XCHANGING/AGENCYPORT MERGER INQUIRY

INITIAL SUBMISSION TO THE CMA AT PHASE 2

6 January 2015

CONTENTS

XCHANGING/AGENCYPORT

INITIAL SUBMISSION TO THE CMA AT PHASE 2

1. INTRODUCTION AND EXECUTIVE SUMMARY

Introduction

1.1 On 4 July 2014, Xchanging acquired the European operations of Agencyport Software Group for £64.1 million. The US operations of Agencyport were retained by Agencyport Software Group. Agencyport US remains as a trading company and therefore Agencyport can no longer be a trading name for the European entity. The contracting entity is now Xchanging Software Europe Limited though, for the purpose of this submission, Agencyport remains the naming convention. Xchanging and Agencyport are together referred to in this submission as the "**Parties**".

1.2 The transaction provides Xchanging with access to a number of complementary software products to those within its insurance software business, Xuber. In particular, the acquisition provides Xchanging with a software offering in the sizeable global health insurance market and an exposure modelling product.

1.3 The principal overlap between the Parties relates to the supply of policy administration software (**"PAS"**). PAS is software which is used to manage the administration requirements of companies which write insurance (insurance carriers[1]) in relation to the various elements of their business (policy administration, claims management, billing administration, and the management of outwards reinsurance).

1.4 In its Phase 1 decision (the **"Decision"**), the CMA raised concerns only in relation to a sub-segment of the Parties' customers for PAS, namely those insurance carrier customers which are active in the Lloyd's of London marketplace (commonly referred to as the "Lloyd's market").

1.5 Xchanging supplies two relevant PAS products: Iris, a legacy PAS product which is installed by Xchanging's existing [✂] Lloyd's carrier customers, and its current PAS system, Xuber for Insurers, which was launched in 2012 to replace a number of legacy software products, including Iris. [✂]. Both Iris and Xuber are sold in the same format, and with the same marketing, to carriers active inside and outside of the Lloyd's market (and to those customers active in both areas).

1.6 Agencyport sells its PAS software under two product names: OPEN Core Commercial (marketed to customers outside Lloyd's) and OPEN Core Lloyd's (marketed to customers within Lloyd's). Each of these products was renamed in 2013 (from OPEN Co and OPEN Box respectively) at the time the software was upgraded. The software underlying both OPEN Core products (OPEN Foundation) is the same, with different configurations required depending on whether the software is deployed to a customer active in the Lloyd's market or not.

1.7 In the Decision, the CMA concluded that it is or may be the case that an SLC may be expected to arise in respect of the supply of PAS to Lloyd's carriers. The key conclusions in the Decision leading to this finding are that:

(a) the relevant frame of reference should be restricted to the supply of PAS to Lloyd's carriers in the UK on the basis of the requirement from these customers that PAS has certain messaging and reporting functionality that is specific to Lloyd's;

---

[1] Insurance carriers are companies that sell insurance, agreeing to take risks on behalf of customers in exchange for a fee.

(b) market shares are not necessarily a good indication of the relative strength of competitors (paragraph 78), but nonetheless the CMA did apply "some weight" to a market share analysis (Table 2) the calculation of which was not shared with the Parties;

(c) there is a degree of differentiation between the Parties' products, but they do compete to supply insurers (paragraph 120), although the CMA accepts that they are not the "closest" competitors (paragraph 150);

(d) Xchanging's legacy product, Iris, was out of date, but Xchanging's investment in a new PAS for carriers, Xuber for Insurers, was a response to superior offerings of competitors (including Agencyport) and Xuber's expected success meant it would be a close competitor to Agencyport in future (paragraphs 127 & 150);

(e) the five years of bidding data shows that there was limited competition between the Parties pre-merger, but other evidence should be favoured as being more probative (paragraph 131);

(f) it is important to assess the closeness of competition not only on the basis of recent wins and current offerings, but also on the basis of competitors' plans for, and investment in, product development in future (paragraph 129);

(g) a number of other competitors which have PAS products currently being used by Lloyd's carriers should be discounted, such that the merger can be categorised as a "4-3" (paragraph 135); and

(h) there was not sufficient evidence to conclude that entry or expansion by competitors into the Lloyd's market would mitigate the realistic prospect of an SLC, although the CMA received evidence from third parties that entry was likely.

