties. Those that responded were not planning, or considering, entering the ICCS market in the UK. This indicates both that 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.⁷⁹¹ 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.⁷⁹² In its view, [REDACTED].

Parties' internal documents

9.49 Content Guru is included on [REDACTED] 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: '[REDACTED]'.

Our assessment of entry and expansion into the ICCS market as a result of the Merger

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.⁷⁹³ Frequentis has been present in the market for more than a decade and it has grown its

⁷⁹⁰ Atos, for example, are already live and referenceable in the UK public safety market in 999/101 telephony.

⁷⁹¹ Response to the CMA questionnaire from a third party, August 2022.

⁷⁹² Note of a call with a third party, February 2022, paragraph 15.

⁷⁹³ 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).

market share over this time. It won its largest current customer (ARP) 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 years. None of these other suppliers have achieved a share of supply of more than 5% across emergency services and transport customers, partly due to their limited bidding, although some of these suppliers have achieved a high success rate where they have competed. This evidence indicates that in the past new entrants have initially focused on a limited number of opportunities, and that if this also applied to other new entrants, the extent of that entrant's constraint would be limited initially.

- 9.52 Customers placing importance on a suppliers' track record and reputation (see Figure 9-1) may 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 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 (see Figure 9-1). 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 consider that there will not be timely, likely and sufficient entry into the market for the supply of ICCS in the UK.

Our conclusion on entry and expansion as a countervailing factor to the SLC in ICCS

- 9.57 As set out above, we have found 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 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.⁷⁹⁴
- 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.⁷⁹⁵
- 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.⁷⁹⁶
- 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.⁷⁹⁷

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; and (iii) the relatively small size of the market.⁷⁹⁸
- 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.⁷⁹⁹ This competitor also told us that a specific ERP provider's

⁷⁹⁴ Parties' response to the Countervailing Factors WP, 4 August 2022, comment after paragraph 51.

⁷⁹⁵ Parties' response to the Countervailing Factors WP, 4 August 2022, comment after paragraph 56.

⁷⁹⁶ Parties' response to the phase 1 Issues Letter, 8 April 2022, paragraph 9.3.2.

⁷⁹⁷ 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.

⁷⁹⁸ Note of a call with a third party, June 2022, paragraph 12.

⁷⁹⁹ Response to the CMA questionnaire from a third party, March 2022, question 15(a) and 15(c).

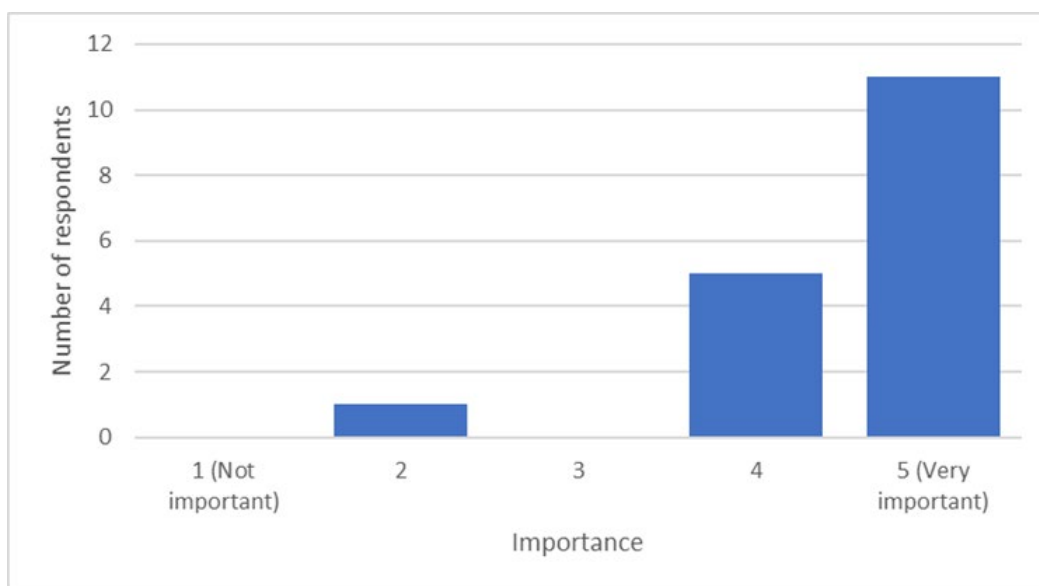
product was not sufficient on its own, and that therefore it did not consider them to be a serious competitor.⁸⁰⁰

Customers' views

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



Source: 17 customer responses to our phase 2 questionnaire.

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.

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

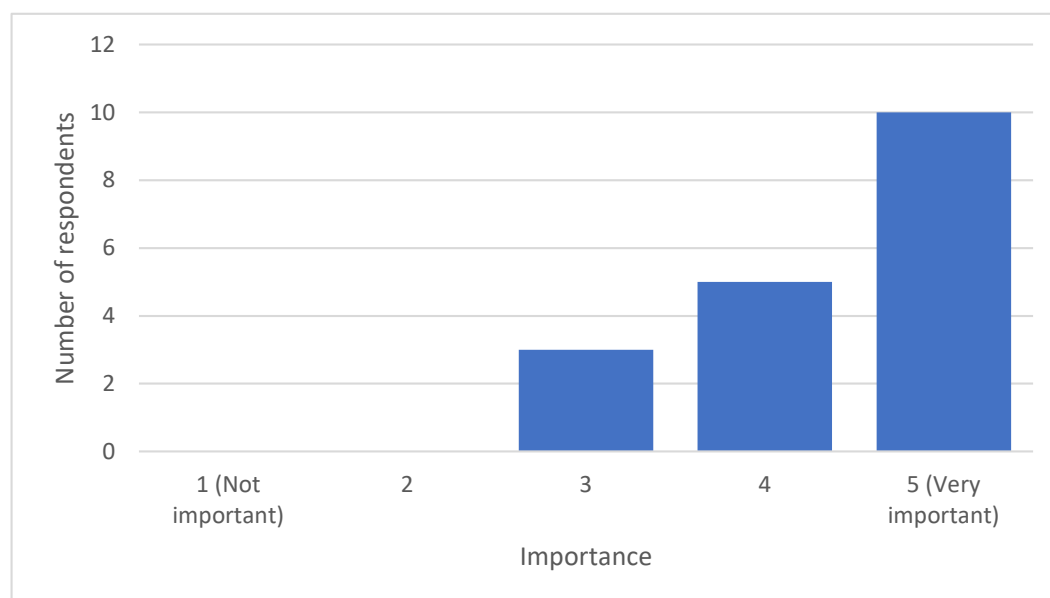
⁸⁰⁰ Note of a call with a third party, June 2022, paragraph 15.

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



Source: 17 customer responses to our phase 2 questionnaire.

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).

- 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'.⁸⁰¹ Another internal document from SSS also highlights customer stickiness stating that it is a '[v]ery slow moving market. Contract terms

⁸⁰¹ SSS Internal Document, Annex 060 to the phase 1 s109(2), '[3X]', May 2021, slide 103.


10+ years. Customer change suppliers as part of a wider back-office restructuring exercise'.^{802,803}

Our assessment of barriers to entry or expansion into the Duties market

- 9.74 Our assessment 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).
- 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.⁸⁰⁴
- 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.⁸⁰⁵
- 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 Competitors submitted that there were no material barriers to entry, but identified a number of factors (eg complexity, customer stickiness) that we consider to be barriers to entry that will in combination hinder new entrants from entering the market.
- 9.79 Taking this evidence in the round, we concluded that barriers to entry in the Duties market are high.

Entry and expansion as a result of the Merger – Duties

- 9.80 Having 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

⁸⁰² SSS Internal Document, Annex 10.2.31 to the FMN, '[

⁸⁰³ SSS told us that both documents referred to in this paragraph were prepared in contemplation of the transaction.

⁸⁰⁴ [CMA129](#), paragraph 8.41(b).

⁸⁰⁵ [CMA129](#), paragraph 8.41(b).

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 7) 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 Duties expansion further in this chapter.

- 9.81 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.

Parties' views

- 9.82 The Parties submitted that large international ERP suppliers have supplied Duties to police customers and that other Duties suppliers are based outside the UK.⁸⁰⁶ 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].⁸⁰⁷
- 9.83 The Parties submitted that overseas suppliers are likely to exert an increasingly strong competitive constraint.⁸⁰⁸ 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).⁸⁰⁹

Competitors' views

- 9.84 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

⁸⁰⁶ 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).

⁸⁰⁷ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 51.

⁸⁰⁸ Parties' response to the phase 1 Issues Letter, 8 April 2022, paragraph 9.3.2.

⁸⁰⁹ Parties' response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 52.

supply of duties management services to any emergency services customer in the UK in the next two years (see paragraphs 7.152 to 7.154).⁸¹⁰

9.85 [REDACTED].⁸¹¹ [REDACTED].

Our assessment of entry and expansion into the Duties market as a result of the Merger

9.86 We have considered the prospects of international entry into the UK Duties market as a result of the Merger.

9.87 The evidence we have seen to date, particularly that from third parties, suggests that the current incentives to enter the UK Duties market may be weak.

9.88 With regards to international entry, the view of a majority of customers is that a supplier being proven in the UK was a relevant factor for their decision on a supplier and this 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.

9.89 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 and none had plans to enter the market, instead 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.

Our conclusion on entry and expansion as a countervailing factor to the SLC in Duties

9.90 As set out above, we found 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. We have also found that the incentives to enter the UK Duties market are weak.

9.91 Based on the above, our 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.

⁸¹⁰ We note that we contacted [REDACTED] 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 [REDACTED] may enter the Duties market, we do not consider it likely that they would do so as a result of the Merger.

⁸¹¹ Submission to the CMA from a third party, September 2022.

Countervailing factors: Merger efficiencies

- 9.92 In this section we assess whether efficiencies arising from the Merger constitute a countervailing factor.
- 9.93 In some instances, mergers can give rise to efficiencies.⁸¹² 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.⁸¹³ They may prevent an SLC by offsetting any anti-competitive effects.⁸¹⁴
- 9.94 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.⁸¹⁵ Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.⁸¹⁶
- 9.95 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.⁸¹⁷
- 9.96 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.⁸¹⁸

Parties' views

- 9.97 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

⁸¹² [CMA129](#), paragraph 8.2.

⁸¹³ [CMA129](#), paragraph 8.3(a).

⁸¹⁴ [CMA129](#), paragraph 8.4.

⁸¹⁵ [CMA129](#), paragraph 8.6.

⁸¹⁶ [CMA129](#), paragraph 8.6.

⁸¹⁷ [CMA129](#), paragraph 8.7.

⁸¹⁸ [CMA129](#), paragraph 8.8.

competitive by offering a combination of improved products, better customer service and more competitive pricing’.⁸¹⁹

9.98 NECSWS anticipates a cost synergy programme which by FY24 delivers £[REDACTED] million of annual ongoing savings across the UK businesses. Specifically, NECSWS anticipates cost synergies in the following areas as a result of the Merger:⁸²⁰

(a) [REDACTED].

(b) [REDACTED].

9.99 [REDACTED].⁸²¹

9.100 [REDACTED].⁸²²

Our assessment

9.101 Our assessment 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 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.⁸²³ 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 [REDACTED], the cost efficiencies identified by NECSWS are not merger specific. In particular we have not seen evidence that the cost efficiencies related to [REDACTED] could only be achieved through the Merger. Similarly, NECSWS’s submissions on [REDACTED] 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.

⁸¹⁹ FMN, paragraphs 1.5–1.6; Parties’ response to the Issues Statement, 28 June 2022, paragraph 2.6.

⁸²⁰ NECSWS’s response to the CMA’s RFI 2, 30 May 2022, question 23; Parties’ response to the Issues Statement, 28 June 2022, paragraph 2.6.

⁸²¹ Parties’ response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 62.

⁸²² Parties’ response to the Countervailing Factors WP, 4 August 2022, comment on paragraph 62.

⁸²³ [CMA129](#), paragraph 8.10.

- (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]'.⁸²⁴ 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.

Conclusion on countervailing factors

- 9.102 For the reasons set out above, our 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 found an SLC.

10. FINDINGS ON SLC

- 10.1 For the reasons set out in the preceding chapters, the inquiry group appointed to consider this reference has made the following 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; and
 - (b) the creation of that situation has resulted, or may be expected to result, in a SLC 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 Given these findings, we have assessed potential remedies to assess the SLCs we have found in the next chapter.

11. REMEDIES

Introduction

- 11.1 The CMA has found that the Merger has resulted in or may be expected to result in SLCs in the markets for the supply of ICCS and Duties in the UK.
- 11.2 Where the CMA makes a finding of an SLC, it must then decide whether, and if so what, action should be taken (or be recommended to be taken by others) to

⁸²⁴ NECSWS Internal Document, Annex 9.2.4 to FMN '[X]', February 2021, slide 4.

remedy, mitigate or prevent the SLC concerned and/or any adverse effects resulting or which may be expected to result from the SLC.⁸²⁵

- 11.3 This chapter sets out our assessment of, and final decision on the appropriate remedies to the SLCs that we have identified in this final report.
- 11.4 In the Notice of Possible Remedies (**Remedies Notice**), we sought views on possible remedies to the SLCs.⁸²⁶
- 11.5 Subsequent to the publication of the Remedies Notice, we issued our Remedies Working Paper (the **RWP**) to the Parties. The RWP set out our provisional decisions on remedies.
- 11.6 This chapter has been prepared after consideration of written and oral responses received from the Parties and third parties following the publication of the Remedies Notice and the issuing of the RWP. In reaching our decision on remedies, we have, in particular, considered:
- (a) written responses to our public consultation on possible remedy options as set out in our Remedies Notice;
 - (b) the Parties' various submissions and responses to our questions, including on remedies;
 - (c) evidence from our response hearings with each of the Parties;
 - (d) evidence from third parties on possible remedies including from customers of the Parties, existing competitors and potential purchasers;⁸²⁷ and
 - (e) the Parties' joint response to the RWP.

Framework for the assessment of remedies

- 11.7 Where the CMA finds an SLC, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.⁸²⁸
- 11.8 The Act requires that the CMA, when considering possible remedial actions, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as

⁸²⁵ Section 35(2) and (3) and section 41 of the Act.

⁸²⁰ The Remedies Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in the provisional findings.

[illegible]

828 Section 35(2) of the Act.

is reasonable and practicable to the SLC and any adverse effects resulting from it'.⁸²⁹

- 11.9 To fulfil this requirement, the CMA will first seek remedies that are effective in addressing the SLC and any resulting adverse effects. The CMA will assess the effectiveness of remedies in addressing the SLC and resulting adverse effects before going on to consider the costs likely to be incurred by the remedies.⁸³⁰
- 11.10 In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLCs and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:⁸³¹
- (a) impact on the SLC and resulting adverse effects – the CMA views competition as a dynamic process of rivalry between firms seeking to win customers' business over time – restoring the process of rivalry is a key aim of a remedy;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality in terms of implementation, monitoring and enforcement; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.
- 11.11 Once the CMA has identified the remedy options that would be effective in addressing the SLC, the CMA will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,⁸³² to the effect of any remedial action on any relevant customer benefits arising from the merger.
- 11.12 A detailed description of the factors the CMA will examine in determining what (if any) remedial action is to be taken can be found in our Merger remedies guidance, CMA87.⁸³³

Nature of the SLCs

- 11.13 We have found an SLC in two specialist software product markets that both Parties supply. These concerns relate to:

⁸²⁹ [Section 35\(4\) of the Act](#).

⁸³⁰ Guidance on merger remedies in phase 1 and phase 2 investigations, 13 December 2018 ([CMA87](#)), paragraph 3.5.

⁸³¹ [CMA87](#), paragraph 3.5.

⁸³² [Section 35\(5\)](#) of the Act.

⁸³³ [CMA87](#).

- (a) ICCS software, which is used by control room personnel in day-to-day duties such as receiving and making urgent phone calls to communicate with emergency response staff; and
 - (b) Duties software, which is used by police forces to plan and staff shifts.
- 11.14 The CMA has found that NECSWS and SSS were part of a small pool of providers of both types of software product and a loss of either of these businesses as an independent competitor would represent a significant impact on competition.
- 11.15 In this chapter, we assess potential remedies to address the SLCs as set out in this final report.

Overview of remedies options

- 11.16 As set out in CMA87, remedies are conventionally classified as either structural or behavioural:⁸³⁴
- (a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
 - (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the process of rivalry absent the merger.
- 11.17 In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies, because:⁸³⁵
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.
- 11.18 In the Remedies Notice, we set out the following remedies options:
- (a) the full divestiture of SSS by NECSWS; or

⁸³⁴ [CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.

⁸³⁵ [CMA87](#), paragraph 3.46.

- (b) a partial divestiture through the sale of the ICCS operations and Duties operations of SSS either on a combined or separate basis. Partial divestiture refers to the divestiture of part of the acquired business (or the acquirer's business) containing operations that are relevant to the SLCs that we have found.

