

COMPLETED ACQUISITION BY DYE AND DURHAM LIMITED, THROUGH ITS SUBSIDIARY DYE & DURHAM (UK) LIMITED, OF TM GROUP (UK) LIMITED

Issues statement

21 January 2022

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the Parties for reasons of commercial confidentiality.

The reference

1. On 23 December 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**), of TM Group (UK) Limited (**TMG**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). D&D and TMG are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
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 a market or markets in the United Kingdom (**UK**) for goods or services.
3. In answering these two questions, we will apply a ‘balance of probabilities’ threshold to our analysis.¹ That is, we will decide whether it is more likely than not that the Merger will result in an SLC.

Purpose of this issues statement

4. In this issues statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained

¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.36.

in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

5. The CMA's phase 1 Decision (the **Phase 1 Decision**)² contains much of the detailed background to this issues statement. We are publishing this issues statement to assist parties submitting evidence to our phase 2 investigation. The issues statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.
6. While we are not precluded from considering any other issues which may be identified during phase 2, we intend to focus our investigation on horizontal unilateral effects in the supply of property search reports as part of single 'search packs' (**Property Search Report Bundles**) in England and Wales (**E&W**). This is the area in which the CMA found a realistic prospect of an SLC in the Phase 1 Decision.
7. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on this and any other issue which may be identified during the course of the phase 2 investigation.

Impact of Coronavirus (COVID-19)

8. We are publishing this issues statement during the Coronavirus (COVID-19) pandemic, which is having significant impact on consumers and business across the world. The CMA has published a [statement](#) on its website covering how it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic.
9. Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.

Background

The Parties

10. D&D provides cloud-based software and technology solutions for legal and business professionals in Australia, Canada, the UK and Ireland. Its UK offering

² The summary of the Phase 1 Decision is published on the CMA inquiry webpage [here](#). The Decision to refer and the full text of the Phase 1 Decision will be published on the CMA inquiry webpage in due course.

includes technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Northern Ireland.³ D&D is headquartered in Canada and listed on the Toronto Stock Exchange. D&D had UK turnover of £[X] in the financial year ending 30 June 2021⁴.

11. TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Scotland.⁵ TMG is headquartered in England and had UK turnover of £[X] in 2020.

Business activities and relevant overlap

12. The Parties overlap in the supply of Property Search Report Bundles in E&W. Property Search Report Bundles are ordered by conveyancers (eg law firms and licensed conveyancers) and intermediaries (eg panel managers that arrange for property transactions and typically refer a consumer to a conveyancer, estate agents, lenders, and mortgage brokers) during the due diligence process in property transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties in E&W.

The Merger

13. On 8 July 2021, D&D, through its subsidiary D&D UK, acquired TMG from TMG's former shareholders, Countrywide Group Holdings Limited, Connells Limited, and LSL Property Services plc.

Our inquiry

14. Below we set out some specific areas that we intend to investigate in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. We will also consider the rationale for the Merger, pricing strategies and behaviour, and any other relevant issues that arise during the course of our inquiry.

³ D&D entered the UK property search industry with the acquisition of a majority interest in Easy Convey in 2016. Since then, D&D has acquired various other businesses active at different levels of the property search supply industry in E&W and one supplier of Property Search Report Bundles in Northern Ireland. In E&W, D&D is active through Easy Convey Limited (**Easy Convey**); Index Property Information Limited (**Index PI**); Stanley Davis Group Limited (**SDG**); Property Information Exchange Limited (**PIE**); PSG Connect Limited (**PSG**); Terrafirma IDC Limited (**Terrafirma**); Future Climate Info Limited (**FCI**); certain assets of CLS Property Insight Limited (**CLS**); Lawyer Checker Limited (**Lawyer Checker**); and GlobalX (UK) Limited (**GlobalX UK**). In Northern Ireland, D&D is active through LawLink (UK) Ltd (**LawLink NI**).

⁴ As per financial reporting requirements in Canada.

⁵ TMG was established in 1999. In E&W, TMG is active through tmConvey/tmConnect; Conveyancing Data Services (**CDS**); and Mio. In Scotland, TMG is active through Property Searches Scotland (**PSS**).

Jurisdiction

15. In the context of a completed merger, a relevant merger situation exists where the following conditions are satisfied:⁶
- (a) Two or more enterprises have ceased to be distinct; and
 - (b) Either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
16. The CMA's Phase 1 Decision found that it is or may be the case that the CMA has jurisdiction to review the Merger on the basis that two enterprises (ie D&D and TMG) have ceased to be distinct and that the share of supply test is met.⁷
17. We shall consider the question of jurisdiction in our inquiry.

The counterfactual

18. The application of the SLC test involves a comparison of the prospects for competition with a merger against the competitive situation without a merger. The latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.⁸
19. We shall assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would have been most likely to have arisen absent the Merger) including how D&D, TMG and other providers would have competed in the absence of the Merger.
20. The CMA's Phase 1 Decision found that the counterfactual was the pre-existing conditions of competition.
21. In our phase 2 investigation, in order to reach a judgement as to whether or not an SLC is likely to occur as a result of the Merger, we will select the most likely

⁶ Section 23 of the Act.

⁷ Summary of Phase 1 Decision, paragraph 2.