1.8 This submission explains why the Parties consider that these conclusions are not supported by the evidence. In particular:

(a) the product scope has been drawn too narrowly and the time and cost of adding Lloyd's specific functionality has been materially overstated;

(b) the Parties were not close competitors prior to the transaction;

(c) [✂];

(d) the CMA's analysis of competitors which have been at least as successful as the Parties has led it to mischaracterise the transaction as a 4 to 3 merger; and

(e) barriers to entry and expansion are modest and can be covered by the award of a single contract. In addition, there is evidence of recent entry, and customers have confirmed that they could sponsor entry.

The product scope considered in the Decision is too narrow

1.9 The Parties consider insurance markets to be global and Xchanging has estimated that the global market size for Commercial P&C software spend is £2 billion.[2] Therefore, the Parties consider that the Decision's focus on the supply of PAS to Lloyd's carriers in the UK is incorrect, and represents a small fraction of the overall global market. In particular:

[2] Project Asgard Board Briefing (June 2014): Annex 5, previously submitted at Annex 6 to Xchanging's response to the s.109 Notice.

(a) all insurance carriers (whether Lloyd's registered or not) have very similar software requirements (the Parties estimate that approximately [✂] per cent of the functionality of a PAS system is common to all insurance customers);

(b) the Parties supply the same PAS product foundation to both Lloyd's and non-Lloyd's insurers, both within the UK as well as to insurers overseas (reflecting the global nature of the market);

(c) it is straightforward to add the incremental Lloyd's functionality to a PAS system, and there are examples of suppliers (such as Guidewire and Zov Solutions) that have recently developed Lloyd's functionality. In addition, a number of Lloyd's carriers use bespoke in-house developed systems which further demonstrates that adding the Lloyd's functionality is not particularly onerous;

(d) barriers to entry in relation to the provision of PAS software to Lloyd's managing agents have been materially overstated. The Parties have calculated that the cost of adding functionality specific to both London commercial and Lloyd's customers to amount to [✂] (based on actual Xuber development costs), so developing only Lloyd's functionality would be a fraction of this cost. The Parties therefore consider that their estimate of the cost of developing Lloyd's functionality of £500,000 to £1 million is a reasonable estimate, and that [✂]; and

(e) barriers to expansion for PAS suppliers already supplying Lloyd's carriers are low. Given the nature of software markets, once the initial investment costs have been made, the marginal cost of supplying an additional Lloyd's customer with PAS are low. In this regard, if it is feasible for Lloyd's carriers to sponsor new entry (i.e. on the basis of a single contract), it would be even easier to sponsor expansion of a supplier that has already developed a PAS product with Lloyd's functionality.

1.10 The low barriers to entry into the supply of PAS to Lloyd's customers for the many other suppliers of PAS which currently do not offer this functionality is consistent with a cross-check of the observable facts:

(a) significant in-house supply of PAS systems by Lloyd's carriers (indicating that the cost of developing Lloyd's functionality can be justified by a single customer);

(b) the number of suppliers of software which offer Lloyd's functionality of which there are at least 8 (with these suppliers being identified in the Parties' internal documents, external market reports, the Parties' bidding data, press releases, and by third parties responding to the CMA);

(c) the actual evidence of entry by developing Lloyd's functionality (e.g. by Guidewire and Zov Solutions, and by third party comments received by the CMA at Phase 1 that entry was likely); and

(d) confirmation by third parties responding to the CMA at Phase 1 that they considered they could sponsor new entry into the Lloyd's market.