- 11.19 We also invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise. These may include requirements relating to the scope of any divestiture package, the process of selecting the assets to be divested, the identification of suitable potential purchaser(s), and the divestiture process including the timing of divestiture.
- 11.20 In response to the Remedies Notice, the Parties also proposed the divestiture of ICCS from NECSWS (the **NECSWS ICCS [REDACTED] Remedy**) and the divestiture of Duties from NECSWS (the **NECSWS Duties [REDACTED] Remedy**), together the **NECSWS [REDACTED] Remedies**. The NECSWS ICCS [REDACTED] Remedy consists of the former APD business that includes the Cortex ICCS product. The NECSWS Duties [REDACTED] Remedy consists of the CARM Duties product.⁸³⁶ We have included the NECSWS [REDACTED] Remedies in our assessment.
- 11.21 The Parties also proposed [REDACTED] remedies [REDACTED] the CMA does not find the [REDACTED] Remedies to be effective. These [REDACTED] remedies are the divestiture of ICCS from SSS (the **SSS ICCS [REDACTED] Remedy**) and the divestiture of Duties from SSS (the **SSS Duties [REDACTED] Remedy**) together the **SSS [REDACTED] Remedies**.⁸³⁷ The details of the [REDACTED] Remedies are also set out and considered in our assessment.
- 11.22 In the Remedies Notice, we said that behavioural remedies on their own appeared unlikely to be effective in addressing the SLC that we have found. We said that we were willing to consider any behavioural remedies that were put forward as part of the consultation, but none were proposed by any of the respondents to the consultation. We have therefore not considered behavioural remedies further.
- 11.23 Accordingly, we focus the remainder of this chapter on assessing the effectiveness of:
- (a) the NECSWS ICCS [REDACTED] Remedy and the SSS ICCS [REDACTED] Remedy;
 - (b) the NECSWS Duties [REDACTED] Remedy and the SSS Duties [REDACTED] Remedy; and
 - (c) the full divestiture of the whole of SSS.

⁸³⁶ NECSWS's response to the Remedies Notice, 30 September 2022, page 11.

⁸³⁷ NECSWS's response to the Remedies Notice, 30 September 2022, page 11.

11.24 We then go on to consider the proportionality of any effective remedies. Finally, we set out our conclusions on what we consider to be the least costly remedy, or package of remedies, that is effective in addressing the SLCs we have identified.

Effectiveness of remedy options

- 11.25 In this section, we discuss the effectiveness of different remedy options, and conclude on those which we consider would represent an effective remedy to the SLCs and/or any of their adverse effects which we have identified. In doing this, we first look at partial divestiture options to address the SLC in ICCS (ie the NECSWS ICCS [X] Remedy and the SSS ICCS [X] Remedy – from paragraph 11.34). We then look at partial divestiture options to address the SLC in Duties (the NECSWS Duties [X] Remedy and the SSS Duties [X] Remedy – from paragraph 11.165). Finally, we consider full divestiture of SSS (from paragraph 11.260).
- 11.26 Both the NECSWS ICCS and Duties [X] Remedies and the SSS ICCS and Duties [X] Remedies are partial divestiture remedy options. In this case, partial divestiture refers to the divestiture of part of SSS (the acquired business) or NECSWS (the acquirer's business) containing operations that are relevant to the ICCS and Duties SLCs. The aim of the divestiture is to address the SLCs through the disposal of a business or assets from the Parties to create a new source of competition (if sold to a new market participant) or to strengthen an existing source of competition (if sold to an existing participant independent of the Parties).⁸³⁸ A successful divestiture will effectively address at source the loss of rivalry resulting from the Merger by changing or restoring the structure of the market.⁸³⁹
- 11.27 There are three categories of risk that could impair the effectiveness of any divestiture remedy, namely composition risk, purchaser risk and asset risk:⁸⁴⁰
- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

⁸³⁸ [CMA87](#), paragraph 3.37.

⁸³⁹ [CMA87](#), paragraph 3.38.

⁸⁴⁰ [CMA87](#), paragraph 5.3.

- 11.28 An effective divestiture remedy must give us sufficient confidence that these practical risks can be properly addressed. We therefore consider the following issues:
- (a) the scope of the divestiture package;
 - (b) the availability and suitability of purchasers; and
 - (c) ensuring an effective divestiture process.
- 11.29 In considering the appropriate scope for a divestiture package, the CMA seeks to ensure that it:
- (a) is sufficiently broad in scope to address all aspects of the SLC and resulting adverse effects;
 - (b) would enable the eventual purchaser to operate the divested business as an effective competitor; and
 - (c) is sufficiently attractive to potential purchasers.
- 11.30 In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.⁸⁴¹
- 11.31 Our guidance sets out that the CMA will wish to satisfy itself that a prospective purchaser:
- (a) is independent of the Parties: SSS and NECSWS;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant market; and
 - (d) that divestiture to the purchaser will not create further competition concerns.⁸⁴²
- 11.32 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.⁸⁴³

⁸⁴¹ [CMA87](#), paragraph 5.7.

⁸⁴² [CMA87](#), paragraph 5.21.

⁸⁴³ [CMA87](#), paragraph 3.33.

11.33 We now consider the effectiveness of each of the potential remedies under consideration.

NECSWS ICCS [REDACTED] Remedy

Description of remedy

11.34 The NECSWS ICCS [REDACTED] Remedy would involve the Parties divesting the ICCS operations of NECSWS to a suitable purchaser. This would include the products, relevant customer contracts, Intellectual Property (**IP**) and other resources formerly associated with NECSWS's APD subsidiary including its ICCS Cortex product, Aspire CRM product, and Artemis telematic and fleet management system (the **APD Business**).⁸⁴⁴

11.35 The Parties have proposed that the NECSWS ICCS [REDACTED] Remedy should exclude NECSWS's CallTouch ICCS product, whilst also stating that the divestiture could include CallTouch should the CMA consider it necessary.⁸⁴⁵

Views of the Parties

11.36 NECSWS submitted that the NECSWS ICCS [REDACTED] Remedy would be wholly effective in remedying an SLC in ICCS as it would entirely remove the overlap between SSS and NECSWS in the supply of ICCS to emergency services and transport customers, and would lead to a structural change in the market addressing an SLC in ICCS.⁸⁴⁶ In their joint response to the RWP, the Parties reiterated the view that the NECSWS ICCS [REDACTED] Remedy would be an effective and proportionate remedy to address the SLC identified in ICCS.⁸⁴⁷

11.37 NECSWS considers that the NECSWS ICCS [REDACTED] Remedy would constitute an attractive set of assets that would be viable and profitable and would enable a potential purchaser to be a strong competitor in ICCS, with revenues of £[REDACTED] million in FY22 and a market share of [20–30%] by revenue, [10–20%] by volume of calls and [10–20%] by number of customers.⁸⁴⁸

11.38 In relation to the scope of the NECSWS ICCS [REDACTED] Remedy, NECSWS told us that CallTouch should be excluded. It stated that Cortex was its [REDACTED] ICCS product for emergency services customers, and [REDACTED]. It also told us that [REDACTED], and therefore

⁸⁴⁴ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.1.

⁸⁴⁵ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.1 and Parties' response to the Remedies WP, 8 November 2022, paragraph 2.2.

⁸⁴⁶ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.5.

⁸⁴⁷ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.1.

⁸⁴⁸ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.7.

NECSWS considered that the divestment of the APD Business alone would be proportionate and effective.⁸⁴⁹

- 11.39 NECSWS submitted that its Stream video streaming service should be excluded from the scope of the divestiture as it is not necessary or proportionate to include this.⁸⁵⁰ [REDACTED].⁸⁵¹
- 11.40 NECSWS told us that, taking into account [REDACTED], it anticipates that there will be a pool of independent, well-funded potential purchasers which are likely to be interested in acquiring these assets.⁸⁵²
- 11.41 NECSWS highlighted [REDACTED] potential purchasers of the NECSWS ICCS [REDACTED] Remedy.⁸⁵³ Separately, SSS identified [REDACTED] potential purchasers of an ICCS business ([REDACTED]).⁸⁵⁴ [REDACTED] businesses were identified by both Parties as being a potential purchaser of ICCS.
- 11.42 As regards process, NECSWS stated that the APD Business would be straightforward to separate and divest. NECSWS also submitted that it does not foresee any material separation issues with its CallTouch product.⁸⁵⁵
- 11.43 NECSWS anticipates a timeline of within [REDACTED] for this divestiture.⁸⁵⁶

Views of third parties

- 11.44 Views from customers⁸⁵⁷ on a standalone ICCS divestiture were mixed. We were told by some customers that it would be viable, for example:
- (a) a standalone ICCS offering (ie not bundled with other non-ICCS products) would be a viable procurement option,⁸⁵⁸
 - (b) standalone products that can be integrated with other solutions should be an option for customers to enable them to access best of breed solutions, as a single supplier of multiple products may not be able to do so,⁸⁵⁹ and
 - (c) there are Fire & Rescue services that would want a standalone ICCS.⁸⁶⁰

⁸⁴⁹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.4.

⁸⁵⁰ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.6.

⁸⁵¹ NECSWS's response to the CMA's RFI 4, 6 October 2022, question 78.

⁸⁵² NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.8–5.9.

⁸⁵³ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁸⁵⁴ SSS's further submission on remedies, 19 October 2022, section 7.

⁸⁵⁵ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.8.1–5.8.2.

⁸⁵⁶ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 5.11.

⁸⁵⁷ We contacted a cross-section of NECSWS and SSS customers of ICCS and/or Duties receiving 9 out of 13 responses. Therefore, whilst these responses are indicative, given the small number of responses, we recognise these may not be fully reflective of customer views.

⁸⁵⁸ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁵⁹ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶⁰ Response to the CMA questionnaire from a third party, October 2022, question 2.

- 11.45 We also heard other points from customers which indicated this option could potentially be less attractive including:
- (a) ICCS should be bundled with CAD;⁸⁶¹
 - (b) a standalone ICCS would not be an attractive proposition for customers;⁸⁶² and
 - (c) there are clear benefits to customers of having a combined ICCS, CAD and RMS suite.⁸⁶³
- 11.46 We also contacted a range of potential purchasers and current competitors to ascertain interest and views on the potential partial divestiture of ICCS and Duties (NECSWS or SSS) and full divestiture.⁸⁶⁴ Five third parties told us they may be interested in a purchase of a standalone ICCS divestiture and broadly considered this to be a feasible remedy option ([X], [X], [X] and [X]) with one ([X]) interested in NECSWS's ICCS specifically.
- 11.47 In relation to divestiture more generally, of either ICCS or Duties from either NECSWS or SSS, third parties made a number of general points as follows:
- (a) the divestiture package should come as 'shrink wrapped' as possible which we understand to mean the divestiture package should include all the necessary components neatly carved off to be as standalone and ready-made as possible and not bundled with other products;⁸⁶⁵
 - (b) that their preference over potential available divestiture opportunities (out of NECSWS or SSS ICCS or Duties) would be dependent on factors such as revenue streams, ability to be competitive on day one and level of integration a purchaser already has with the product;⁸⁶⁶ and
 - (c) that the choice of NECSWS or SSS ICCS or Duties also depends on the best fit with the buyer's existing software portfolio.⁸⁶⁷
- 11.48 On a divestiture of ICCS from NECSWS, we were told by a third party that the NECSWS ICCS [X], which we understand to mean a purchaser would want to move NECSWS ICCS customers to their own ICCS product if they have one.⁸⁶⁸

⁸⁶¹ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶² Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶³ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶⁴ We contacted 38 potential purchasers (using the lists provided to us by the Parties) and current competitors – receiving 21 responses in total.

⁸⁶⁵ Response to the CMA questionnaire from a third party, October 2022, question 6.

⁸⁶⁶ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶⁷ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁸⁶⁸ Response to the CMA questionnaire from a third party, October 2022, question 8.

Scope of remedy

11.49 In assessing the scope of the potential remedy (see paragraphs 11.29 and 11.30), we consider the following aspects of the remedy:

- (a) products and contracts;
- (b) staff resources; and
- (c) any other resources.

Products and contracts

11.50 As noted above, the NECSWS ICCS [REDACTED] Remedy would include the APD Business as well as all of its contracts, and whilst it was not the preferred option of the Parties, it could also potentially include CallTouch (see paragraph 11.51 below). The NECSWS ICCS [REDACTED] Remedy, with CallTouch, would include:⁸⁶⁹

- (a) [REDACTED] Cortex ICCS contracts;
- (b) [REDACTED] CallTouch ICCS contracts;
- (c) [REDACTED] CallTouch Data Gateway (**CDG**) contracts;⁸⁷⁰
- (d) [REDACTED] Aspire CRM products;⁸⁷¹
- (e) [REDACTED] Artemis contracts;⁸⁷² and
- (f) [REDACTED] TfL Connect contract.⁸⁷³

11.51 NECSWS told us that including CallTouch '[REDACTED]' and '[REDACTED]'.⁸⁷⁴

11.52 Our view is that the CallTouch product should be included within a divestiture of ICCS from NECSWS. Under the Act, the CMA is obliged 'to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable' to any SLCs found.⁸⁷⁵ CallTouch is an ICCS product with [REDACTED] emergency services and transport customers and which NECSWS intends to continue to provide to [REDACTED] customers. In our view, therefore, it should be included within the scope of a remedy in order to address comprehensively the SLC that we

⁸⁶⁹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4 and Annex 1.

⁸⁷⁰ The CallTouch Data Gateway (**CDG**) [REDACTED] [REDACTED] (NECSWS's response to the Remedies Notice, 30 September 2022, Table 4).

⁸⁷¹ Customer records management (**CRM**) software is used to record and link contacts from the same individual as part of a single record [REDACTED]. [REDACTED] (FMN, paragraph 3.12.3).

⁸⁷² Artemis is [REDACTED] (FMN, paragraph 4.5).

⁸⁷³ The TfL Connect project relates to [REDACTED].

⁸⁷⁴ NECSWS, response hearing transcript, 4 October 2022, pages 55–56.

⁸⁷⁵ [Section 41\(4\)](#) of the Act.

have found, which was in the market for the supply of ICCS to emergency service and transport customers in the UK.

11.53 NECSWS also told us that, if CallTouch was to be included in a remedy, its Cortex and CallTouch products could be sold either to one purchaser or to different purchasers.⁸⁷⁶ NECSWS's view is that it should have the optionality to pursue simultaneously both the sale of Cortex and CallTouch together and the sale of CallTouch separately from Cortex, provided that: (i) a suitable alternative purchaser for CallTouch can be identified and a divestment carried out within the relevant timeframe; and (ii) a separate divestment of CallTouch would not impede the sale of the rest of the NECSWS ICCS divestiture within the relevant timeframe.⁸⁷⁷ NECSWS told us that having the optionality to sell CallTouch separately may be preferable and beneficial from a customer perspective for the following reasons:⁸⁷⁸

- (a) [REDACTED];⁸⁷⁹
- (b) a credible potential outcome is that the NECSWS ICCS (Cortex) business is divested to a trade buyer which is active in the public safety industry. However, NECSWS considers that a telecommunication company which has a focus in transport may be a more suitable purchaser for NECSWS CallTouch ICCS on a long-term basis, [REDACTED];⁸⁸⁰ and
- (c) NECSWS would want the optionality to divest Cortex and CallTouch separately to different purchasers particularly if a potential purchaser of Cortex did not wish to purchase CallTouch, or if there were a better option for customers with an alternative purchaser.⁸⁸¹

Staff resources

11.54 NECSWS told us that included in the NECSWS ICCS [REDACTED] Remedy divestiture would be [REDACTED] UK staff members, [REDACTED].⁸⁸²

11.55 [REDACTED] members of staff [REDACTED], would not be transferred to the purchaser but would be accessible in the short term through a Transitional Services Agreement (**TSA**).⁸⁸³

⁸⁷⁶ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 4.7.

⁸⁷⁷ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.4.

⁸⁷⁸ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.5.

⁸⁷⁹ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.5.1.

⁸⁸⁰ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.5.2.

⁸⁸¹ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.5.3.

⁸⁸² NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁸⁸³ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

Other resources

- 11.56 All relevant IP associated with the Cortex, Aspire, Artemis and CallTouch products would be included. NECSWS has confirmed this IP is distinct from and not used in other areas of NECSWS's business.⁸⁸⁴
- 11.57 The NECSWS ICCS [X] Remedy divestiture would also include assignment of the lease to NECSWS's office [X] where the staff to be transferred as part of the NECSWS ICCS [X] Remedy are based. There is no distinct office for CallTouch staff but its laboratory equipment, currently in [X], would be transferred to the [X] office.⁸⁸⁵ NECSWS also told us that it would be prepared to retain the [X] lease [X] at the election of a potential purchaser, [X].⁸⁸⁶

Assessment of scope

- 11.58 We note that the NECSWS ICCS [X] Remedy (with CallTouch included) would include NECSWS's two ICCS products, Cortex and CallTouch, and their associated contracts and IP. This would therefore provide a purchaser with the ICCS customers currently contracting with NECSWS, as well as enabling the purchaser to offer Cortex and CallTouch to customers.
- 11.59 Some third parties expressed interest in an ICCS product that was not bundled with other products in a divestiture. On this we note that the NECSWS ICCS [X] Remedy is focussed in its scope as it contains many fewer products than a full divestiture of SSS. However, the NECSWS ICCS [X] Remedy does include all products that are used in the relevant market as well as some non-ICCS but connected products of CDG, Aspire CRM, Connect, and Artemis. We understand that these products, alongside Cortex, were part of the APD subsidiary acquired by NECSWS in 2018. Together these products therefore appear to form a readily identifiable business that would operate independently of NECSWS after divestiture, namely the APD Business. NECSWS confirmed to us that the NECSWS ICCS [X] Remedy (ie excluding CallTouch (see paragraph 11.51 above) and Stream (see paragraph 11.69 below)) would represent a divestment of all of the APD business acquired in 2018. The only exclusion from the current APD business would be the Stream product which we consider from paragraph 11.69 below.⁸⁸⁷

CallTouch

- 11.60 We have considered NECSWS's submissions as to the best approach to the divestiture of Cortex and CallTouch. The CMA will generally prefer the divestiture

⁸⁸⁴ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁸⁸⁵ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁸⁸⁶ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.12.3.

⁸⁸⁷ NECSWS's response to the CMA's RFI 5, 24 October 2022, questions 88– 91.

of an existing business to the divestiture of part of a business or a collection of assets.⁸⁸⁸ Cortex and CallTouch together comprise NECSWS's current ICCS business and therefore, in line with the CMA's general preference, our view is that this existing business should be sold together as a single entity. We consider that this would give us the highest degree of certainty in terms of ensuring that the SLC is comprehensively addressed, because the entirety of NECSWS's pre-Merger ICCS offering would continue as it is currently constituted under single new ownership, independent of the Merged Entity, and this will reduce composition risk and purchaser risk related to the NECSWS ICCS [REDACTED] Remedy.

