

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

Summary of final report

Published: 3 August 2022

Overview of our findings

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

Who are the businesses and what services do they provide?

4. D&D and TMG overlap in the supply of PSRBs in E&W. PSRBs are bundles of a number of property search reports, which are provided together as part of single 'search packs'. They assist in assessing the value, risk, and general context of the property and its surroundings. PSRBs are ordered by conveyancers and intermediaries (eg panel managers that manage and provide access to panels of conveyancers on behalf of businesses introducing conveyancers to property buyers (**Panel Managers**), estate agents, lenders, and mortgage brokers) during the due diligence process in property

transactions, for the ultimate benefit of buyers and sellers of residential and commercial properties in E&W.

5. D&D provides products to customers in Australia, Canada, the UK, and Ireland. Its UK products include technology-enabled real estate due diligence solutions used by conveyancers and intermediaries that provide property search reports for use in property transactions in E&W and Northern Ireland. D&D is a franchisor to third party franchisees (**Index Indirect** and **PSG Indirect**, together **D&D Indirect**) and D&D owned franchisees (**Index Direct** and **PSG Direct**). D&D is headquartered in Canada and listed on the Toronto Stock Exchange.
6. TMG provides technology-enabled real estate due diligence solutions used by conveyancers and intermediaries, including property search reports for use in property transactions in E&W and Scotland. TMG is headquartered in England.
7. D&D and TMG are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

Sources of evidence

8. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our findings.
9. We received submissions and responses to information requests from the Parties and held a virtual site visit and in-person hearings with each of them. We also conducted a thorough examination of the Parties' internal documents, which show (among other things) how they run their businesses and how they view their competitors.
10. We gathered evidence from competitors via written questions and discussions to understand better the competitive landscape and get their views on the impact of the Merger. This includes evidence from the Parties' third party owned franchisees, from their major competitors (Landmark and ATI), from smaller competitors, and from the Association of Independent Personal Search Agents (**IPSA**).
11. As regards customer engagement, we commissioned the market research agency DJS Research (**DJS**) to undertake a telephone survey of customers of the Parties to better understand how they purchase and use PSRBs. The 170 respondents to the survey were made up of conveyancers who varied by size and their degree of residential or commercial focus. The survey was carried out in February and March 2022. The DJS customer survey report,

including the full questionnaire and the methodology of the survey, is published on the [inquiry webpage](#) alongside this document.

12. We also spoke to several law firms including some 'Top 100' law firms (as identified by [The Lawyer](#)) that specialise in large transactions and are among TMG's largest customers, some law firms that are large or medium-sized customers of D&D for residential and commercial services, and several Panel Managers which are either customers of D&D, or TMG, or both.
13. Moreover, we spoke to a number of companies which the Parties informed us were potential new entrants in the market.
14. Finally, we considered evidence from the Parties and third parties received during the CMA's phase 1 investigation of the Merger.

What would have happened had the Merger not taken place?

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

What is the market that the Parties operate in?

17. We have looked at the impact of the Merger in relation to the supply of PSRBs in E&W. We have excluded Scotland and Northern Ireland from our assessment because the Parties do not have overlapping activities there.
18. In our analysis, we have considered whether searches relating to residential and commercial properties are different. While commercial properties require more extensive searches and command a higher price, they involve the same general process and have a similar breakdown of costs. All providers of residential property search reports also provide commercial property search reports.
19. We have also considered whether the conditions of competition vary in relation to different customer groups. We found that all of the Parties' brands serve small conveyancers, medium/large conveyancers, larger law firms and other customers.

20. On this basis, we did not think that the market should be further divided. We consider any differences between residential and commercial reports and between customer groups in relation to the effects of the Merger for competition.
21. We have also examined the competitive dynamics in this market. We found that suppliers compete on a number of different aspects of quality, as well as on price. However, many aspects of supplier quality are not directly observable by customers unless they have an existing relationship with the supplier concerned. Associated with this, relationships between customers and suppliers are often long-lasting, and poor experiences (in terms of quality or price) may be what prompts a customer to consider switching.
22. In this context, suppliers compete by seeking to develop a good reputation for quality and timeliness of delivery and for good standards of follow-up service; and by developing the functionality of their platforms, including by offering additional services on their platforms and by integrating them with other existing software which the customer may use.
23. Suppliers also compete on price, often by offering discounts off the list price as part of negotiations to win new customers or to retain existing customers.
24. The market characteristics described above appear to be broadly typical of the kind of market in which suppliers are differentiated on quality and service features, and in which individual customers may or may not switch supplier in response to a price increase or deterioration in quality, depending on the price and quality of available alternatives.
25. There are few technical or contractual barriers to switching and it is easy for customers to shift volume between suppliers with which they have an existing relationship. This suggests that the prevalence of multi-sourcing may help to facilitate switching between existing suppliers. However, given that customers multi-source with a limited number of suppliers and for a variety of reasons, and may use different suppliers for different types of transaction or search, the implications for ease of switching are not clear-cut.
26. Economies of scale exist in this market, and the larger suppliers of PSRBs derive benefits from their ability to spread the cost of investments in marketing and technology over a higher volume both in terms of PSRB volumes and number of customers supplied.
27. The market is characterised by technological innovation, and has become increasingly digitised, including through integration with case management and ancillary services. It has also become more vertically integrated, as large

PSRB suppliers have acquired companies that compile environmental reports which are included in most PSRBs.

The effects of the Merger

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

This is also consistent with the evidence provided by competitors, which consider that D&D and TMG are among each other's closest competitors, and the available evidence on customer switching (which also suggests that TMG may be a stronger competitive constraint on D&D than the other way around – albeit that we interpret the customer switching evidence with caution).