1.11 Whilst for these reasons, the Parties consider that the Decision restricted its assessment to an overly-narrow market definition, it is not necessary for the CMA to conclude that the market is broader than Lloyd's in order to conclude that there is no prospect of an SLC. Irrespective of whether the market is defined narrowly in relation to the supply of PAS to Lloyd's carriers only, or more broadly to also include commercial insurers, the Parties consider that there is no prospect that the transaction will give rise to an SLC.

The Parties are not close competitors

1.12 The Decision concludes that the Parties are not each other's closest competitors (paragraph 150), although it does conclude that the Parties are close competitors. This

conclusion is not supported by the evidence. Rather, the evidence available to the CMA at Phase 1 supports the Parties' view that, whilst they both provide PAS which can be used by Lloyd's carriers, they are not close competitors.

1.13 In particular, the Parties note:

(a) market shares of legacy customers are not significant on any measure, even when considered on an overly-narrow basis in relation to the supply of PAS to Lloyd's carriers only:

(i) the Parties' combined market share by Lloyd's customer count is [✂] per cent (increment [✂] per cent), with this number being overstated reflecting the fact that a number of the Parties' customers also use other PAS suppliers as well as one of the Parties ([✂]). The Parties' combined share of customers in relation to a broader UK market including both Lloyd's and non-Lloyd's carriers is just [✂] per cent;

(ii) the CMA's market shares contained in Table 2 of the Decision (the detail of which was not shared with the Parties during Phase 1 despite repeated requests) is clearly incorrect, since it attributes a much higher market share to Xchanging than to Agencyport, despite Xchanging's PAS revenues from Lloyd's carriers being around a third of that of Agencyport. The CMA was therefore incorrect to place weight on this analysis given its inconsistency with the facts;

(iii) on the basis of Xchanging's pre-transaction estimate of the Lloyd's market size by software spend of £50 million (which is contained in the Project Asgard Board document),[3] the Parties' market share in 2013 would be [✂] per cent ([✂] per cent if the revenue from [✂] are excluded, [✂]);

(iv) if the CMA's analysis in Table 2 is corrected by taking the actual average spend on PAS by the Parties' customers as a proportion of their Gross Written Premium (**"GWP"**), this gives an estimate of a Lloyd's market size of £37.5-£50 million (consistent with the estimate in Xchanging's internal document referred to above), and a market share of [✂] per cent (or between [✂] per cent, in light [✂]);

(b) bidding data, which provides a more accurate reflection of pre-merger competition between the Parties in software markets, demonstrates that the Parties were not strong competitors over the last five years, and the Parties were clearly not close competitors to one another. Of the [✂] tenders/contracts by Lloyd's carriers that the Parties were aware of over the last five years[4]:

(i) Agencyport won [✂], whilst Xchanging won [✂] contracts (i.e. [✂] of the [✂] contracts, or [✂] per cent, were won by other competitors, which is consistent with the Parties' market shares);

(ii) Agencyport bid for [✂] tenders, and faced Xchanging on only [✂] occasions (less than [✂] per cent of tenders), with neither party being successful in relation to [✂] of those [✂] tenders;

---

[3] Project Asgard was the code name given to the potential acquisition of Agencyport by Xchanging.

[4] As the Parties do not have full visibility of all the tenders/contracts by Lloyd's carriers that have taken place over the last five years (in particular, where neither party was invited to bid), the Parties' bidding data is likely to overstate the position of the Parties.