- 11.61 However, we recognise there is some potential residual risk that a joint sale of CallTouch and Cortex together might be so unattractive to purchasers that no suitable purchaser could be identified for the NECSWS ICCS [REDACTED] Remedy. We consider this to be a remote risk, noting that NECSWS has not provided any evidence alongside its submission that potential purchasers of the NECSWS ICCS [REDACTED] Remedy may not wish to purchase CallTouch.
- 11.62 In light of the above, we consider that NECSWS should be required to use its best endeavours to divest CallTouch as part of the NECSWS ICCS [REDACTED] Remedy to a single purchaser. [REDACTED].

Staffing

- 11.63 In relation to staffing, we understand that the appropriate operational resources could be identified relatively easily given that staff working in operational areas such as product management, development/quality assurance and product support are '[REDACTED]'.⁸⁸⁹
- 11.64 We understand from NECSWS that the staff members and teams that would be included in the divestiture are identifiable and separable in staff organisation charts, including what reporting lines would be.⁸⁹⁰ We would expect that all relevant staff working on the products included within this divestiture would be transferred to the purchaser, including but not limited to managers/senior leaders where the majority of the staff that report to them work on the divested products. As is standard practice for the CMA, the inclusion or exclusion of individual staff members would be outlined in final undertakings or a final order.
- 11.65 We also note that a portion of operational staff are [REDACTED] and excluded from the NECSWS ICCS [REDACTED] Remedy as it stands currently, [REDACTED]. The Parties suggested

⁸⁸⁸ CMA87, paragraph 5.12.

⁸⁸⁹ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.12.2.

⁸⁹⁰ NECSWS's response to the CMA's RFI 5, 24 October 2022, question 92.

that this could be addressed by a TSA for a suitable period of time while the potential purchaser identifies suitable staff to undertake these roles [X].⁸⁹¹ [X].

- 11.66 We note that the package would not include any generic non-operational staff such as HR, finance, legal and marketing, however evidence from potential purchasers suggests that the inclusion of these staff is not necessary and that purchasers would be able to either use existing staff to support these functions or readily obtain such services.

Site office

- 11.67 As regards the Parties' submission that NECSWS would be prepared to retain the [X] lease at the election of a potential purchaser, we note that we were told by third parties that:
- (a) 'To some extent, site ownership could be viewed as more of a liability than an asset in any divestiture'.⁸⁹²
 - (b) 'Site offices would not be particularly important to [X] who noted they recently closed some regional offices and hubs with changes in working patterns pre and post Covid. They would look to move, to the extent not already in place, to a hybrid way of working to better serve the needs of its staff'.⁸⁹³
 - (c) 'With respect to the importance of site offices, when [X] acquires business, it does consider locations, but this isn't the most critical aspect in its considerations'.⁸⁹⁴
 - (d) 'Due to the movement towards hybrid working, it is no longer imperative for a site office to be included in any divestment package and it ([X]) generally had a neutral stance on this issue'.⁸⁹⁵
- 11.68 The evidence from third parties indicates that the inclusion of a site office is not a critical part of a divestiture, and that it could potentially be a liability depending on the purchaser's circumstances and plans. Our view, therefore, is that the lease to NECSWS's office [X] should be included within the initial scope of the divestiture but could be removed at the election of the purchaser.

⁸⁹¹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁸⁹² Note of a call with a third party, October 2022, paragraph 11.

⁸⁹³ Note of a call with a third party, October 2022, paragraph 16.

⁸⁹⁴ Note of a call with a third party, October 2022, paragraph 10.

⁸⁹⁵ Note of a call with a third party, October 2022, paragraph 12.

Stream

- 11.69 NECSWS told us that it considers that it is not necessary or proportionate to include Stream within the scope of the NECSWS ICCS [REDACTED] Remedy but, if necessary, NECSWS would be content to either offer a purchaser of NECSWS's ICCS business a reseller agreement for Stream (so that the purchaser could offer Stream alongside NECSWS's ICCS product), or – if necessary – to fully divest Stream to a purchaser of NECSWS's ICCS business.⁸⁹⁶ [REDACTED]:
- (a) [REDACTED].⁸⁹⁷
 - (b) [REDACTED].⁸⁹⁸ and
 - (c) [REDACTED].⁸⁹⁹
- 11.70 [REDACTED].⁹⁰⁰ [REDACTED].⁹⁰¹
- 11.71 [REDACTED].⁹⁰²
- 11.72 Most customers told us that video streaming services are not an essential part of an ICCS product offering, but it is an optional add-on which is 'nice to have'. Most customers and competitors also told us that there are other suppliers of these services should customers wish to purchase this.⁹⁰³ Some customers told us that it was likely to be an important element of communications and safety advice in the future and that the use of the same ICCS platform to be able to access video streaming would be of benefit.⁹⁰⁴ One customer told us that having a single supplier providing both products would be their preference to enable better integration.⁹⁰⁵ NECSWS submitted that these customer views supported its position that its Stream offering was [REDACTED] and that customers do not consider there to be a link between ICCS and video streaming functionality.⁹⁰⁶
- 11.73 We also note that SSS also offers a video streaming product used currently by a number of emergency service customers.⁹⁰⁷

⁸⁹⁶ NECSWS's response to the CMA's RFI 4, 6 October 2022, question 78.

⁸⁹⁷ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.6.

⁸⁹⁸ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.6.

⁸⁹⁹ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.6.

⁹⁰⁰ NECSWS's response to the CMA's RFI 4, 6 October 2022, question 78.

⁹⁰¹ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.8.

⁹⁰² NECSWS Internal Document, Annex 217 to RFI 4, '[REDACTED]', 11 October 2022, slide 3.

⁹⁰³ Third party submissions to the CMA, October 2022.

⁹⁰⁴ For example [REDACTED] said 'Video streaming from customers via our ICCS system is in the future likely to be an important element of communications and safety advice'.

⁹⁰⁵ Third party submission to the CMA, October 2022.

⁹⁰⁶ Parties' response to the Remedies WP, 8 November 2022, paragraphs 2.6–2.8.

⁹⁰⁷ SSS offers a live video streaming product, 999Eye designed for emergency service customers currently being used by a number of fire and rescue services in the UK.

- 11.74 We have considered the positioning of Stream in NECSWS's internal documents.
[REDACTED].⁹⁰⁸ [REDACTED]:
- (a) [REDACTED].⁹⁰⁹
 - (b) [REDACTED].⁹¹⁰
 - (c) [REDACTED].⁹¹¹
- 11.75 NECSWS submitted that these documents reflected its [REDACTED] but that [REDACTED].⁹¹² NECSWS also submitted that further internal documents showed [REDACTED],⁹¹³ specifically the statement that Stream '[REDACTED]' and a suggestion to '[REDACTED]'.⁹¹⁴ NECSWS submitted that the documents cited above at paragraph 11.74 should not, therefore, be considered as evidence that Stream is [REDACTED] or a [REDACTED] in ICCS and that this is [REDACTED].⁹¹⁵
- 11.76 Notwithstanding the above, NECSWS submitted that, to the extent that we ultimately disagree with NECSWS's assessment, that it would be more proportionate to provide the proposed purchaser with optionality in respect of whether and, if so, how to acquire Stream.⁹¹⁶
- 11.77 We recognise that some customers procure streaming separately from ICCS and that there are other video streaming suppliers that a potential purchaser could partner with, or that it could potentially develop its own product (though this could take between 6–18 months). We also recognise that video streaming does not appear to be a core component to an ICCS offering at this stage.
- 11.78 However, as noted above, the CMA generally prefers the divestiture of an existing business to the divestiture of part of a business or a collection of assets.⁹¹⁷ Moreover, where there are carve outs from an underlying business the CMA may have less assurance that the purchaser will be supplied with all it requires to operate competitively.⁹¹⁸ In the present case, Stream [REDACTED], the current NECSWS ICCS offering includes Stream, and it is being [REDACTED].
- 11.79 [REDACTED] is not, in our view, determinative of Stream's importance, or unimportance, to the composition of the NECSWS ICCS [REDACTED] Remedy. Rather, in our view, it is also

⁹⁰⁸ NECSWS's response to the CMA's RFI 4, 6 October 2022, question 78.

⁹⁰⁹ NECSWS Internal Document, Annex 195 to the CMA's RFI 4, '[REDACTED]', May 2020, slide 3.

⁹¹⁰ NECSWS Internal Document, Annex 203 to the CMA's RFI 4, '[REDACTED]', August 2021, slide 2.

⁹¹¹ NECSWS Internal Document, Annex 217 to the CMA's RFI 4, '[REDACTED]', 11 October 2022, slide 3.

⁹¹² Parties' response to the Remedies WP, 8 November 2022, paragraph 2.9.

⁹¹³ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.9.

⁹¹⁴ NECSWS's response to the CMA's RFI 4, 6 October 2022, Annex 205, slide 3 and 8. In the same presentation NECSWS also suggested an option of '[REDACTED]'.

⁹¹⁵ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.9.

⁹¹⁶ Parties' response to the Remedies WP, 8 November 2022, paragraphs 2.10 and 2.11.

⁹¹⁷ [CMA87](#), paragraph 5.12.

⁹¹⁸ [CMA87](#), paragraph 5.14.

apparent, on our reading of NECSWS internal documents that Stream was [REDACTED]. Whilst we recognise that it is possible that NECSWS's view of the importance of this product [REDACTED].

- 11.80 Moreover, the evidence from some customers and competitors also suggests that video streaming could be an increasingly important aspect of an ICCS offering in the future. For these reasons our view is that Stream should be included within the scope of a NECSWS ICCS divestiture package. For the same reasons, we would be concerned that a divestiture package would be subject to composition risk if it did not include Stream and that, therefore, any prospective purchaser should be required to acquire it with the NECSWS ICCS [REDACTED] Remedy. We have also not received evidence that a divestiture package including Stream would be so unattractive as to be likely to put off purchasers. We also note that [REDACTED],⁹¹⁹ but consider that this would not preclude purchaser interest as the option to enter into sub-contracting arrangements would potentially still exist (see paragraph 11.97). We, therefore, do not consider that it is appropriate or necessary to provide optionality in respect of Stream to a prospective purchaser.

CAD

- 11.81 Some third party customers and businesses told us that it was an advantage for ICCS to be offered to customers alongside a CAD product.⁹²⁰ It therefore appears that a combined offering of ICCS with CAD would be more attractive for some customers and potential purchasers, but not necessarily all (for example those purchasers that already have CAD or customers who contract for this separately and therefore want the option of a standalone ICCS product). We consider issues relating to potential purchasers in the section below. In relation to the scope of the divestiture, we consider that the NECSWS ICCS [REDACTED] Remedy could be an effective solution to the SLC in ICCS, notwithstanding the fact that it does not contain a CAD product, for the following reasons:

- (a) Divesting ICCS without CAD would replicate the pre-Merger structure of the market in that one of the Parties (NECSWS) had ICCS but not CAD before the Merger; and
- (b) Customers seeking both CAD and ICCS still have alternative options available from other suppliers that offer both or who partner with other suppliers that offer CAD ([REDACTED]).

- 11.82 We also note from NECSWS that '[REDACTED]'.⁹²¹

⁹¹⁹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

⁹²⁰ Note of a call with a third party, October 2022, paragraph 2; Note of a call with a third party, October 2022, paragraph 3; Response to the CMA questionnaire from two third parties, October 2022, question 2.

⁹²¹ NECSWS's response to the CMA's RFI 5, 24 October 2022, question 98.

Geographical Information Systems

11.83 The NECSWS ICCS [REDACTED] Remedy would not include the transfer of NECSWS's Geographical Information Systems (**GIS**) product. GIS is an electronic mapping software product which is used across emergency services within back-office operations (such as analysts for crime mapping) and by call handlers. NECSWS told us in relation to GIS:

- (a) it was developed by Northgate Public Services (now NECSWS);
- (b) it has been offered to NECSWS's customers for many years [REDACTED];
- (c) it is supplied [REDACTED];
- (d) customers do not [REDACTED];
- (e) [REDACTED]; and
- (f) no other ICCS-only vendor to emergency services customers also supplies a mapping solution.⁹²²

11.84 NECSWS told us that that its GIS product [REDACTED].⁹²³

11.85 From the evidence above we consider that GIS is not supplied as part of NECSWS's ICCS offering but rather it is supplied as a separate product. Therefore, we do not consider it necessary for the NECSWS ICCS [REDACTED] Remedy to include GIS. We note that NECSWS proposes to [REDACTED] ([REDACTED]) [REDACTED].⁹²⁴ This is considered at paragraphs 11.97 and 11.98.

Conclusion on scope

11.86 Our view is that the NECSWS ICCS [REDACTED] Remedy should be required to have the following scope:

- (a) the products, relevant customer contracts, IP and resources set out at paragraph 11.50 above, including those formerly associated with NECSWS's APD subsidiary including its ICCS Cortex product, Aspire CRM product, and Artemis telematic and fleet management system (the APD Business), on the understanding this includes all planned, ongoing or completed product development projects (eg cloud technology and the outputs of [REDACTED] mentioned at paragraph 11.82 above);
- (b) CallTouch;

⁹²² Parties' response to CMA questions of 15 November 2022, GIS questions 1 and 2.

⁹²³ Parties' response to CMA questions of 15 November 2022, GIS questions 1 and 2.

⁹²⁴ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4.

- (c) Stream;
- (d) [REDACTED] UK staff members, [REDACTED];
- (e) At the discretion of the purchaser, either:
 - (i) [REDACTED] staff members [REDACTED]; or
 - (ii) a TSA to provide the purchaser access to [REDACTED] members of staff [REDACTED].
- (f) all relevant IP associated with the Cortex, Aspire, Artemis, CallTouch and Stream products;
- (g) assignment of the lease to NECSWS's office [REDACTED] (at the discretion of the purchaser); and
- (h) the transfer of the CallTouch laboratory equipment.

Availability and suitability of purchasers

- 11.87 Our guidance sets out a number of criteria that the CMA will wish to satisfy itself regarding the availability and suitability of prospective purchasers (see paragraph 11.31), which we have taken into account in our assessment below and within each of the other alternative remedy options we have considered. We have conducted a number of calls with third parties potentially interested in a divestiture of one of the businesses.
- 11.88 As noted at paragraph 11.46 above, five third party businesses told us they may be interested in a potential purchase of a standalone ICCS divestiture ([REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]) from either NECSWS or SSS and one ([REDACTED]) told us they may be interested in NECSWS's ICCS specifically.
- 11.89 In terms of purchaser appetite for a potential divestiture of ICCS from NECSWS specifically, we were told:
- (a) A potential purchaser's existing relationship with NECSWS would make a purchase of NECSWS's ICCS more attractive than SSS's ICCS.⁹²⁵
 - (b) The choice of NECSWS or SSS ICCS depends on the best fit with the buyer's existing software portfolio.⁹²⁶

⁹²⁵ Note of a call with a third party, October 2022, paragraph 2.

⁹²⁶ Response to the CMA questionnaire from a third party, October 2022, question 1.

- (c) The NECSWS ICCS is a [REDACTED], which we understand to mean a purchaser would want to move NECSWS ICCS customers to their own ICCS product if they have one.⁹²⁷

11.90 We were also told by two potential purchasers that their interest in a purchase of an ICCS divestiture was made stronger by the opportunity to complement their existing CAD offering.⁹²⁸

Assessment of purchaser suitability and availability

11.91 From the available evidence, we consider that:

- (a) there would be purchaser interest in a divestiture of ICCS;
- (b) purchasers' preference between NECSWS and SSS ICCS might be influenced by the purchaser's existing product links with the Parties products and the comparative revenues/financials and existing profile of customer contracts; and
- (c) the lack of a CAD product within the scope of the divestiture would not preclude purchaser interest and indeed would attract it in some cases.

11.92 We set out the CMA's criteria for purchaser suitability in paragraph 11.31. Of the third parties that noted interest, there is one ([REDACTED]) that we consider has the potential to raise competition concerns should its purchase of NECSWS's divestment go ahead. We therefore consider that on the basis of the current evidence there are at least four purchaser candidates that would be available and have the potential to be suitable.

Effective divestiture process

11.93 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

- (a) the transfer of customer contracts from the divesting business to the purchaser;
- (b) agreement of a TSA for staff [REDACTED] (if required);
- (c) ensuring the competitive capability of the divestiture package does not deteriorate before completion of the divestiture; and

⁹²⁷ Response to the CMA questionnaire from a third party, October 2022, question 8.

⁹²⁸ Note of a call with a third party, October 2022, paragraph 1; Note of a call with a third party, October 2022, paragraph 3.

(d) the appropriate timescale for divestiture to take place.

11.94 We consider these in turn below.

Transfer of contracts

11.95 NECSWS told us that the NECSWS ICCS [REDACTED] Remedy would not give rise to any material contract separation issues. This is because [REDACTED].⁹²⁹

11.96 NECSWS told us that ‘contracts that span different products are a typical aspect of the industry, and can be separated out if required. Separation of such contracts is simply one aspect to be addressed as part of any transaction or indeed a divestiture process – this is not an impediment to effective implementation and can realistically be achieved’.⁹³⁰

11.97 NECSWS told us that ‘[t]he most likely way to ensure continuity of supply to customers once a contract for more than one product has been separated out is that one supplier remains as the ‘prime’ supplier and the other becomes a sub-contractor for the remaining services under the contract. Subcontracting of services is common in the industry’.⁹³¹

11.98 We have been told by an interested purchaser that such arrangements are common in the industry and could be a suitable way around these issues.⁹³² On this basis, we consider that NECSWS’s proposal [REDACTED] in the event of divestiture would be workable.