35. We consider that the two large national providers (ATI and Landmark) each would provide a credible competitive constraint post-Merger, with ATI having been particularly effective in recent years. ATI and Landmark are mentioned as close competitors in the Parties' internal documents, and the evidence from customers and competitors corroborates this view. The evidence from the survey and the available evidence on switching, both of which we interpret with caution, shows ATI to be a strong constraint with Landmark attracting some customers but fewer than ATI. Like the Merged Entity, these providers are able to take advantage of economies of scale in order both to invest in integrated software systems and the provision of other ancillary services to customers, and to compete with the Parties in terms of marketing.
36. On the other hand, the competitive constraint that the smaller suppliers exert on the Merged Entity, individually and in aggregate, is limited and likely to diminish in the future. We consider that the smaller suppliers are likely to struggle to match the evolving needs of customers in an increasingly digitised market. Whilst the customer survey and switching evidence shows that some customers see smaller suppliers as alternatives to the Parties, we treat this evidence with caution and do not consider it sufficient to support a conclusion that they are effective competitors in light of the other evidence. As noted above, all the smaller suppliers have very low shares of supply, and they consider themselves restricted in their ability to compete with the large suppliers. The Parties' internal documents contain very few references to these smaller suppliers. In some of the references that are included, the Parties indicate that these smaller competitors are not seen as a competitive threat by them. We therefore do not consider that the presence of the smaller suppliers, either taken separately or together, is sufficient to offset the loss of competition arising from the Merger.
37. Any competitive constraint that the D&D franchisees that are owned by third parties (ie the D&D Indirect franchisees) may exert on the Merged Entity is also limited. We consider that the D&D Indirect franchisees are largely dependent on D&D for some key aspects of their market offering and are subject to various restrictions arising from the franchise agreements with D&D. This limits their ability to differentiate themselves, innovate and compete with the Merged Entity. Moreover, the D&D Indirect franchisees are themselves small regional competitors, who lack the ability to compete for

some customer groups or to constrain the Merged Entity to a significant degree.

38. Finally, we consider that while certain intermediaries may be currently able to negotiate better terms than other customers, this does not mean that they will be able to exercise a sufficient pricing constraint to offset the loss of competition arising from the Merger.
39. On this basis, our current view is that the Merger eliminates a major national PSRB supplier from the market; that in addition to the Merged Entity only two large national PSRB suppliers would remain; and that the competitive constraint on the Merged Entity from the two large suppliers, franchisees and smaller suppliers would not be sufficient to offset the effects of the Merger.

Countervailing factors

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

Conclusions

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

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

43. We considered different options for D&D to sell all or part of TMG, and whether they would be effective at restoring the competition lost by the Merger. We also considered possible requirements for a suitable purchaser for the business to be sold, and the process that should be followed to sell the business.
44. We have decided that only the divestiture of the whole of TMG to a suitable purchaser would be an effective remedy to address the SLC and the harm it would cause to competition. We considered whether an alternative partial divestiture remedy package proposed by D&D (the **Partial Divestiture**) would be an effective remedy. D&D submitted that the proposed Partial Divestiture would comprise all of TMG's operations in E&W, but would exclude the PSS

business which operates outside of E&W. We note that D&D put forward a number of iterations of its Partial Divestiture proposal and the proposal has still not been specified in detail.

45. In its final proposal, D&D stated that the retained parts of PSS would be as follows:
- (a) certain PSS customer data which would be transferred onto a D&D platform;
 - (b) the PSS brand;
 - (c) all existing PSS staff; and
 - (d) any software to the extent that these are only currently being utilised by TMG to service the needs of PSS customers.
46. We identified a number of risks relating to the specification and design of the Partial Divestiture remedy (such as the composition of the remedy and the transfer or disclosure of TMG proprietary information and know-how), as well as risks relating to the financial impact on TMG, the diversion of TMG's management and staff resources in implementing the remedy, and other implementation risks. These risks arise in large part from the current degree of integration between PSS and the rest of TMG. Although some of these risks might be mitigated by further specification of the remedy, others would be very difficult to address. Taking all the risks together in the round, we consider that the Partial Divestiture would not represent an effective remedy to the SLC we have found.
47. In examining the effectiveness of the full divestiture remedy, we considered the effect of supply agreements between TMG and the Shareholders (the **Supply Agreements**) and in particular the effects of a condition that the Shareholders would replace certain of the reports offered to their panel firms with those supplied by D&D (the **Input Switching Clauses**). The Supply Agreements were negotiated and agreed alongside the Merger and are related to the Merger.
48. We have concluded that a future purchaser should be free to decide for itself whether to implement the Supply Agreements or renegotiate them with the Shareholders. In order to ensure a purchaser is free to make its own assessment, we consider that the Input Switching Clauses should remain suspended until completion of the divestiture, and that D&D should not make the sale of TMG either legally or de facto conditional on the purchaser retaining the Supply Agreements or on the purchaser concluding any other arrangements for the supply of inputs with D&D. The CMA will put in place

arrangements to ensure that D&D complies with these requirements during the divestiture process.

49. In particular, we intend to require a high degree of oversight in the divestiture process. This includes oversight around selection of potential purchasers, the information provided to them, discussions with them, the negotiation process, and the identification of potentially suitable purchasers for the CMA to assess. We will also ensure that potential purchasers are made aware of the aspects of the remedy in relation to the Supply Agreements and are able to contact the Monitoring Trustee (**MT**) directly if they consider D&D has not complied with its obligations.

What happens next?

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