(iii) of the [✂] bids where the Parties faced each other where Agencyport was successful, the Parties consider, based on feedback from the customer, that Xchanging was not considered to be a close competitor; and

(iv) [✂];

The Decision largely dismisses this clear evidence of limited competition between the Parties on the basis that Xchanging will be a closer competitor in future following the launch of Xuber. However, this position ignores the fact that the five year period contains more than two years of bidding data subsequent to the launch of Xuber for Insurers, [✂];

(c) there are a number of strong competitors bidding for and winning contracts. Whilst the Parties do not always have visibility as to which competitors are bidding for which contracts, the bidding data confirms competition for tenders/contracts from Sequel, CSC, NIIT/Room, eBaoTech, Guidewire, Northdoor, and Fineos. This is further corroborated by the Parties' internal documents, by external market research reports, and various press releases of competitors (e.g. announcing contract wins); and

(d) whilst the Decision appears to acknowledge the differentiation of the Parties' PAS products (paragraph 120) (i.e. that Xchanging offers a componentised solution, whilst Agencyport offers an end-to-end solution only, which leads to a price and technical architecture difference between the Parties), this does not appear to have been reflected in the competitive assessment. [✂], but this analysis fails to reflect that once Xchanging had the ability to analyse the Agencyport business in more detail post-merger, the future plan was changed [✂].

1.14 Accordingly, notwithstanding the concerns set out above in relation to the CMA's overly restrictive approach to market definition, even if the market were considered on a narrow basis in relation to the supply of PAS to Lloyd's managing agents in the UK, the evidence clearly shows that the competition between Parties pre-merger was limited.

The Parties will not become close competitors in the future

1.15 The Parties consider that the evidence demonstrates that the Parties were not close competitors pre-merger. The Decision acknowledges that the Parties were not the closest competitors pre-merger but, due to Xchanging's investment in Xuber, the CMA's theory of harm develops into an allegation that the Parties will become closer competitors in future. Whilst the CMA has adopted a forward looking dynamic analysis in the context of assessing the future competitive constraint from Xuber, it has adopted a static analysis in its assessment of the future competition from Agencyport and the other PAS suppliers, assuming that Agencyport is, and will remain, a strong competitor, whilst no other supplier will invest in their software products (despite evidence to the contrary).

1.16 To the extent that the CMA's assessment of the transaction focuses on the degree of future competition between the Parties, it is important that an equivalent standard is applied to assessing future competition between the Parties as it is to assessing competition from other suppliers. Given the inherently uncertain nature of software markets, it is also important that there is sufficient certainty (to meet the CMA's balance of probabilities test) that any forward looking analysis will materialise in practice. In this regard, as set out in this submission, the Parties believe that the future success of Xuber is highly uncertain and it is highly speculative to allege that the Parties would have become close competitors in future such that it would have resulted in an SLC.

1.17 The assessment set out in the Decision is based on a mischaracterisation of the rationale for the development of Xuber and its target customers and places reliance on Xchanging internal documents setting out the investment case for Xuber, [✂].

1.18 When the evidence is analysed, it becomes clear that:

(a) the investment of [✂] in Xuber over 2 years [✂] of which was in relation to product development) was based on the development of a global product software suite for customers including insurers, reinsurers, brokers and MGAs, and was not specific to Lloyd's carriers. The forecast five year return of [✂] from investment in Xuber set out in the investment case makes it clear that Lloyd's carriers, with total software spend of around £50 million (or less than £20 million on the basis of the CMA's calculations in Table 2 of the Decision) are a relatively minor part the Xuber strategy;

(b) the implication of the conclusion at paragraph 127 of the Decision that "*Xchanging has recently developed a new product in response to the superior offerings of its competitors (which includes that of Agencyport) and was actively competing with Agencyport pre-Merger with its Xuber product*" is that the investment in Xuber was largely driven by a desire to target Lloyd's customers and in response to Agencyport's product offering. This conclusion simply has no basis in fact;

(c) the CMA has relied on the forecasts set out in Xchanging's investment case, seemingly without reconciling Xuber's global strategy and what this means in relation to Lloyd's customers. More importantly however, the Decision relies on Xuber generating the returns set out in the investment case and being a success in winning Lloyd's customers. [✂].