11.99 On novation of customer contracts, we understand from NECSWS that [REDACTED] of their [REDACTED] ICCS contracts would require customer consent to novation.⁹³³ The Parties also told us that [REDACTED] and that [REDACTED].⁹³⁴

11.100 NECSWS [REDACTED]. NECSWS told us that ‘[REDACTED]’.⁹³⁵ This view was shared by the interested purchasers we spoke to.⁹³⁶

11.101 Customers in the industry told us that their consent to novation would be determined by:

⁹²⁹ NECSWS’s response to the Remedies Notice, 30 September 2022, Table 4.

⁹³⁰ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 2.16.

⁹³¹ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 2.17.

⁹³² Note of a call with a third party, October 2022, paragraph 7.

⁹³³ NECSWS, response hearing transcript, page 49.

⁹³⁴ Parties’ response to the Remedies WP, 8 November 2022, paragraph 2.12.5.

⁹³⁵ NECSWS’s response to the Remedies Notice, 30 September 2022, page 16.

⁹³⁶ Note of a call with a third party, October 2022, paragraph 10; Note of a call with a third party, October 2022, paragraph 7.

- (a) the new owner being a responsible company from a friendly nation with sufficient resources and commitment to invest in their products;⁹³⁷
- (b) current contract terms, staff access and technical support being maintained;⁹³⁸ and
- (c) current products being maintained, and any revised contract terms and conditions.⁹³⁹

11.102 Of the factors raised by customers above, we consider that these concerns could be addressed by a suitable purchaser that is committed to the market. As set out at paragraph 11.31 above, our purchaser approval process will take this factor into account.

11.103 We therefore consider that the transfer of contracts that would be required from the NECSWS ICCS [X] Remedy would not undermine an effective divestiture process.

Agreement of TSA

11.104 As set out at paragraphs 11.65 and 11.86(e) above, a purchaser may require a TSA for the services of NECSWS's staff [X] should these staff not transfer as part of the divestiture. In such a scenario the TSA would need to be agreed between NECSWS and the purchaser as part of the divestiture process.

11.105 We have not received any evidence that agreeing a TSA would be a concern for purchasers, and consider that it would not threaten an effective divestiture process for the following reasons:

- (a) NECSWS has already recognised the potential need for a TSA and is willing to put one in place as part of the NECSWS ICCS [X] Remedy; and
- (b) the CMA will review and approve transaction documents, including any TSA, as part of the remedy implementation process.

Ensuring the divestiture package does not deteriorate

11.106 In order to be satisfied that the proposed divestiture package would not deteriorate during the divestiture process, we have identified two areas of concern which could introduce risks undermining the effectiveness of the remedy:

- (a) retention of staff; and

⁹³⁷ Response to the CMA questionnaire from a third party, October 2022, question 7.

⁹³⁸ Response to the CMA questionnaire from a number of third parties, October 2022, question 7.

⁹³⁹ Response to the CMA questionnaire from a third party, October 2022, question 7.

(b) retention of customers.

11.107 On retention on staff, [REDACTED]. [REDACTED].

11.108 We have not received evidence to suggest that retention of staff would be a particular issue during divestiture of the NECSWS ICCS [REDACTED] Remedy, albeit we recognise that as with any divestiture there would be some staff uncertainty and potential unease. We also heard from two potential purchasers that raised some concerns about [REDACTED] staff integration in the event of proceeding with a divestiture. In this regard, the Parties submitted that such third parties are likely not well placed to assess [REDACTED] within NECSWS and this is a potential, rather than actual, concern that would be alleviated with the provision of information.⁹⁴⁰ We consider that retention of key NECSWS staff will need to be a key focus for interim measures up to the point of divestiture, and we would instruct the Monitoring Trustee to work with the Parties to ensure that this is actively managed and [REDACTED] to ensure staff retention.

11.109 On retention of customers, we have not seen evidence of this being a concern for NECSWS at present. Amongst the market participants we spoke to, only retention of customers by SSS has been raised as a factor in potential divestiture options.⁹⁴¹

11.110 A key factor in retention of customers in the event of divestiture would be the need to achieve customer consent for novation of contracts. As set out above, the available evidence indicates that achieving customer novations can be reasonably expected of a purchaser approved in our remedies process.

11.111 We therefore consider that the risks of deterioration of the divestiture package are capable of being effectively managed, and that consequently these risks are not sufficient to compromise the effectiveness of this remedy option.

Timescale for divestiture

11.112 In considering an appropriate timescale to allow NECSWS to implement any required divestiture (the **Initial Divestiture Period**), our guidance states that we 'will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence'. Our guidance also states that the Initial Divestiture Period will normally not exceed six months.⁹⁴²

⁹⁴⁰ Parties' response to the Remedies WP, 8 November 2022, paragraph 2.12.4.

⁹⁴¹ Note of a call with a third party, October 2022, paragraph 5.

⁹⁴² [CMA87](#), paragraph 5.41.

11.113 NECSWS told us that it could complete the disposal of the NECSWS ICCS [REDACTED] Remedy [REDACTED], and [REDACTED].⁹⁴³

11.114 When asked how long they would expect a divestiture of ICCS to take, third parties gave us responses that ranged from under two months up to six-to-nine months.⁹⁴⁴

11.115 The available evidence indicates that the divestiture of the NECSWS ICCS [REDACTED] Remedy could reasonably be expected to complete within [REDACTED] and potentially sooner, which would be in line with our expectations set by CMA guidance. We therefore conclude that a timescale of up to [REDACTED] for divestiture should be adopted.

Our assessment of the NECSWS ICCS [REDACTED] Remedy

11.116 As set out above, the NECSWS ICCS [REDACTED] Remedy would:

- (a) have the scope to compete effectively in the ICCS market;
- (b) be attractive to a number of potentially suitable purchasers; and
- (c) enable an effective divestiture process that could lead to a sale within [REDACTED].

11.117 Therefore our view is that the NECSWS ICCS [REDACTED] Remedy, amended to provide for the scope summarised at paragraph 11.86, would be an effective solution to the SLC in the supply of ICCS.

SSS ICCS [REDACTED] Remedy

Description of remedy

11.118 The SSS ICCS [REDACTED] Remedy would involve the Parties divesting the ICCS operations of SSS to a suitable purchaser. This would include the products, relevant customer contracts, IP and resources associated with SSS's DSx ICCS platform.⁹⁴⁵

Views of the Parties

11.119 NECSWS submitted that the SSS ICCS [REDACTED] Remedy would in principle address an SLC in ICCS as it would lead to a structural change in the market, and would

⁹⁴³ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4 and NECSWS, response hearing transcript, page 34.

⁹⁴⁴ Response to the CMA questionnaire from a number of third parties, October 2022, question 10.

⁹⁴⁵ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 6.2 and SSS, response hearing transcript, 4 October 2022, page 23.

entirely remove the overlap between SSS and NECSWS in the supply of ICCS to emergency services and transport customers.⁹⁴⁶

11.120 NECSWS considers that the SSS ICCS [REDACTED] Remedy would be [REDACTED].⁹⁴⁷

11.121 SSS told us it believes that [REDACTED] having, SSS assumes, [REDACTED].⁹⁴⁸

11.122 On process, NECSWS stated that [REDACTED].⁹⁴⁹ It told us that [REDACTED].⁹⁵⁰

11.123 SSS told us that divestiture of its ICCS product [REDACTED].⁹⁵¹ As set out above, NECSWS anticipates a timeline of divestiture within [REDACTED] for the SSS ICCS [REDACTED] Remedy.⁹⁵²

Views of third parties

11.124 In assessing the SSS ICCS [REDACTED] Remedy we have taken into account the general comments third parties made on divestitures set out from paragraph 11.44 above which also apply here. As regards specifically the SSS ICCS business, a third party told us the ‘perception in the market is that SSS had the better technology (for ICCS compared to NECSWS)’.⁹⁵³

Scope of remedy

11.125 For our assessment of the scope of the SSS ICCS [REDACTED] Remedy, we consider the following aspects of the remedy:

- (a) products and contracts;
- (b) staff resources; and
- (c) any other resources.

Products and contracts

11.126 As noted above, the SSS ICCS [REDACTED] Remedy would include the DSx ICCS product as well as all of its associated contracts.⁹⁵⁴ There are [REDACTED] contracts with an ICCS element, [REDACTED].⁹⁵⁵

⁹⁴⁶ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 6.3.

⁹⁴⁷ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 7.3.3.

⁹⁴⁸ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 3.1.3.

⁹⁴⁹ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 7.2.

⁹⁵⁰ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 6.2.

⁹⁵¹ SSS’s response to the Remedies Notice, 30 September 2022, Section 3e.

⁹⁵² NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 5.11.

⁹⁵³ Note of call with a third party, October 2022, paragraph 2.

⁹⁵⁴ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 6.2.

⁹⁵⁵ SSS’s further submission on remedies, 19 October 2022, paragraph 2.2.

Staff resources

11.127 Included in the divestiture would be [REDACTED] UK staff members, including [REDACTED] at [REDACTED] level, and [REDACTED] from the [REDACTED].⁹⁵⁶

11.128 NECSWS told us:⁹⁵⁷

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED]. These resources would need to be separated out, acquired and/or provided by the divestiture purchaser.

Other resources

11.129 All relevant IP associated with DSx would be included.⁹⁵⁸

11.130 NECSWS told us that '[REDACTED]'.⁹⁵⁹

11.131 ICCS operations do not have distinct premises and there would therefore not be an office site included in the divestiture.⁹⁶⁰

Assessment of scope

11.132 We note that the SSS ICCS [REDACTED] Remedy would include SSS's ICCS product DSx, and its associated contracts and IP. This should therefore provide a purchaser with the ICCS customers currently contracting with SSS, as well as enabling the purchaser to offer DSx to customers.

11.133 However, as set out in detail from paragraph 11.145 below, at least [REDACTED] ICCS contracts would need to be split out from existing contracts that also cover other SSS products. It is not clear how easy it would be to split these contracts, including in terms of allocating revenues between the various products, which could raise some commercial uncertainty and/or risk for any divested SSS ICCS business.

11.134 Several third parties expressed interest in acquiring an ICCS product that was not bundled with other products. On this we note that the SSS ICCS [REDACTED] Remedy

⁹⁵⁶ SSS's response to the CMA's follow up question, 6 October 2022, question 1(b).

⁹⁵⁷ NECSWS's response to the Remedies Notice, 30 September 2022, paragraphs 6.4.1– 6.4.4.

⁹⁵⁸ SSS, response hearing transcript, page 23.

⁹⁵⁹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 6.4.3.

⁹⁶⁰ SSS, response hearing transcript, page 21, lines 15–24.

contains many fewer products than a full divestiture of SSS, and so would potentially be attractive to these parties.

- 11.135 This remedy, as described by the Parties, excludes any video streaming product. However, SSS does offer a video streaming product (999Eye) that is currently used by a number of customers in the UK. As explained from paragraph 11.72 above, evidence from customers and competitors suggests that video streaming could be an increasingly important aspect of an ICCS offering in the future. For similar reasons to those set out in our assessment of the NECSWS ICCS [REDACTED] Remedy, our view is that 999Eye should be included within the scope of the SSS ICCS [REDACTED] Remedy.
- 11.136 We also note, as set out in our assessment of the NECSWS ICCS [REDACTED] Remedy, that some third party customers and businesses told us that it was an advantage for ICCS to be offered to customers alongside a CAD product.⁹⁶¹ It therefore appears that a combined offering of SSS's ICCS with its CAD could be more attractive for some customers (particularly those that have already purchased both products together) and potential purchasers, though not necessarily all (for example those purchasers that already have CAD or customers who contract for this separately and therefore want the option of a standalone ICCS product). Consequently, to restore the competitive conditions in ICCS pre-Merger (where SSS, unlike NECSWS, had a CAD offering as well as ICCS), and ensure the commercial viability of any SSS ICCS divestiture, it might potentially be necessary for the SSS ICCS [REDACTED] Remedy to include the SSS CAD product as part of the divestiture.
- 11.137 The core staff resource included within this divestiture would be [REDACTED] that are generally identifiable as part of SSS's ICCS operations. However, it is not clear [REDACTED] staff, [REDACTED], will be included from areas such as [REDACTED]. Such staff members would need to be identified, allocated and split out as part of a divestiture process and it is not clear, at this stage, what the outcome or risk profile of this process would be. We also note that NECSWS evidence set out in paragraph 11.128 above [REDACTED], which could further increase the risks associated with this potential divestiture package.

Availability and suitability of purchasers

- 11.138 As noted at paragraph 11.46 above, four third party businesses told us they may be interested in a purchase of a standalone ICCS divestiture ([REDACTED], [REDACTED], [REDACTED] and [REDACTED]) from either NECSWS or SSS.

⁹⁶¹ Note of a call with a third party, October 2022, paragraph 2; Note of a call with a third party, October 2022, paragraph 3; Response to the CMA questionnaire from a number of third parties, October 2022, question 2.

11.139 In terms of purchaser appetite for a divestiture of ICCS from SSS specifically, we were told:

- (a) more information on revenues and contract profiles would need to be known to form a comparative judgement of SSS's ICCS and NECSWs's ICCS.⁹⁶²
- (b) the choice of NECSWs or SSS ICCS depends on the best fit with the buyer's existing software portfolio.⁹⁶³
- (c) a potential purchaser that expressed interest in purchasing an ICCS divestiture package told us that SSS's ICCS was their preference (though it also said it would be interested in NECSWs ICCS).⁹⁶⁴

11.140 We were also told by two potential purchasers that their interest in a purchase of an ICCS divestiture was made stronger by the opportunity to complement their existing CAD offering.⁹⁶⁵

Assessment of purchaser suitability and availability

11.141 From the available evidence, we consider that:

- (a) there would be purchaser interest in a divestiture of ICCS;
- (b) purchasers' preference between NECSWs and SSS ICCS might be influenced by the comparative revenues/financials and existing profile of customer contracts; and
- (c) the lack of a CAD product within the scope of the divestiture could preclude some but not all purchaser interest.

11.142 We set out the CMA's criteria for purchaser suitability in paragraph 11.31. Of the third parties that noted interest, there is one ([X]) that we consider would be likely to raise competition concerns as regards a potential ICCS divestiture. We therefore consider that on the basis of the current evidence there are at least three purchaser candidates that have the potential to be suitable.

Effective divestiture process

11.143 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

⁹⁶² Response to the CMA questionnaire from a third party, October 2022, question 2.

⁹⁶³ Response to the CMA questionnaire from a third party, October 2022, question 1.

⁹⁶⁴ Third party submission to the CMA, 5 October 2022.

⁹⁶⁵ Note of a call with a third party, October 2022, paragraph 1; Note of a call with a third party, October 2022, paragraph 3.

- (a) the transfer of customer contracts from the divesting business to the purchaser;
- (b) ensuring the competitive capability of the divestiture package does not deteriorate before completion of the divestiture; and
- (c) the appropriate timescale for divestiture to take place;

11.144 We consider these in turn below.

Transfer of contracts

11.145 The Parties told us SSS's ICCS solution is typically supplied to customers either on a standalone basis or in conjunction with other SSS solutions. The following SSS contracts for the supply of ICCS also involve the supply of other SSS products:

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].⁹⁶⁶

11.146 NECSWS told us that, 'for the SSS ICCS contracts that also involve the supply of another SSS solution, these shared contracts would need to be separated out. One way of achieving this may be by one of the parties (ie SSS or the purchaser) remaining the prime supplier for such contracts and sub-contracting the provision of the other solution to the other party (ie the one which owns that solution). NECSWS understands that [REDACTED].'⁹⁶⁷

11.147 SSS told us that [REDACTED].⁹⁶⁸

11.148 We note, as set out in our assessment of the NECSWS ICCS [REDACTED] Remedy, that a third party told us (in response to a hypothetical question regarding contract separation) that sub-contracting arrangements in the event of divestiture would be workable.⁹⁶⁹ However it was also recognised that this would be more complex and potentially time consuming to resolve than a divestiture without the need for such arrangements.

11.149 We understand that the SSS ICCS [REDACTED] Remedy would require at least [REDACTED] to be separated to form ICCS-only contracts (this represents [REDACTED]). Given the number of contracts to be split, this significantly increases the risks associated with this

⁹⁶⁶ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 6.4.5.

⁹⁶⁷ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 6.4.6.

⁹⁶⁸ SSS's response to the Remedies Notice, 30 September 2022, paragraph 3.17.

⁹⁶⁹ For example, note of a call with a third party, October 2022, paragraph 8.

remedy. SSS submitted that the contract splitting process could be carried out in the following way:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED].⁹⁷⁰

11.150 It is possible that as a result of the splitting process revenues may not be appropriately apportioned, or some customers may not provide consent to their contracts being split. Although third parties told us that sub-contracting could in theory be a workable solution, we note that these parties do not have full visibility of the contracts. Therefore, we consider there remains a substantial risk that a process involving splitting [REDACTED] would encounter challenges when implemented.

11.151 On novation of customer contracts, we understand from the Parties that [REDACTED]⁹⁷¹ of their [REDACTED]⁹⁷² ICCS contracts would require customer consent to novation. As set out at paragraph 11.102 above, our purchaser approval process would consider the purchaser's commitment to the market which could influence customers' consent to novation. Furthermore, the same customers have already been through the novation process in relation to the Merger and therefore have an existing understanding of the process. However we note that some additional risks would remain where a [REDACTED] number of contracts would need to novate successfully.

11.152 There is therefore some uncertainty regarding the likelihood of successful transfer of contracts, particularly due to the issues related to contract separation. It is possible that the process could be carried out effectively, but given the large number of contracts affected and complexity of splitting the joint contracts this increases the risks of this divestiture option. We note, however, the inclusion of SSS's CAD in this remedy may reduce substantially the number of contracts needing to be split and so, to a degree, would mitigate this risk given that the majority of the relevant contracts relate to a joint supply of ICCS and CAD (albeit not all). We consider the impact of such a potential adjustment on the overall effectiveness of the SSS ICCS [REDACTED] Remedy in paragraph 11.164 below.