⁸ Merger Assessment Guidelines (CMA129) (March 2021), paragraph 3.1.

conditions of competition as the counterfactual against which to assess the Merger.⁹

22. Significant changes affecting competition from third parties which would occur with or without the Merger (and therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of our counterfactual assessment.¹⁰ The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the Merger,¹¹ which we intend to consider in the competitive assessment.
23. We will consider the evidence gathered at phase 1 and any new evidence we receive which is relevant to the consideration of the counterfactual in our assessment of the Merger. We are likely to only focus on significant changes where there are reasons to believe that those changes would make a material difference to our competitive assessment.¹²

Market definition

24. Market definition provides a framework for assessing the competitive effects of a merger.¹³ An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹⁴
25. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.¹⁵
26. In practice, the analysis of market definition and the competitive effects will often overlap, with many factors affecting market definition being relevant to the assessment of competitive effects and vice versa.¹⁶
27. In the Phase 1 Decision, the CMA considered the impact of the Merger on the supply of Property Search Report Bundles in E&W. The CMA found at Phase 1 that most property search reports are purchased as part of bundles, with only a limited number of discrete property search reports being purchased directly

⁹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 3.13.

¹⁰ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 3.10.

¹¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 3.7.

¹² [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 3.9.

¹³ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), chapter 9.

¹⁴ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.1.

¹⁵ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.4.

¹⁶ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.2.

from upstream suppliers of reports; and did not find it necessary to segment the market between Property Search Report Bundles for residential and commercial properties. The CMA also found at Phase 1 that property search reports are different in Scotland and Northern Ireland and hence that the scope of competition was limited to E&W. D&D is not currently active in Scotland, and TMG is not currently active in Northern Ireland.

28. We will use the frame of reference adopted in the Phase 1 Decision as a starting point for our analysis and our view of market definition will be largely drawn from the findings of our competitive assessment. Where relevant, we will consider out-of-market constraints and/or any differences in the degree of competitive constraints on the Merged Entity from different suppliers.

Assessment of the competitive effects of the Merger

Theory of harm

29. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm provides the framework for our analysis of the competitive effects of a merger.¹⁷ Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or further analysis in the course of our phase 2 inquiry. We welcome views on the theory of harm described below.
30. We will consider the evidence gathered so far and any new evidence we receive which is relevant to the theory of harm in our assessment of the Merger.

Horizontal unilateral effects

31. Taking the approach followed in the phase 1 investigation as the starting point, and subject to the evidence we obtain regarding the market definition (described above), we intend to assess in our phase 2 investigation whether the Merger gives rise to an SLC in the supply of Property Search Report Bundles in E&W. This is a horizontal unilateral effects theory of harm.
32. Unilateral effects can arise in a merger where one firm merges with a competitor that previously provided a competitive constraint. Through the merger, removing one party as a competitor might allow the merged entity profitably to increase prices, lower the quality of their products or customer

¹⁷ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.11.

service, reduce the range of their products/services, and/or reduce innovation relative to what might occur in the counterfactual.¹⁸

33. The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.¹⁹
34. In its Phase 1 Decision, the CMA found there was a realistic prospect of an SLC as a result of unilateral effects as:²⁰
- (a) the supply of Property Search Report Bundles in E&W is becoming more concentrated, with only four main suppliers (the Parties, Landmark Information Group and Australian Technology Innovators). There is also a tail of smaller, often regional suppliers. The Merger would create a clear market leader and reduce from four to three the number of large national suppliers of Property Search Report Bundles in E&W;
 - (b) the Parties compete closely with each other for a significant volume of sales. The Parties are also expected to compete even more closely in the future;
 - (c) customers are insensitive to price increases and the CMA has seen evidence of D&D's intention to raise prices post-Merger;
 - (d) ATI and Landmark compete closely with the Parties and are expected to continue to compete closely with the Merged Entity after the Merger. However, the constraints from ATI and Landmark are unlikely to be sufficient to prevent a significant reduction in competition;
 - (e) smaller competitors constitute only a limited constraint on the Parties and there is no evidence that they would act as a more significant constraint on the Merged Entity in the future; and
 - (f) there are material barriers to entry and expansion and entry of new suppliers or expansion by smaller suppliers would not be timely, likely and sufficient in response to the Merger; hence entry or expansion in E&W

¹⁸ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 4.1.

¹⁹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 4.3.

²⁰ [Summary of Phase 1 Decision](#), paragraph 4.

would not be sufficient to prevent competition concerns as a result of the Merger.

35. We will use the data and information collected in the CMA's phase 1 investigation and seek to expand and segment this evidence base, as appropriate, to assess the theory of harm set out above. For example, we expect to examine:
- (a) what factors conveyancers and intermediaries consider when choosing between suppliers of Property Search Report Bundles in E&W;
 - (b) how closely the Parties (in particular their different brands) compete for different types of customers in the supply of Property Search Report Bundles in E&W;
 - (c) the strength of the constraints from the two other large national suppliers, Landmark and ATI, in the supply of Property Search Report Bundles to different types of customers in E&W;
 - (d) the strength of the constraints from franchise groups and smaller, often regional providers in the supply of Property Search Report Bundles to different types of customers in E&W; and
 - (e) the relevance of the evidence the CMA has seen of D&D's intention to raise prices post-Merger.

Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

Countervailing factors

36. We will consider whether there are any countervailing factors which are likely to prevent or mitigate any SLC that we may find. We will also consider evidence to the extent relevant, in our competitive assessment, such as evidence of entry and/or expansion by third parties, which may be sponsored, for example, by certain types of customer, and whether entry and/or expansion would be timely, likely, and sufficient to prevent any SLC from arising as a result of the Merger.²¹

Possible remedies and relevant customer benefits

37. Should we conclude that the Merger has resulted or may be expected to result in an SLC within a market or markets in the UK, we shall consider whether and, if so, what remedies might be appropriate and will issue a further statement.

²¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 8.30.

38. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits (**RCBs**) that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.²²

Responses to the issues statement

39. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on Friday 4 February 2022** by emailing DD.TM@cma.gov.uk.

²² [Merger Remedies \(CMA87\)](#), paragraphs 3.4 and 3.15 to 3.24.