Ensuring the divestiture package does not deteriorate

11.153 In order to be satisfied that the proposed divestiture package would not deteriorate during the divestiture process, we have identified two key areas with which we must be comfortable:

⁹⁷⁰ SSS's further submissions on remedies, 19 October 2022, question 2(b).

⁹⁷¹ NECSWS, response hearing transcript, page 49.

⁹⁷² NECSWS's response to CMA query of 3 October 2022, '[REDACTED]', 12 October 2022.

- (a) retention of staff; and
- (b) retention of customers.

- 11.154 On retention on staff, SSS told us ‘SSS’s staff have already faced a long period of significant uncertainty, without any clear future direction of the ownership of the business. [REDACTED]’.⁹⁷³ We do though note that this submission relates to a potential full divestiture of SSS, rather than its ICCS operations.
- 11.155 Although the evidence in paragraph 11.154 above relates to a full divestiture of SSS, we recognise that as with any divestiture there would be some staff uncertainty and potential unease during implementation of the SSS ICCS [REDACTED] Remedy. [REDACTED].
- 11.156 An important factor in a successful divestiture would be to ensure that key SSS staff working on ICCS continue to work and transfer with the divestiture. This would need to be a focus of the Monitoring Trustee, noting the additional risk that not all such key staff are identified and allocated to the divested entity appropriately (see paragraph 11.137).
- 11.157 On retention of customers, SSS told us ‘In the public safety sector, customers want their suppliers to be long-term, reliable partners. [REDACTED]’.⁹⁷⁴ We do though note that this submission relates to a potential full divestiture of SSS, rather than its ICCS operations.
- 11.158 A key factor in the retention of customers in the event of divestiture would be the need to achieve customer consent for novation of contracts. As set out above, as part of the purchaser approval process the CMA would seek to ensure that a credible purchaser has been identified, which is likely to provide customers with reassurance and increase the likelihood of successfully novating its contracts, but there remain some additional risks when a large number of contracts require novation.

Timescale for divestiture

- 11.159 As set out above, our guidance states that the Initial Divestiture Period will normally not exceed six months.⁹⁷⁵
- 11.160 SSS told us that [REDACTED],⁹⁷⁶ which NECSWS anticipates would take [REDACTED] and [REDACTED].⁹⁷⁷

⁹⁷³ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 2.13.1.

⁹⁷⁴ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 2.13.2.

⁹⁷⁵ [CMA87](#), paragraph 5.41.

⁹⁷⁶ SSS’s response to the Remedies Notice, 30 September 2022, Section 3(e).

⁹⁷⁷ NECSWS’s response to the Remedies Notice, 30 September 2022, Table 4 and NECSWS, response hearing transcript, page 34.

11.161 When third parties were asked how long they would expect a divestiture of ICCS to take, we were given responses that ranged from under two months up to six-to-nine months.⁹⁷⁸

11.162 The available evidence indicates that, while it could potentially take longer, the divestiture of the SSS ICCS [X] Remedy could reasonably be expected to complete within [X], which would be in line with our expectations set by CMA guidance. We therefore conclude that a timescale of up to [X] for divestiture should be adopted.

Our assessment of the SSS ICCS [X] Remedy

11.163 As set out above, we consider that the SSS ICCS [X] Remedy:

- (a) should have the scope to compete effectively in the market, but it would need to overcome some risks relating to:
 - (i) multi-product contracts – in that all ICCS revenues within these contracts would need to be sufficiently included within separated ICCS-only contracts for the purchaser to acquire; and
 - (ii) staff – all staff working on ICCS would need to be identified and allocated to the divestiture package appropriately;
- (b) can be expected to attract a number of purchasers; and
- (c) has risks in terms of ensuring an effective divestiture process relating to transfer of contracts and staff.

11.164 On this basis, our conclusion is that the SSS ICCS [X] Remedy would have a higher risk profile than an appropriately scoped NECSWS ICCS divestiture. It is not clear to us that all of the identified risks could be mitigated to such an extent in order to provide us with sufficient confidence to conclude that this remedy would be an effective solution to the SLC in the supply of ICCS. As noted at paragraph 11.152 above, an amendment of this remedy to include SSS's CAD may mitigate some of the risks associated with contract splitting. However, we would still, in such a scenario, be unable to conclude with confidence that the SSS ICCS [X] Remedy would be an effective solution to the SLC in the supply of ICCS because it would remain unclear how the risks around staffing (set out in paragraphs 11.137 and 11.156 above) would be mitigated.

⁹⁷⁸ Response to the CMA questionnaire from a number of third parties, October 2022, question 10.

NECSWS Duties [REDACTED] Remedy

Description of remedy

11.165 The NECSWS Duties [REDACTED] Remedy would involve the Parties divesting the Duties operations of NECSWS to a suitable purchaser. This would include the products, relevant customer contracts, IP and other resources associated with CARM.⁹⁷⁹

Views of the Parties

11.166 NECSWS submitted that the NECSWS Duties [REDACTED] Remedy would be [REDACTED] effective in remedying an SLC in Duties as it would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers, and would lead to a structural change in the market addressing an SLC in Duties.⁹⁸⁰

11.167 NECSWS considers that the NECSWS Duties [REDACTED] Remedy would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties, noting [REDACTED] and has short-term profitability for CARM.⁹⁸¹

11.168 NECSWS stated that there will be a pool of independent, well-funded potential purchasers which are likely to be interested in acquiring these assets, [REDACTED].⁹⁸²

11.169 NECSWS highlighted [REDACTED] potential purchasers of the NECSWS Duties [REDACTED] Remedy.⁹⁸³ SSS identified [REDACTED] potential purchasers of a Duties business.⁹⁸⁴ [REDACTED] was identified by both Parties.⁹⁸⁵

11.170 NECSWS also stated that:

- (a) [REDACTED]. [REDACTED], and therefore is likely to be attractive to potential purchasers. Given that the core technology underlying CARM is [REDACTED], there is [REDACTED] to support its customer base;
- (b) CARM, as a narrowly focused Duties planning solution, has [REDACTED]. CARM could therefore [REDACTED] (which would make it attractive to a range of potential purchasers/customers);
- (c) CARM may be additionally attractive to potential purchasers who have an existing ERP/HR solution, due to the fact that CARM would be complementary;⁹⁸⁶

⁹⁷⁹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

⁹⁸⁰ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.4.

⁹⁸¹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.5.1.

⁹⁸² NECSWS's response to the Remedies Notice, 30 September 2022, paragraphs 8.8–8.9.

⁹⁸³ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

⁹⁸⁴ SSS's further submission on remedies, 19 October 2022, paragraph 7.3.

⁹⁸⁵ [REDACTED].

⁹⁸⁶ Parties' Response to the Remedies WP, 8 November 2022, paragraph 3.2.4.

- (d) The CARM product, and associated customer contracts and resources, could be [REDACTED] separated out from the remainder of NECSWS's business for the purposes of a divestiture, within a time period acceptable to the CMA. The CARM business is relatively limited in scope, with [REDACTED] customers and relevant employees; CARM is a narrow, standalone product and does not need to be separated out from other products in a technical sense. It is also unlikely that there would be any material challenges in separating out the CARM customer contracts within the relevant timeframe, in particular since [REDACTED]. All of the above would facilitate efficient due diligence, commercial and financial handover processes. As such, CARM can readily be acquired by a third-party purchaser without implementation risk or cost for existing customers;⁹⁸⁷ and
- (e) NECSWS's view is that obtaining relevant consents from customers of CARM should be readily achievable, bearing in mind the [REDACTED] customers involved and the limited scope and impact of the divestiture for customers.⁹⁸⁸

11.171 On process, NECSWS stated that the NECSWS Duties [REDACTED] Remedy would be readily capable of timely implementation and envisages a timeline to disposal of [REDACTED].⁹⁸⁹

Views of third parties

11.172 Views from customers on a standalone Duties divestiture were mixed. For example, we were told that:

- (a) a standalone Duties offering (ie not bundled with other products) would be a viable procurement option;⁹⁹⁰ and
- (b) standalone products should be an option for customers to access best of breed solutions.⁹⁹¹

11.173 We also heard other points from customers such as:

- (a) a Duties system that is fully integrated into a wider ERP/HR solution is extremely beneficial and would certainly make this more attractive within the market;⁹⁹² and
- (b) Duties solutions tend to come with interfaces/links to ERP solutions rather than CMS, CAD or ICCS. Therefore, a standalone Duties solution would be less attractive than one that is proven to interface to ERP, but not

⁹⁸⁷ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.5.4.

⁹⁸⁸ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.5.

⁹⁸⁹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.6

⁹⁹⁰ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁹⁹¹ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁹⁹² Response to the CMA questionnaire from a third party, October 2022, question 2.

significantly so. This is because there is always interface/integration work required to link these systems and the capabilities of a Duties system are largely different from CAD and CMS.⁹⁹³

11.174 Six third party businesses told us they may be interested in a purchase of a standalone Duties divestiture ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]) – although two of these purchasers were primarily interested in ICCS and one was more broadly interested in a full SSS divestiture.

11.175 As well as the general points on divestitures set out from paragraph 11.47 above, on the choice of a divestiture of Duties from NECSWS or SSS third party businesses told us:

- (a) without detailed knowledge of the capabilities in the different solution sets it is difficult to confirm which combination is preferred (out of NECSWS Duties and SSS Duties) – but its expectation would be to acquire the platform that has been more successful in recent years and has been ‘invested’ in from a product & technology perspective;⁹⁹⁴ and
- (b) the choice of NECSWS or SSS Duties depends on the best fit with the buyer’s existing software portfolio.⁹⁹⁵

11.176 On NECSWS Duties specifically, one third party told us that CARM has more ‘room to grow’ than SSS Duties as a result of its lower market share and relative under-marketing by NECSWS.⁹⁹⁶

Scope of remedy

11.177 For our assessment of scope for each potential remedy, we consider the following aspects of the remedy:

- (a) products and contracts;
- (b) staff resources; and
- (c) any other resources.

⁹⁹³ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁹⁹⁴ Response to the CMA questionnaire from a third party, October 2022, question 2.

⁹⁹⁵ Response to the CMA questionnaire from a third party, October 2022, question 1.

⁹⁹⁶ Note of a call with a third party, October 2022, paragraph 4.

Products and contracts

11.178 As noted above, the NECSWS Duties [REDACTED] Remedy would include the NECSWS CARM product and its contracts. [REDACTED].⁹⁹⁷

Staff resources

11.179 Included in the divestiture would be [REDACTED] UK staff members [REDACTED].⁹⁹⁸

11.180 [REDACTED] members of staff [REDACTED] would not be transferred to the purchaser but would be accessible in the short term through a TSA.⁹⁹⁹

Other resources

11.181 All relevant IP associated with CARM would be included, and is distinct from other areas of NECSWS's business.¹⁰⁰⁰ We understand that there is no distinct office for CARM, and all of the UK staff members work remotely.¹⁰⁰¹ Therefore no office would be included in the scope of the divestiture package.

Assessment of scope

11.182 We note that this remedy would include NECSWS's only Duties product, CARM, and its associated contracts and IP. This would therefore provide a purchaser of the remedy with the Duties customers currently contracting with NECSWS, as well as enabling the purchaser to offer CARM to new customers.

11.183 Several third parties told us that it would be preferable for Duties to be divested separately from ICCS, rather than bundled with other products. On this we note that this remedy contains only CARM and therefore many fewer products than would full divestiture of SSS, and that CARM is a 'narrow, standalone product'.¹⁰⁰²

11.184 On staffing, the fact that [REDACTED] members of staff would transfer to the purchaser of this divestiture indicates that CARM is to some extent presently integrated within NECSWS and the purchaser would need to embed it within a new structure, [REDACTED]. This does not necessarily mean that the scope of the divestiture is insufficient, but rather that we must consider the availability and suitability of purchasers that would be able to operate CARM effectively.

11.185 We also note that the view from third party customers was broadly that it was an advantage for Duties to be offered to customers alongside ERP/HR solutions, but

⁹⁹⁷ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5 and Annex 1. Note that [REDACTED], [REDACTED] and [REDACTED] have a joint contract for CARM.

⁹⁹⁸ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

⁹⁹⁹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

¹⁰⁰⁰ NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

¹⁰⁰¹ NECSWS's response to the CMA's RFI 5, 24 October 2022, question 102.

¹⁰⁰² NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.5.4.

not necessary. We therefore consider that a combined offering of Duties with ERP/HR solutions would be more attractive for some customers, albeit not all. In relation to the position facing customers we note that divesting a Duties business without ERP/HR solutions would replicate the pre-Merger structure of the market in that one of the Parties (NECSWS) had Duties but not ERP/HR solutions before the Merger. We also note that the Parties told us that [REDACTED].¹⁰⁰³

11.186 Our view is that a NECSWS Duties divestiture package should be required to include the elements set out above in paragraph 11.178, on the understanding this includes all planned, ongoing or completed product development projects (eg [REDACTED]). For the reasons set out at paragraph 11.65 above, the scope of a NECSWS Duties divestiture package should provide the purchaser with the choice of either:

- (a) the transfer of the [REDACTED] members of staff [REDACTED]; or
- (b) access through a TSA to the [REDACTED] members of staff [REDACTED].

Availability and suitability of purchasers

11.187 As noted at paragraph 11.174 above, six third party businesses told us they may be interested in a purchase of a standalone Duties divestiture from either NECSWS or SSS.

11.188 In terms of purchaser appetite for a divestiture of Duties from NECSWS specifically, we were told that preference between NECSWS and SSS Duties would depend on market share, contract profiles, revenue streams and ability to be competitive on day one.¹⁰⁰⁴ There would also be more interest in a Duties product that had been 'invested' in and was a better fit with the purchaser's existing software portfolio.

Assessment of purchaser suitability and availability

11.189 From the available evidence, we consider that:

- (a) there would be purchaser interest in a divestiture of Duties;
- (b) purchasers' preference between NECSWS and SSS Duties would largely be determined by the purchaser's existing portfolio and the comparative revenues/financials and existing profile of customer contracts; and

¹⁰⁰³ Parties' response to the Remedies WP, 8 November 2022, paragraph 3.2.1.

¹⁰⁰⁴ Response to the CMA questionnaire from a third party, October 2022, question 2.

- (c) ERP/HR solutions were not noted by potential purchasers as a significant factor in determining their interest.

11.190 We have some concerns that the relatively small market share ([10–20%] based on revenues [§] in FY22) of CARM could result in less purchaser interest in the NECSWS Duties [§] Remedy than in a divestiture of a Duties product with a larger market share and revenues. This could mean that whilst there is broad interest at this stage of the process, there is some question over whether this would materialise into firm bids for the business. However, we consider that sufficient purchaser interest would nevertheless be likely to exist, as indicated by:

- (a) six expressions of interest in either the NECSWS or SSS Duties;
- (b) the weight put by purchasers on ‘fit’ with their current portfolio;
- (c) the view from an interested potential purchaser that told us CARM has more ‘room to grow’ as a result of its lower market share and relative under-marketing by NECSWS;¹⁰⁰⁵ and
- (d) the options available to the parties and the CMA for managing purchaser risk, including the possibility of selling both NECSWS businesses to the same suitable purchaser or through the specification of divestiture trustee arrangements (see paragraph 11.326).

Effective divestiture process

11.191 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

- (a) the transfer of customer contracts from the divesting business to the purchaser;
- (b) agreement of a TSA for staff [§];
- (c) ensuring the competitive capability of the divestiture package does not deteriorate before completion of the divestiture; and
- (d) the appropriate timescale for divestiture to take place.

11.192 We consider these in turn below.

¹⁰⁰⁵ Note of a call with a third party, October 2022, paragraph 4.

Transfer of contracts

- 11.193 NECSWS told us their belief that the NECSWS Duties [X] Remedy would not give rise to any material contract separation issues. This is because customer contracts for CARM are [X].¹⁰⁰⁶
- 11.194 NECSWS also stated that obtaining relevant consents from customers of CARM should be readily achievable, bearing in mind the [X] customers involved and the limited scope and impact of the divestiture for customers.¹⁰⁰⁷
- 11.195 NECSWS does not anticipate any issues or undue delays in achieving novations, and this view is shared by interested purchasers.¹⁰⁰⁸
- 11.196 Customers in the industry told us that their consent to novation would be determined by:
- (a) the new owner being a responsible company from a ‘friendly nation’ from a security perspective with sufficient resources and commitment to invest in their products;¹⁰⁰⁹
 - (b) current contract terms, staff access and technical support being maintained;¹⁰¹⁰ and
 - (c) current products being maintained.¹⁰¹¹
- 11.197 Of the factors raised by customers above, we consider that these concerns could be addressed by a suitable purchaser that is committed to the market. As set out at 11.31 above, our purchaser approval process takes this into account.
- 11.198 [X], and that novation would only need to be achieved for [X] contracts, we consider that the transfer of contracts would not be likely to undermine an effective divestiture process. However, whilst there are a [X] contracts to novate, should any of these contracts fail to be novated then this could increase the risks of the commercial viability of the overall divestiture.

Agreement of TSA

- 11.199 As set out at paragraph 11.186 above, a purchaser may require a TSA for the services of NECSWS’s staff [X] should these staff not transfer as part of the

¹⁰⁰⁶ NECSWS’s response to the Remedies Notice, 30 September 2022, Table 5.

¹⁰⁰⁷ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 8.5.5.

¹⁰⁰⁸ Note of a call with a third party, October 2022, paragraph 10; Note of a call with a third party, October 2022, paragraph 7.

¹⁰⁰⁹ Response to the CMA questionnaire, October 2022, question 7.

¹⁰¹⁰ Response to the CMA questionnaire from a number of third parties, October 2022, question 7.

¹⁰¹¹ Response to the CMA questionnaire, October 2022, question 7.

divestiture. In such a scenario the TSA would need to be agreed between NECSWS and the purchaser as part of the divestiture process.

11.200 We have not seen evidence that agreeing a TSA would be a concern for purchasers, and consider that it would not threaten an effective divestiture process for the following reasons:

- (a) NECSWS has recognised already the potential need for a TSA as part of the NECSWS Duties [REDACTED] Remedy; and
- (b) the CMA will review and approve transaction documents, including any TSA, as part of the remedy implementation process.

Ensuring the divestiture package does not deteriorate

11.201 In order to be satisfied that the divestiture would not deteriorate during the divestiture process, we have identified two areas of concern which could introduce risks undermining the effectiveness of the remedy:

- (a) retention of staff; and
- (b) retention of customers.

11.202 On retention on staff, we understand from NECSWS that [REDACTED]. [REDACTED].

11.203 We have not received evidence to suggest that retention of staff would be a particular issue during divestiture of the NECSWS Duties [REDACTED] Remedy, albeit we recognise that as with any divestiture there would be some staff uncertainty and potential unease. We also heard from two potential purchasers that set out their concern for integration of staff in the event of purchasing the divestiture. However, retention of key NECSWS staff will need to be a key focus for interim measures up to the point of divestiture, and we would instruct the Monitoring Trustee to work with the Parties to ensure that this is actively managed and that [REDACTED] to ensure staff retention.

11.204 On retention of customers, we have not seen evidence of this being a concern for NECSWS at present, though given the [REDACTED] customers this is an important factor to take into account. Amongst the market participants we spoke to, only retention of customers by SSS has been raised as a factor in potential divestiture options.¹⁰¹²

11.205 A key factor in retention of customers in the event of divestiture would be the need to achieve customer consent for novation of contracts. As set out above, we consider that the risks of achieving customer novations should be relatively low given the [REDACTED] of contracts requiring novation and the fact that the CMA's

¹⁰¹² Note of a call with a third party, October 2022, paragraph 5.

purchaser approval process would involve an assessment of purchaser credibility. However as noted above, given there are [REDACTED] contracts, if any of these fail to be novated successfully then there is some risk this could undermine the divestiture. This risk could be mitigated by the CMA instructing the Monitoring Trustee to work with the Parties to ensure that this is actively monitored and managed.

11.206 On balance we consider that the risks of deterioration of the divestiture package are capable of being effectively managed, and that consequently these risks are not sufficient to compromise the effectiveness of this remedy option.

Timescale for divestiture

11.207 As set out above, the Initial Divestiture Period will normally not exceed six months.¹⁰¹³

11.208 NECSWS told us that it could complete the disposal of the NECSWS Duties [REDACTED] Remedy [REDACTED], and [REDACTED].¹⁰¹⁴

11.209 Third parties, when asked how long they would expect a divestiture of Duties to take, gave us responses that ranged from under two months to six-to-nine months.¹⁰¹⁵

11.210 The available evidence indicates that the divestiture of the NECSWS Duties [REDACTED] Remedy could reasonably be expected to complete within [REDACTED] and potentially sooner, which would be in line with our expectations set by CMA guidance. We therefore conclude that a timescale of [REDACTED] for divestiture should be adopted.

Our assessment of the NECSWS Duties [REDACTED] Remedy

11.211 As set out above, the NECSWS Duties [REDACTED] Remedy would:

- (a) have the scope to compete effectively in the market;
- (b) attract a number purchasers, although we note an element of purchaser risk associated with the small size of the business to be divested; and
- (c) enable an effective divestiture process that would be likely to lead to a sale within [REDACTED].

11.212 While noting the purchaser risk, we consider on balance that the NECSWS Duties [REDACTED] Remedy would be an effective solution to the SLC in the supply of Duties.

¹⁰¹³ [CMA87](#), paragraph 5.41.

¹⁰¹⁴ NECSWS's response to the Remedies Notice, 30 September 2022, Table 4 and NECSWS, response hearing transcript, page 34.

¹⁰¹⁵ Response to the CMA questionnaire from a number of third parties, October 2022, question 10.

SSS Duties [X] Remedy

Description of remedy

11.213 The SSS Duties [X] Remedy would involve the Parties divesting the Duties operations of SSS to a suitable purchaser. This would include the products, relevant customer contracts, IP and resources associated with the SSS Origin product.¹⁰¹⁶

Views of the Parties

11.214 NECSWS submitted that the SSS Duties [X] Remedy would be wholly effective in remedying an SLC in Duties as it would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers, and would lead to a structural change in the market addressing an SLC in Duties.¹⁰¹⁷

11.215 NECSWS considers that ‘the Origin product would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties. [X].¹⁰¹⁸

11.216 NECSWS highlighted [X] potential purchasers of the SSS Duties [X] Remedy.¹⁰¹⁹ SSS identified [X] potential purchasers interested in acquiring a Duties business.¹⁰²⁰ [X] identified as a potential purchaser by both Parties.¹⁰²¹

11.217 On process, NECSWS stated that the SSS Duties [X] Remedy could be ‘readily implemented on a reasonable timeframe’ and envisages a timeline to disposal of [X].¹⁰²²

Views of third parties

11.218 In assessing the SSS Duties [X] Remedy we have taken into account the general views on divestitures set out in paragraph 11.47 11.47 above. We have also taken into account the views on standalone Duties divestiture, ERP/HR solutions and the choice between NECSWS and SSS Duties set out from paragraph 11.172 11.172 above. As regards SSS Duties specifically, one third party told us that it has a larger market share in policing than NECSWS Duties, but to make a judgement on which is preferable to buy a purchaser would need to understand more about the

¹⁰¹⁶ NECSWS’s response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰¹⁷ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 9.4.

¹⁰¹⁸ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 9.6.

¹⁰¹⁹ NECSWS’s response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰²⁰ SSS’s further submission on remedies, 19 October 2022, paragraph 7.3.

¹⁰²¹ [X].

¹⁰²² NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 8.6.

current market share and contract renewal profile of both NECSWS Duties and SSS Duties. This would include their respective presence outside of policing.¹⁰²³

Scope of remedy

11.219 For our assessment of scope for each potential remedy, we consider the following aspects:

- (a) products and contracts;
- (b) staff resources; and
- (c) any other resources.

Products and contracts

11.220 As noted above, the SSS Duties [X] Remedy would include the SSS Origin product and its [X] contracts. This comprises the following service modules:

- (a) Duties ([X]);
- (b) HR ([X]);
- (c) Health & Safety ([X]);
- (d) Training ([X]);
- (e) Self-Service ([X]);
- (f) Finance ([X]);
- (g) Procurement ([X]); and
- (h) Payroll ([X]).¹⁰²⁴

Staff resources

11.221 Included in the divestiture would be [X] UK staff members including [X] at [X] level [X].¹⁰²⁵

11.222 SSS told us ‘There are also [X] staff engaged in the [X] contract with Capita. As above, if a purchaser had its own offshore development function SSS would anticipate that this resource would not be required. If it is required, it could be

¹⁰²³ Response to the CMA questionnaire from a third party, October 2022, question 2.

¹⁰²⁴ NECSWS’s response to the Remedies Notice, 30 September 2022, Annex 2.

¹⁰²⁵ SSS’s response to the CMA’s follow up question, 6 October 2022, question 1(c) and SSS’s response to the Remedies Notice, 30 September 2022, paragraph 3.9.

provided under a TSA or a CSA with Capita Group depending on the purchaser'.¹⁰²⁶

Other resources

- 11.223 All relevant IP associated with Origin would be included and is distinct from other areas of SSS's business. The SSS Duties [X] Remedy divestiture package would also include the existing SSS site dedicated to Duties, comprising a serviced office [X].¹⁰²⁷

Assessment of scope

- 11.224 We note that this remedy would include SSS's only Duties product, Origin, and its associated contracts and IP. This would therefore provide a purchaser of the remedy with the Duties customers currently contracting with SSS, as well as enabling the purchaser to offer Origin to new customers.
- 11.225 Several third parties told us that it would be preferable for Duties to be divested separately from ICCS, rather than bundled with other products. On this we note that this remedy contains only Origin products and therefore many fewer products than the full divestiture of SSS.¹⁰²⁸
- 11.226 On staffing, the fact that [X] members of staff would transfer to the purchaser of this divestiture indicates that Origin is to some extent identifiable as a standalone business, [X].¹⁰²⁹ [X]. This does not necessarily mean that the scope of the divestiture is insufficient, but rather that we must consider the availability and suitability of purchasers that would be able to operate Origin effectively.
- 11.227 We also note that the view from third party customers was broadly that it was an advantage for Duties to be offered to customers alongside ERP/HR solutions, but not necessary. We therefore consider that a combined offering of Duties with ERP/HR solutions, as Origin is, would be more attractive for some customers and potential purchasers, albeit not all. We also note that the Parties told us that SSS's Origin solution [X].¹⁰³⁰
- 11.228 Our view is that a SSS Duties divestiture package should be required to include the elements set out above in paragraph 11.220, on the understanding this includes all planned, ongoing or completed cloud technology projects. For the reasons set out at paragraph 11.65 above, the scope of a SSS Duties divestiture package should provide the purchaser with the choice of either:

¹⁰²⁶ SSS's response to the CMA's follow up question, 6 October 2022, paragraph 1.8.

¹⁰²⁷ NECSWS's response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰²⁸ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 8.5.4.

¹⁰²⁹ NECSWS's response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰³⁰ Parties' response to the Remedies WP, 8 November 2022, paragraph 3.2.1.

- (a) the transfer of the [X] members of staff [X]; or
- (b) access through a TSA to the [X] members of staff [X].

Availability and suitability of purchasers

11.229 As noted at paragraph 11.174 above, six third party businesses told us they may be interested in a purchase of a standalone Duties divestiture from either NECSWS or SSS.

11.230 In terms of purchaser appetite for a divestiture of Duties from SSS specifically, we were told that preference between NECSWS and SSS Duties would depend on market share, contract profiles, revenue streams and ability to be competitive on day one.¹⁰³¹ There would also be more interest in a Duties product that had been 'invested' in and was a better fit with the purchaser's existing software portfolio.

Assessment of purchaser suitability and availability

11.231 From the available evidence, we consider that:

- (a) there would be purchaser interest in a divestiture of Duties;
- (b) purchasers' preference between NECSWS and SSS Duties would largely be determined by the purchaser's existing portfolio and the comparative revenues/financials and existing profile of customer contracts; and
- (c) the inclusion of ERP/HR solutions within the scope of the divestiture could increase interest from purchasers, but was not noted by potential purchasers as a significant factor in determining their interest.

Effective divestiture process

11.232 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

- (a) the transfer of customer contracts from the divesting business to the purchaser;
- (b) agreement of a TSA for staff [X];
- (c) ensuring the competitive capability of the divestiture package does not deteriorate before completion of the divestiture;
- (d) the appropriate timescale for divestiture to take place; and

¹⁰³¹ Response to the CMA questionnaire from a third party, October 2022, question 2.

- (e) potential issues associated with divesting business units from both NECSWS and SSS and whether this raises concerns related to ‘mix and match remedies’.

11.233 We consider these in turn below.

Transfer of contracts

11.234 NECSWS told us ‘[T]here would not be material challenges in separating out the SSS’s business Origin customer contracts within the relevant timeframe, as [REDACTED].’¹⁰³²

11.235 SSS told us ‘SSS currently has [REDACTED] Origin customers. [REDACTED].’¹⁰³³

11.236 The Parties told us that ‘there would not be material obstacles to obtaining relevant customer consents for the Origin divestiture ([REDACTED]), noting that Origin is not a mission-critical solution’.¹⁰³⁴

11.237 The Parties do not anticipate any issues or undue delays in achieving novations, and this view is shared by interested purchasers.¹⁰³⁵

11.238 Customers in the industry told us that their consent to novation would be determined by:

- (a) the new owner being a responsible company from a friendly nation with sufficient resources and commitment to invest in their products;¹⁰³⁶
- (b) current contract terms, staff access and technical support being maintained;¹⁰³⁷ and
- (c) current products being maintained.¹⁰³⁸

11.239 Of the factors raised by customers above, we consider that these concerns could be addressed by a suitable purchaser that is committed to the market. As set out at paragraph 11.31 above, our purchaser approval process considers this.

11.240 Given that [REDACTED], and that novation is not anticipated to be an issue, we consider that the transfer of contracts would not be likely to undermine an effective divestiture process.

¹⁰³² NECSWS’s response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰³³ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 3.11.

¹⁰³⁴ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 9.7.

¹⁰³⁵ Note of a call with a third party, October 2022, paragraph 10.

¹⁰³⁶ Response to the CMA questionnaire from a third party, October 2022, question 7.

¹⁰³⁷ Response to the CMA questionnaire from a number of third parties, October 2022, question 7.

¹⁰³⁸ Response to the CMA questionnaire from a third party, October 2022, question 7.

Agreement of TSA

- 11.241 As set out at paragraph 11.228 above, a purchaser may require a TSA for the services of the staff [REDACTED] (contracted with Capita) should these staff not transfer as part of the divestiture. In such a scenario the TSA would need to be agreed between NECSWS, Capita and the purchaser as part of the divestiture process.
- 11.242 We have not seen evidence that agreeing a TSA would be a concern for purchasers, and consider that it would not threaten an effective divestiture process for the following reasons:
- (a) SSS has recognised already the potential need for a TSA as part of the SSS Duties [REDACTED] Remedy; and
 - (b) the CMA will review and approve transaction documents, including any TSA, as part of the remedy implementation process.

Ensuring the divestiture package does not deteriorate

- 11.243 In order to be satisfied that the divestiture would not deteriorate during the divestiture process, we have identified two areas of concern which could introduce risks undermining the effectiveness of the remedy:
- (a) retention of staff; and
 - (b) retention of customers.
- 11.244 On retention on staff, SSS told us ‘SSS’s staff have already faced a long period of significant uncertainty, without any clear future direction of the ownership of the business. [REDACTED]’.¹⁰³⁹ We do though note that this submission relates to a potential full divestiture of SSS, rather than its Duties operations.
- 11.245 Although the evidence in paragraph 11.244 above relates to a full divestiture of SSS, we recognise that as with any divestiture there may be some staff uncertainty and potential unease during divestiture of the SSS Duties [REDACTED] Remedy. [REDACTED].
- 11.246 On retention of customers, SSS told us ‘In the public safety sector, customers want their suppliers to be long-term, reliable partners. [REDACTED]’.¹⁰⁴⁰ We do though note that this submission relates to a potential full divestiture of SSS, rather than its Duties operations that are a small part of SSS.
- 11.247 A key factor in the retention of customers in the event of divestiture would be the need to achieve customer consent for novation of contracts. As set out above, as

¹⁰³⁹ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 2.13.1.

¹⁰⁴⁰ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 2.13.2.

part of the purchaser approval process the CMA would seek to ensure that a credible purchaser has been identified, which is likely to provide customers with reassurance and increase the likelihood of successfully novating its contracts, but there remain some additional risks when up to [REDACTED] contracts require novation.

11.248 Overall on balance we consider that the identified risks of deterioration of the divestiture package can be effectively managed, and as such do not threaten the effectiveness of the divestiture process.

Timescale for divestiture

11.249 As set out above, the Initial Divestiture Period will normally not exceed six months.¹⁰⁴¹

11.250 NECSWS told us that it could complete the disposal of the SSS Duties [REDACTED] Remedy [REDACTED].¹⁰⁴²

11.251 Third parties, when asked how long they would expect a divestiture of Duties to take, gave us responses that ranged from under two months to six-to-nine months.¹⁰⁴³

11.252 The available evidence indicates that the divestiture of the SSS Duties [REDACTED] Remedy could reasonably be expected to complete within [REDACTED], which would be in line with our expectations set by CMA guidance. We therefore conclude that a timescale of up to [REDACTED] for divestiture should be adopted.

Our assessment of the SSS Duties [REDACTED] Remedy

11.253 As set out above, the SSS Duties [REDACTED] Remedy would:

- (a) have the scope to compete effectively in the market;
- (b) attract a number purchasers; and
- (c) enable an effective divestiture process that would be likely to lead to a sale within [REDACTED].

11.254 We consider on balance that the SSS Duties [REDACTED] Remedy would be an effective solution to the SLC in the supply of Duties.

¹⁰⁴¹ [CMA87](#), paragraph 5.41.

¹⁰⁴² NECSWS's response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰⁴³ Response to the CMA questionnaire from a number of third parties, October 2022, question 10.

Mix and match divestiture

- 11.255 As the CMA's guidance sets out, divestiture of a mixture of assets from both merger parties (a so-called 'mix-and-match' approach) may create additional composition risks such that the divestiture package will not function effectively. Therefore, if divestiture of a set of assets or parts of a business is proposed, it will normally be preferable for all the assets to be provided by one of the merger parties unless it can be demonstrated to the CMA's satisfaction that there is no significant increase in risk from a mix-and-match alternative.¹⁰⁴⁴
- 11.256 As set out in paragraphs 11.212 and 11.254 we currently consider that either the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy would be an effective solution to the SLC we have found in the supply of Duties. This, along with our view in paragraph 11.117, that the NECSWS ICCS [X] Remedy, as amended to provide for the scope summarised at paragraph 11.86 above would be effective in addressing the SLC we have found in the supply of ICCS, leads us to consider the possibility of a 'mix-and-match' divestiture.

Views of the Parties and third parties

- 11.257 NECSWS told us that a 'mix-and-match' remedy would not give rise to any significant increase in composition risk. This was because ICCS and Duties are two separate business areas, being entirely separate products with very different functions: ICCS relating to call handling and Duties to planning, scheduling and shift management. NECSWS also noted that neither it nor SSS has any customer contracts which include both their ICCS and Duties products. NECSWS submitted that there is therefore no reason in principle why these two divestitures need to come from the same Party.¹⁰⁴⁵
- 11.258 Third parties told us that there is limited crossover between ICCS and Duties, saying 'ICCS and Duties tended not to interact with each other too much',¹⁰⁴⁶ 'Duties and ICCS do not fit together so there could be more (purchaser) interest if selling these elements separately'¹⁰⁴⁷ and 'A 'mix-and-match' divestiture would not affect [X] interest'.¹⁰⁴⁸

Our assessment

- 11.259 In the specific circumstances of this case, given the fact that we have identified separate SLCs for ICCS and Duties in separate relevant markets, we consider that there are minimal risks for allowing for a 'mix-and-match' approach to divestiture.

¹⁰⁴⁴ [CMA87](#), paragraph 5.16.

¹⁰⁴⁵ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 4.6.

¹⁰⁴⁶ Note of a call with a third party, October 2022, paragraph 14.

¹⁰⁴⁷ Note of a call with a third party, October 2022, paragraph 6.

¹⁰⁴⁸ Note of a call with a third party, October 2022, paragraph 13.

In particular, we note that each of the Parties' ICCS and Duties businesses are separate from one another, there is therefore minimal scope for synergies between the ICCS and Duties businesses of each Party and there are no customer contracts which include both ICCS and Duties. All of these factors reduce any composition risks in allowing for a 'mix-and-match' remedy in the specific circumstances of this case.

Full divestiture

Description of remedy

11.260 This remedy option would involve the Parties unwinding the Merger and NECSWS would be required to divest the entirety of SSS to a single suitable purchaser.

Views of the Parties

11.261 NECSWS told us its view that a full divestiture of the SSS business would be: (i) wholly disproportionate; (ii) highly costly, lengthy and intrusive for each of NECSWS, SSS and their customer bases; and (iii) subject to considerable composition risks.¹⁰⁴⁹

11.262 NECSWS stated that it would be manifestly disproportionate and unreasonable to impose a remedy equivalent to blocking the entirety of the Transaction in circumstances where the CMA has identified competition concerns in only two markets, which comprise a limited part of the overall SSS business.¹⁰⁵⁰ NECSWS highlighted:

- (a) the SSS business is considerably wider than the two markets in which an SLC has been found; and
- (b) ICCS and Duties account for only a limited proportion of the SSS business by revenue (which equate to only c.[X]% of the full SSS business).¹⁰⁵¹

11.263 NECSWS stated that a full divestiture of SSS would be highly disruptive to the SSS business and the entire customer base of SSS:

- (a) another sale process of the whole of SSS would add to the already heightened uncertainty and concern across the SSS business, and may lead to staff attrition – thereby potentially affecting SSS's ability to remain competitive in the markets in which it operates;

¹⁰⁴⁹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 3.1.

¹⁰⁵⁰ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 3.2.

¹⁰⁵¹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 3.2.

- (b) SSS's customer base would face further uncertainty as to the future ownership and direction of the business and may be concerned as to continuity of supply of services that are critical for emergency services and other public sector customers, only a short period after the sale by Capita. This would be even more disproportionate and unreasonable for SSS customers whose contracts are entirely unrelated to ICCS and Duties and who would face unnecessary disruption and concern (which could be entirely avoided if a remedy only focused on ICCS and Duties were pursued); and
- (c) such a divestiture could have a significant negative impact on SSS's ability to compete in any of the markets in which SSS is active, due to the uncertainty as to whether, when and to what extent a purchaser would invest in any of its capabilities.

11.264 NECSWS told us that there are considerable composition and purchaser risks associated with the full divestiture of SSS that would affect the viability and timeliness of any such remedy:

- (a) in NECSWS's view, the pool of purchasers – particularly trade buyers - for the full divestiture of SSS would be very limited since there are unlikely to be many purchasers with the requisite appetite and funding to invest in the full spectrum of SSS's businesses;
- (b) potential buyers are more likely to encounter issues in due diligence in respect of the whole SSS business than they are in respect of a partial divestiture, as there are more areas in which issues could arise;¹⁰⁵²
- (c) potential buyers will also need to consider investing across a wide range of products to improve, update and maintain SSS's offering; and
- (d) trade buyers that might prima facie be interested in acquiring the full SSS business may be more likely to raise competition concerns, which could diminish their interest in pursuing any such acquisition and lead to increased purchaser risks.

11.265 On purchasers, NECSWS also stated:

- (a) there would be greater purchaser interest, in particular from trade buyers active in only certain or specialised segments of the industry, for more targeted disposals (eg of ICCS and Duties businesses), for example where the product being divested will 'plug a gap' in an existing portfolio to enable expansion into new or complementary markets; and

¹⁰⁵² The Parties also told us in their response to the RWP that the full divestment of ICCS would incur increased due diligence risks (Parties' response to the Remedies WP, 8 November 2022, paragraph 4.3.3).

- (b) purchasers of a more targeted divestiture will likely be more committed to investing sufficiently in the target business (and therefore more likely to maintain the competitive constraint associated with a divestiture) than a purchaser of the full SSS business, which might not be focused on developing or investing in the full suite of SSS activities. It is therefore more likely that targeted divestitures would restore and maintain pre-Transaction levels of competition in each of ICCS and Duties than would a full divestiture of SSS.

Scope of remedy

11.266 The scope of full divestiture would include by its nature all of SSS's products, contracts, staff and other resources. We therefore consider that the scope of this remedy would allow its purchaser to compete in the ICCS and Duties markets, thereby replicating the pre-Merger conditions of competition where SSS and NECSWS operated independently of each other.

Availability and suitability of purchasers

11.267 We note the Parties' submissions above that purchaser interest in a full divestiture of SSS would be limited and would carry increased due diligence risks. This is to some extent borne out by the evidence we have received from third parties, where there has been less interest in a full divestiture of SSS than there has been in partial divestitures of ICCS and Duties. However, we note that there has nevertheless been stated interest from three third parties ([REDACTED], [REDACTED] and [REDACTED]) in acquiring the whole of SSS.

11.268 In terms of purchaser appetite for a full divestiture of SSS, we received a range of views:

- (a) there would be less interest than there was in the sale that created the Merger;¹⁰⁵³
- (b) interest would be low as it requires a purchaser with both service delivery and product development capabilities in an Oracle technology environment;¹⁰⁵⁴
- (c) a full acquisition would be too large and come with too much baggage;¹⁰⁵⁵ and

¹⁰⁵³ Response to the CMA questionnaire from a third party, October 2022, question 9.

¹⁰⁵⁴ Response to the CMA questionnaire from a third party, October 2022, question 9.

¹⁰⁵⁵ Response to the CMA questionnaire from a third party, October 2022, question 8.

- (d) one potential purchaser told us it would be interested in any divestiture but its preference would be for acquisition of a full divestiture of SSS.¹⁰⁵⁶

11.269 The Parties submitted that, in light of the above third party feedback, there appears to be more limited interest in a full divestment of SSS from potential purchasers.¹⁰⁵⁷ The Parties also note that several third parties have told the CMA that it would be preferable for products to be divested separately rather than bundled with other products as would be the case for a full divestment of SSS.¹⁰⁵⁸

Assessment of purchaser availability and suitability

11.270 From the available evidence, we consider that there would be some purchaser interest in a full divestiture of SSS, but it could potentially be limited to a small number of interested parties and may generate less interest than a partial divestiture, as well as requiring more extensive due diligence than a partial divestiture.

11.271 We also note, bearing in mind NECSWS's submission that a purchaser of all of SSS could have less interest in investing across SSS's portfolio:

- (a) purchasers that expressed interest in purchasing all of SSS when our questions covered partial divestiture options as well can reasonably be expected to have a broad interest across SSS's product portfolio; and
- (b) in any case, part of our assessment of purchaser suitability (see paragraph 11.31 above) enables the CMA to evaluate parties' capabilities and commitment to the relevant market(s).

Effective divestiture process

11.272 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

- (a) the transfer of customer contracts from the divesting business to the purchaser;
- (b) ensuring the competitive capability of the divestiture package does not deteriorate before completion of the divestiture; and
- (c) the appropriate timescale for divestiture to take place.

11.273 We consider these in turn below.

¹⁰⁵⁶ Response to the CMA questionnaire from a third party, October 2022, question 3.

¹⁰⁵⁷ Parties' response to the Remedies WP, 8 November 2022, paragraphs 4.4.1– 4.4.2.

¹⁰⁵⁸ Parties' response to the Remedies WP, 8 November 2022, paragraph 4.4.3.

Transfer of contracts

- 11.274 The Parties told us that full divestiture would be ‘highly intrusive, in particular in respect of those customers of SSS which have no relationship with SSS’s ICCS and Duties businesses but will find their contracts disrupted by another sale of the full SSS business’.¹⁰⁵⁹
- 11.275 The Parties also told us that ‘the fact that SSS customers have been through a novation process previously increases, rather than decreases, the relevant risks involved with a Full Divestment’.¹⁰⁶⁰
- 11.276 SSS has [X] active ICCS contracts, and [X] active Duties contracts which [X].¹⁰⁶¹ Full divestment would also require [X].¹⁰⁶²
- 11.277 We understand that, as well as the ICCS and Duties contracts (see paragraphs 11.126 and 11.220), there would need to be novation of contracts for [X] further SSS customers that do not procure ICCS or Duties from SSS.¹⁰⁶³ The number of novations required adds an element of complexity and hence risk to this option, albeit we note that these customers will have been through a novation process already, indicating that securing novations on such a scale is feasible, where customers are satisfied about the capabilities of a purchaser. However, we also note the Parties’ submission (see paragraph 11.275) that there is increased risk where customers have already been through a novation process.
- 11.278 Customers told us that their consent to novation would be determined by:
- (a) the new owner being a responsible company from a friendly nation with sufficient resources and commitment to invest in their products;¹⁰⁶⁴
 - (b) current contract terms, staff access and technical support being maintained;¹⁰⁶⁵ and
 - (c) current products being maintained.¹⁰⁶⁶
- 11.279 Of the factors raised by customers above, we consider that these concerns could be addressed by a suitable purchaser with the necessary capabilities and who is committed to the relevant market(s). As set out at paragraph 11.31 above, our purchaser approval process considers these aspects of suitability.

¹⁰⁵⁹ NECSWS’s response to the Remedies Notice, 30 September 2022, paragraph 2.4.3.

¹⁰⁶⁰ Parties’ response to the Remedies WP, 8 November 2022, paragraph 4.3.2.

¹⁰⁶¹ SSS’s response to the Remedies Notice, 30 September 2022, Annex 1 and 2.

¹⁰⁶² Additional products include Records Management Systems (**RMS**); Computer Aided Dispatch (**CAD**) systems; ResponsEye, a Digital Interview Recording product (**EvidenceWorks IRS**); a Digital Evidence Management product (**EvidenceWorks DEM**); and Radio Managed Services.

¹⁰⁶³ SSS’s response to the Remedies Notice, 30 September 2022, paragraph 2.4.

¹⁰⁶⁴ Response to the CMA questionnaire from a third party, October 2022, question 7.

¹⁰⁶⁵ Response to the CMA questionnaire from a number of third parties, October 2022, question 7.

¹⁰⁶⁶ Response to the CMA questionnaire from a third party, October 2022, question 7.

11.280 We note that novation would need to be achieved for a larger number of contracts than for a partial divestiture. However, the evidence we have seen indicates that this could add to the effort and timescale of divestiture, rather than representing a material impediment, particularly given that novation was achieved for SSS's contracts as part of the sale to NECSWS. We therefore consider that the transfer of contracts would not undermine an effective divestiture process.

11.281 We also note, as a factor in support of this option, that a full divestiture of SSS would mean that the purchaser acquires all products and [X].

Ensuring the divestiture package does not deteriorate

11.282 In order to be satisfied that the divestiture package would not deteriorate during the divestiture process, we have identified two areas of concern which could introduce risks undermining the effectiveness of the remedy:

- (a) retention of staff; and
- (b) retention of customers.

11.283 NECSWS told us that 'A full divestiture of SSS would be highly disruptive to (i) the SSS business and (ii) the entire customer base of SSS's.' More specifically, NECSWS submitted:

- (a) another sale process of the whole of SSS would add to the already heightened uncertainty and concern across the SSS business, and may lead to staff attrition – thereby potentially affecting SSS's ability to remain competitive in the markets in which it operates;
- (b) SSS's customer base would face further uncertainty as to the future ownership and direction of the business and may be concerned as to continuity of supply of services that are critical for emergency services and other public sector customers, only a short period after the sale by Capita. This would be even more disproportionate and unreasonable for SSS customers whose contracts are entirely unrelated to ICCS and Duties and who would face unnecessary disruption and concern (which could be entirely avoided if a remedy only focused on ICCS and Duties were pursued); and
- (c) such a divestiture could have a significant negative impact on SSS's ability to compete in any of the markets in which SSS is active, due to the uncertainty as to whether, when and to what extent a purchaser would invest in any of its capabilities.

- 11.284 In a call held with a third party, the retention of customers by SSS through a sale process was raised as a factor in potential divestiture options.¹⁰⁶⁷
- 11.285 We were also told by another third party that ‘Any divestiture should take care not to damage the company’s ability to maintain its products and support its customer base. SSS has its own internal structure and skilled staff frequently work across product ranges and projects and a poorly implemented divestiture could lead to skills erosion, loss of quality to their customers and loss of value to the company’.¹⁰⁶⁸
- 11.286 In relation to NECSWS’s point on another sale process adding to existing uncertainty on staff retention, we received a report from the Monitoring Trustee on staff attrition. The conclusion of this was that the Monitoring Trustee [REDACTED]. [REDACTED].¹⁰⁶⁹
- 11.287 The Monitoring Trustee also told us [REDACTED].¹⁰⁷⁰
- 11.288 We considered that the risks associated with losing key staff would need to be taken seriously but are capable of being effectively managed.
- 11.289 A key factor in retention of customers in the event of divestiture would be the need to achieve customer consent for novation of contracts. As set out above, the available evidence indicates that achieving customer novations can be reasonably expected of a purchaser approved in our remedies process. In the context of the Monitoring Trustee’s report, we also note customer representatives’ view that ‘Retention of key staff during the novation and for an agreed period afterwards, would also strengthen the consent process’.¹⁰⁷¹
- 11.290 We therefore consider that staff retention, whilst important, could be effectively managed and would not be likely to threaten deterioration of the divestiture package. We also consider that the need to achieve customer consent to novation of contracts, whilst potentially more lengthy and complex to implement than the extent of novation required under a partial divestiture, and not without some risk, would not be likely to undermine the effectiveness of the divestiture process.

Timescale for divestiture

- 11.291 As set out above, the Initial Divestiture Period will normally not exceed six months.¹⁰⁷²
- 11.292 NECSWS told us that a full divestiture would take more time than a partial divestiture (at least [REDACTED]), where its view of a partial divestiture is that it would take

¹⁰⁶⁷ Note of a call with a third party, October 2022, paragraph 5.

¹⁰⁶⁸ Response to the CMA questionnaire from a third party, October 2022, question 10.

¹⁰⁶⁹ Email from the Monitoring Trustee, 14 October 2022.

¹⁰⁷⁰ Email from the Monitoring Trustee, 14 October 2022.

¹⁰⁷¹ Response to the CMA questionnaire from a third party, October 2022, question 4.

¹⁰⁷² [CMA87](#), paragraph 5.41.

[REDACTED].¹⁰⁷³ SSS highlighted that the previous sales process had taken at least [REDACTED].¹⁰⁷⁴

11.293 When asked how long they would expect a divestiture of all of SSS to take, third parties gave us responses that ranged from three to nine months.¹⁰⁷⁵

11.294 The Parties submitted that our provisional view in the RWP that full divestiture of SSS could be completed within a broad range of timescales from [REDACTED] was a significant underestimate.¹⁰⁷⁶ The Parties submitted that there was no credible evidence in the RWP to suggest that the relevant timescale would be [REDACTED].¹⁰⁷⁷ The Parties submitted that we had placed undue weight on the view of a single third party which suggests that a Full Divestment could take [REDACTED] but that any suggestion that a Full Divestment could be carried out [REDACTED], let alone [REDACTED], is plainly incorrect.¹⁰⁷⁸ Rather, in the Parties' submission, the estimates provided by the Parties are very likely to be the most accurate source of evidence on anticipated timescales, as those estimates are informed by their previous experience in respect of this transaction.¹⁰⁷⁹

11.295 The available evidence indicates that full divestiture of SSS could be completed within a broad range of timescales from [REDACTED]. We therefore note that there is a risk that such a divestiture could take longer than the six-month expectation set by CMA guidance. Contrary to the Parties' submissions, the CMA has not put undue weight on the submission of one third party that a divestment could be achieved within [REDACTED]; rather we have considered all third party feedback in the round, along with the other relevant evidence we have received. There are also additional asset risks of allowing a longer divestiture period. Given this, we do not consider that there is sufficient evidence to move away from the general presumption set out in our guidance that the Initial Divestiture Period will normally not exceed six months.

Our assessment of full divestiture

11.296 As set out above, we consider that a divestiture consisting of the entirety of SSS would:

- (a) have the scope to compete effectively in the market;
- (b) attract some purchasers; and

¹⁰⁷³ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 3.6.5 and NECSWS, response hearing transcript, pages 52–53.

¹⁰⁷⁴ SSS, response hearing transcript, page 50.

¹⁰⁷⁵ Response to the CMA questionnaire from a number of third parties, October 2022.

¹⁰⁷⁶ Parties' response to the Remedies WP, 8 November 2022, paragraph 4.5.

¹⁰⁷⁷ Parties' response to the Remedies WP, 8 November 2022, paragraph 4.5.

¹⁰⁷⁸ Parties' response to the Remedies WP, 8 November 2022, paragraph 4.6.

¹⁰⁷⁹ Parties' response to the Remedies WP, 8 November 2022, paragraph 4.6.

- (c) enable an effective divestiture process that could be concluded [X].

11.297 We therefore consider that full divestiture would be an effective solution to:

- (a) the SLC we have found in ICCS; and
- (b) the SLC that we have found in Duties.

Conclusions on remedy effectiveness

11.298 Based on the evidence provided to us and assessed above, we have concluded that the following remedies would be effective in remedying the SLCs and adverse effects that we have found:

- (a) the NECSWS ICCS [X] Remedy (amended to provide for the scope summarised at paragraph 11.86) would be an effective remedy to the SLC we have found in ICCS;
- (b) both the NECSWS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.186) and the SSS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.228) would be effective remedies to the SLC we have found in Duties; and
- (c) full divestiture of SSS would be an effective remedy to the SLCs we have found in both ICCS and Duties.

11.299 Looking at the two SLCs together, we have therefore identified three potential solutions that would remedy both SLCs:

- (a) A group of remedies comprising the NECSWS ICCS [X] Remedy amended to provide for the scope summarised at paragraph 11.86 and the NECSWS Duties [X] Remedy sold together or separately;
- (b) a group of remedies comprising the NECSWS ICCS [X] Remedy amended to provide for the scope summarised at paragraph 11.86 and the SSS Duties [X] remedy sold together or separately; and
- (c) full divestiture of SSS.

Proportionality

11.300 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, of those remedy options that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that

is least restrictive. In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.¹⁰⁸⁰

11.301 In conducting this proportionality assessment, we first consider whether there are any relevant customer benefits (**RCBs**) which would affect our decision on remedies, before considering the issue of proportionality more generally.

Relevant customer benefits

11.302 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs.¹⁰⁸¹ In this section, we consider whether there are any RCBs (within the meaning of the Act) that should be taken into account in our remedy assessment.

11.303 An effective remedy to an SLC, such as in this case full divestiture of SSS, could be considered disproportionate if it prevents customers from securing benefits resulting from the Merger. Insofar as these benefits constitute RCBs for the purposes of the Act, the statutory framework allows us to take them into account when we decide whether any remedy is proportionate.

11.304 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or in rare cases it may decide that no remedy is appropriate.¹⁰⁸²

11.305 Neither the Parties, or any third party, identified any potential RCBs to which we should have regard under the Act. Nor did we identify any RCBs ourselves. Consequently, we have not modified our view of the appropriate remedies in light of RCBs.

The proportionality of effective remedies

11.306 In our conclusions on remedy effectiveness above, we summarised our view on which remedies would be effective in addressing the SLCs and the resulting adverse effects. We set out below our assessment of, and conclusions on, which of these would constitute a proportionate remedy.

Framework for assessment of proportionality of merger remedies

11.307 As explained in paragraph 11.300 above, if it is choosing between equally effective remedies, the CMA will select the remedy that imposes the least cost or that is

¹⁰⁸⁰ [CMA87](#), paragraph 3.6.

¹⁰⁸¹ [Section 35\(5\)](#) of the Act.

¹⁰⁸² [CMA87](#), paragraph 3.16

least restrictive (we call this the ‘least onerous effective remedy’). In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.¹⁰⁸³

11.308 To fulfil this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA’s considerations may include (but are not limited to):¹⁰⁸⁴

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may accrue from the Merger which are foregone as a result of the remedy.

11.309 However, as the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA or other monitoring agencies.¹⁰⁸⁵ In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy, as it is for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price.¹⁰⁸⁶

11.310 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.¹⁰⁸⁷

Views of the Parties and third parties

11.311 NECSWS stated that:

- (a) a full divestiture of SSS would be ‘wholly disproportionate, costly and intrusive’;¹⁰⁸⁸
- (b) full divestiture of SSS ‘would be wholly disproportionate in relation to the scale of the two limited SLCs identified by the CMA in the PFs and would be highly intrusive, in particular in respect of those customers of SSS which

¹⁰⁸³ [CMA87](#), paragraph 3.6.

¹⁰⁸⁴ [CMA87](#), paragraph 3.10.

¹⁰⁸⁵ [CMA87](#), paragraph 3.8.

¹⁰⁸⁶ [CMA87](#), paragraph 3.9.

¹⁰⁸⁷ [CMA87](#), paragraph 3.6.

¹⁰⁸⁸ NECSWS’s response to the Remedies Notice, 30 September 2022, page 2.

have no relationship with SSS's ICCS and Duties businesses but will find their contracts disrupted by another sale of the full SSS business';¹⁰⁸⁹ and

- (c) 'the divestiture of NECSWS's own relevant business would be [REDACTED], efficient and proportionate [REDACTED] to address the SLC'.¹⁰⁹⁰

11.312 NECSWS told us 'SSS's customer base would face further uncertainty as to the future ownership and direction of the business and may be concerned as to continuity of supply of services that are critical for emergency services and other public sector customers, only a short period after the sale by Capita. This would be even more disproportionate and unreasonable for SSS customers whose contracts are entirely unrelated to ICCS and Duties and who would face unnecessary disruption and concern (which could be entirely avoided if a remedy only focused on ICCS and Duties were pursued)'.¹⁰⁹¹

CMA assessment of proportionality

11.313 In our assessment of proportionality, we first identify those remedies that would be effective and select the remedy with the lowest cost, or that is least restrictive ('the least onerous effective remedy'). We then consider whether this remedy is disproportionate in relation to the SLC and its adverse effects.

Identification of the least onerous, effective remedy

11.314 Of the effective remedies identified at paragraph 11.298 above, the NECSWS ICCS [REDACTED] Remedy amended to provide for the scope summarised at paragraph 11.86 and the NECSWS Duties [REDACTED] Remedy (amended to provide for the offshore staff provisions set out at paragraph 11.186) or the SSS Duties [REDACTED] Remedy (amended to provide for the [REDACTED] provisions set out at paragraph 11.228) would be less onerous than the full divestiture of SSS because these remedies would not require customers of other areas of SSS's business outside the relevant markets affected by the SLCs, to go through the processes of contract splitting, sub-contracting and novation.

11.315 The Parties told us 'NECSWS's customer contracts for CARM are [REDACTED]¹⁰⁹² and '[REDACTED]'.^{1093,1094} We therefore anticipate that neither the NECSWS Duties [REDACTED] Remedy nor the SSS Duties [REDACTED] Remedy would require customers from areas outside the relevant markets affected by the SLCs to go through the processes of contract splitting, sub-contracting and novation. Both remedies would therefore have minimal impact on customers outside of the relevant markets affected by the

¹⁰⁸⁹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 2.4.3.

¹⁰⁹⁰ NECSWS's response to the Remedies Notice, 30 September 2022, page 2.

¹⁰⁹¹ NECSWS's response to the Remedies Notice, 30 September 2022, paragraph 3.3.2.

¹⁰⁹² NECSWS's response to the Remedies Notice, 30 September 2022, Table 5.

¹⁰⁹³ NECSWS's response to the Remedies Notice, 30 September 2022, Table 6.

¹⁰⁹⁴ [REDACTED]. NECSWS's response to Remedies Notice, 30 September 2022, Annex 2.

SLCs. We also note that both remedies would require a number of customers within the relevant markets to have contracts transferred and novated. As such we find no discernible differences in the relevant costs or intrusiveness, and hence the proportionality of these remedy alternatives.

11.316 Therefore, we conclude that the NECSWS ICCS [X] Remedy amended to provide for the scope summarised at paragraph 11.86; and one of the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy, are the least onerous, effective remedies. These remedies would be less onerous than full divestiture of SSS.

Is the remedy disproportionate in relation to the SLC and/or adverse effects?

11.317 We considered whether any of the NECSWS ICCS [X] Remedy, the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy were disproportionate to the SLCs and its adverse effects.

11.318 The Parties have stated that each of these remedies are proportionate in relation to the SLCs and their adverse effects.¹⁰⁹⁵

11.319 With regard to the potential cost associated with lost RCBs, as we have noted in paragraph 11.305 above, we consider that the statutory test in respect of RCBs is not met in this case.

Conclusion on proportionality

11.320 On the basis of the above, we conclude that the NECSWS ICCS [X] Remedy amended to provide for the scope summarised at paragraph 11.86 and one of either the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy are the least onerous effective remedies and are not disproportionate in relation to the SLCs and their adverse effects. These remedies would be less onerous than full divestiture of SSS.

Remedy implementation

11.321 Having decided on the effectiveness and proportionality of remedies to address the SLCs, we now consider how these should be implemented.

Order or undertakings and restrictions on re-acquisition

11.322 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the Parties wish to offer them, or by making a final order.¹⁰⁹⁶ Either the final undertakings or the final order must be implemented

¹⁰⁹⁵ NECSWS's response to the Remedies Notice, 30 September 2022, paragraphs 5.2.3, 8.2.3 and 9.2.3.

¹⁰⁹⁶ [Section 82](#) (final undertakings) and [section 84](#) (final orders) of the Act.

within 12 weeks of publication of our final report (or extended once by up to 6 weeks),¹⁰⁹⁷ including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

11.323 In line with CMA87, if the divestiture remedies are ultimately imposed, NECSWS would be prohibited from subsequently acquiring the assets or shares of the ICCS and Duties divestiture packages or acquiring any material influence over them. CMA87 states that the CMA will normally limit this prohibition to a period of ten years.¹⁰⁹⁸ We find no compelling reason to depart from CMA87 in this case by seeking a shorter or longer prohibition period.

Provision for appointment of a divestiture trustee

11.324 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if the acquirer fails to achieve an effective disposal within the Initial Divestiture Period, or if the CMA has reason to be concerned that the acquirer will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that the acquirer has a sufficient incentive to implement the divestiture promptly and effectively.

11.325 In our Remedies Notice, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.¹⁰⁹⁹ We have received no such representations from the Parties nor from third parties.

11.326 To ensure a timely completion of this remedy, we would reserve our right to appoint a Divestiture Trustee in any one or more of the following situations:

- (a) NECSWS fails to complete the divestiture process within the Initial Divestiture Period;
- (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
- (c) NECSWS is not engaging constructively with the divestiture process; and
- (d) there is a material deterioration in the divestiture package during the divestiture process.

11.327 In line with the CMA's normal practice,¹¹⁰⁰ if appointed, a Divestiture Trustee would be tasked with completing the divestiture to a potential purchaser approved

¹⁰⁹⁷ [CMA87](#), paragraph 4.68. An extension may be made if the CMA considers there are 'special reasons' for doing so ([section 41A\(2\)](#) of the Act).

¹⁰⁹⁸ [CMA87](#), paragraph 5.10.

¹⁰⁹⁹ [Notice of possible remedies \(publishing.service.gov.uk\)](#).

¹¹⁰⁰ [CMA87](#), paragraph 5.43.

by the CMA and at no minimum price. This would be to seek to secure the divestiture of:

- (a) the NECSWS ICCS [X] Remedy amended to provide for the scope summarised at paragraph 11.86; and/or
- (b) the divestiture of one or other of the NECSWS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.186) or the SSS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.228).

11.328 Should a Divestiture Trustee be appointed, its mandate (agreed with the CMA) would be to secure the divestiture of either of the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy. Both of these remedies are considered to be effective and equally proportionate remedies and this would remain the case regardless of whether the Parties had chosen to pursue divestiture of either remedy or both before the appointment of a Divestiture Trustee.

The role of interim measures during the divestiture process

11.329 We have put in place interim measures to govern the conduct of NECSWS and SSS during the investigation (the **IEO**),¹¹⁰¹ though these will expire upon final determination (ie when the CMA accepts final undertakings or makes a Final Order). In the Remedies Notice, we invited views on whether these interim measures should be continued, or enhanced, during the divestiture process. The Parties submitted that any final undertaking or order need not incorporate the provisions of the IEO in full.¹¹⁰² Rather, NECSWS and SSS's current IEO obligations ought to be reduced so that they are limited to any areas where the CMA identifies an SLC in its final report and are relevant to the subject matter of any remedies.¹¹⁰³ The Parties submitted that such an approach would be consistent with the CMA's guidance and would enable the Parties, the CMA and the Monitoring Trustee, to focus their resources on matters which are relevant to any SLCs and remedies, rather than areas of NECSWS and SSS's businesses which are irrelevant to the CMA's remedies process.¹¹⁰⁴ We received no third party submissions on these matters.

11.330 In our view, the interim measures in place will need to continue until effective disposal has taken place, and therefore will need to be incorporated into the final undertakings or final order. We note the Parties' submissions as regards the appropriate scope of the interim measures in any final undertakings or final order.

¹¹⁰¹ The CMA served an initial enforcement order under [section 72\(2\)](#) of the Enterprise Act 2002 on 21 December 2021. This order remains in force - [Initial enforcement order \(publishing.service.gov.uk\)](#)

¹¹⁰² Parties' response to the Remedies WP, 8 November 2022, paragraph 5.3.

¹¹⁰³ Parties' response to the Remedies WP, 8 November 2022, paragraph 5.3.

¹¹⁰⁴ Parties' response to the Remedies WP, 8 November 2022, paragraphs 5.3– 5.4.

We agree that the interim measures should be focused, insofar as possible, on the areas in which SLCs have been identified and on protecting the assets which are required to implement the remedies we have identified in this chapter. This would be in relation to the NECSWS ICCS [X] Remedy, the NECSWS Duties [X] Remedy and the SSS Duties [X] Remedy, with NECSWS being required to divest one of the two Duties operations.

- 11.331 To that end, during the divestiture process we would expect, in particular, that the operations to be divested would be maintained, with appropriate funding provided. Such funding could include (but not be limited to) ongoing capital investment plans, staff retention schemes, ongoing commitments in customer contracts, and working capital. Interim measures would therefore need to include commitment to provide such funding as necessary.
- 11.332 We also consider that the mandate of the Monitoring Trustee should be extended to cover the Initial Divestiture Period and monitor compliance with the interim measures included in any final undertakings or final report to ensure an effective divestiture process. In particular, under any revised mandate, we will ensure that the Monitoring Trustee is able to effectively oversee the requirement set out in paragraph 11.62 above that NECSWS should use its best endeavours to divest CallTouch as part of the NECSWS ICCS [X] Remedy to a single purchaser.

Conclusions on divestiture process

- 11.333 Based on the above analysis, we reached the following conclusions on what would constitute an effective divestiture process:
- (a) we will not appoint a Divestiture Trustee at the outset of the divestiture process, but reserve the right do so subject to the conditions set out at paragraph 11.326 above;
 - (b) the interim measures in place to govern the conduct of NECSWS and SSS will remain in place through the Initial Divestiture Period, to be amended as necessary; and
 - (c) the mandate of the existing Monitoring Trustee will be extended to monitor the divestiture process.

Decision on remedies

- 11.334 We have decided that the following divestitures would be effective and proportionate remedies to address the SLCs and their resulting adverse effects we have found:

- (a) the NECSWS ICCS [X] Remedy as amended for the scope summarised at paragraph 11.86 ie composed of the divestiture of NECSWS's APD business, CallTouch and Stream (noting the process set out at paragraph 11.62); and
- (b) one of the NECSWS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.186) ie composed of the divestiture of NECSWS's CARM, or the SSS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.228) ie composed of the divestiture of SSS's Origin.

11.335 As set out at paragraph 11.328 above our conclusion is that both the NECSWS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.186) and the SSS Duties [X] Remedy (amended to provide for the [X] provisions set out at paragraph 11.228) would be effective and equally proportionate remedies to address the SLC in Duties. This would remain the case whether the Parties structure the sales process to involve divestiture of the NECSWS Duties [X] Remedy or the SSS Duties [X] Remedy, or if they choose to market both packages to potential buyers.

11.336 Purchasers will be assessed according to the CMA's guidance as set out at paragraph 11.31 above, including their ability to achieve customers' consent to novation of contracts and commitment to investing in these businesses to ensure each of these remains an effective competitor. This assessment will apply to potential purchasers of both or either of the divestitures set out above.

11.337 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the Parties wish to offer them, or by making a final order. Either the final undertakings must be accepted, or the final order made within 12 weeks of publication of a final report (or extended once by up to six weeks under exceptional circumstances), including the period for any formal public consultation on the draft undertakings or order.¹¹⁰⁵

11.338 We have concluded that an Initial Divestiture Period of up to [X] is appropriate in this case.

11.339 To ensure a timely completion of this remedy, we conclude that the CMA should reserve its right to appoint a Divestiture Trustee if:

- (a) the Parties fail to complete the divestiture process within the Initial Divestiture Period;
- (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;

¹¹⁰⁵ [Section 82](#) (final undertakings) and [Section 84](#) (final orders) of the Act. Also [Schedule 10](#).

- (c) the Parties are not engaging constructively with the divestiture process; or
- (d) there is a material deterioration in either or both of the divestiture packages during the divestiture process.

11.340 In line with the CMA's normal practice, if appointed, a Divestiture Trustee should be tasked with completing the divestiture to a potential purchaser approved by the CMA and at no minimum price.¹¹⁰⁶

11.341 We have put in place interim measures to ensure the continued independent operation of NECSWS and SSS during this inquiry. These will expire upon final determination of the Merger reference: that is, when the CMA accepts final undertakings or makes a final order. We will maintain similar provisions to our existing interim measures, including requirements on maintaining funding, during the implementation of this remedy until completion of the divestiture remedies. The existing Monitoring Trustee's appointment will continue, in order to monitor the Parties' compliance with them. The Monitoring Trustee will also be involved in certain aspects of the divestiture process, as appropriate and consistent with our guidance, in order to monitor the Parties' compliance with any final order or undertakings in relation to the divestiture remedies and to ensure an efficient divestiture process.

11.342 We will adjust the Monitoring Trustee's mandate to reflect these new functions as part of any final order or undertakings.

¹¹⁰⁶ [CMA87](#), paragraph 5.43.