(d) [✂];

(e) to the extent that the CMA has suggested that by targeting its pre-existing Lloyd's carrier customers that "*Xchanging's current share of supply may be indicative of the future competitive strength of Xuber*",[5] it is important to note that Xchanging [✂], the Parties' combined share of supply to Lloyd's carriers would be well below the level at which competition concerns generally arise (being less than 25 per cent on the basis of any plausible analysis of total PAS software spend by Lloyd's carriers); and

(f) based on an Agencyport Management Presentation[6] (which was essentially a document supporting the sale of the business and therefore reports Agencyport in the most favourable light) the CMA has mischaracterised Agencyport as a strong competitor pre-merger, which is not supported by the evidence. In addition, whilst the CMA has adopted a forward looking analysis in the context of assessing the future competitive constraint from Xuber, it has applied a static analysis in assuming that (i) Agencyport will remain a strong competitor, and (ii) that other PAS suppliers will not continue to invest in their software products. The inconsistency in the approach demonstrates that the CMA has applied different standards to assessing future competition between the Parties to its assessment of future competition from third parties.

1.19 Accordingly, to the extent that the Decision relies on an assessment of the extent of future competition between the Parties based solely on the investment case to counteract the lack of evidence of close competition historically, this needs to be cross-checked for reliability against how the position has developed in practice to determine whether weight can be placed on this document. When this is considered, it is clear that this document does not provide a reliable indicator of Xuber's likely future competitive position for Lloyd's customers. There is, therefore, no evidential basis to conclude that Xuber would have become a closer competitor to Agencyport in the absence of the transaction.

---

5 CMA Decision, paragraph 121 (c)

6 Annex 8 (previously submitted as Annex 15 to the Parties' response to the s.109 Notive).

Characterisation as a four to three merger is incorrect

1.20 The Decision concludes that the transaction is a "four to three" merger in respect of the supply of PAS for Lloyd's carriers. The Decision does not discuss, let alone resolve, the mechanism by which a reduction from four to three "leading" competitors, together with a number of other competitors (which a number of third parties have confirmed are credible alternatives) in these markets would lead to an SLC through unilateral effects. Of particular note, the Decision hypothesises that the Parties could worsen non-price aspects of competition (paragraph 151) notwithstanding that the vast majority of the Parties' products are identical in respect of Lloyd's and non-Lloyd's customers (and the Lloyd's specific functionality is based on industry standards).

1.21 The Parties consider that the Decision's dismissal of their competitors for Lloyd's customers other than NIIT and Sequel is based on a highly selective reliance on a small subset of the evidence (a small number of third party comments).

1.22 The Parties provided the CMA with significant evidence of the competitive constraint imposed by other competitors which appears (to the extent that can be gleaned from the Issues Letter and Decision) to have been supported by a number of third party comments. This evidence included:

(a) bidding data which shows that over the last five years these competitors have been [✂] successful [✂] in winning contracts to supply PAS to Lloyd's customers;

(b) the Parties' pre-merger internal documents which show that the Parties consider a broad set of competitors;

(c) external market reports which provide independent confirmation of the competitiveness of these competitors' offering;

(d) recent investment by competitors (including NIIT and Guidewire) as well as additional access to capital as a result of investment in the competing companies; and

(e) third party comments received during Phase 1 which support the credibility of these competitors, as well as a third party confirming that it could sponsor entry. The CMA's reasoning appears to suffer from a form of binary fallacy as certain competitors have been dismissed as being entirely irrelevant to the competitive assessment, whereas the Parties were considered to be strong competitors despite evidence to the contrary.

1.23 Whilst the Decision acknowledges "*a degree of differentiation between the Parties' products*" (paragraph 120), it applies inconsistent standards when comparing the Parties' offerings with those of competitors; Guidewire and Fineos are dismissed as credible competitors on the basis that they have only had recent success in winning tenders for claims components, whilst Xuber, which is in the same position, is treated as a close competitor.[7] Given that the Lloyd's specific development costs would be almost entirely incurred in developing a claims component that could be sold to Lloyd's carriers, the dismissal of these competitors in the forward looking assessment is misplaced.

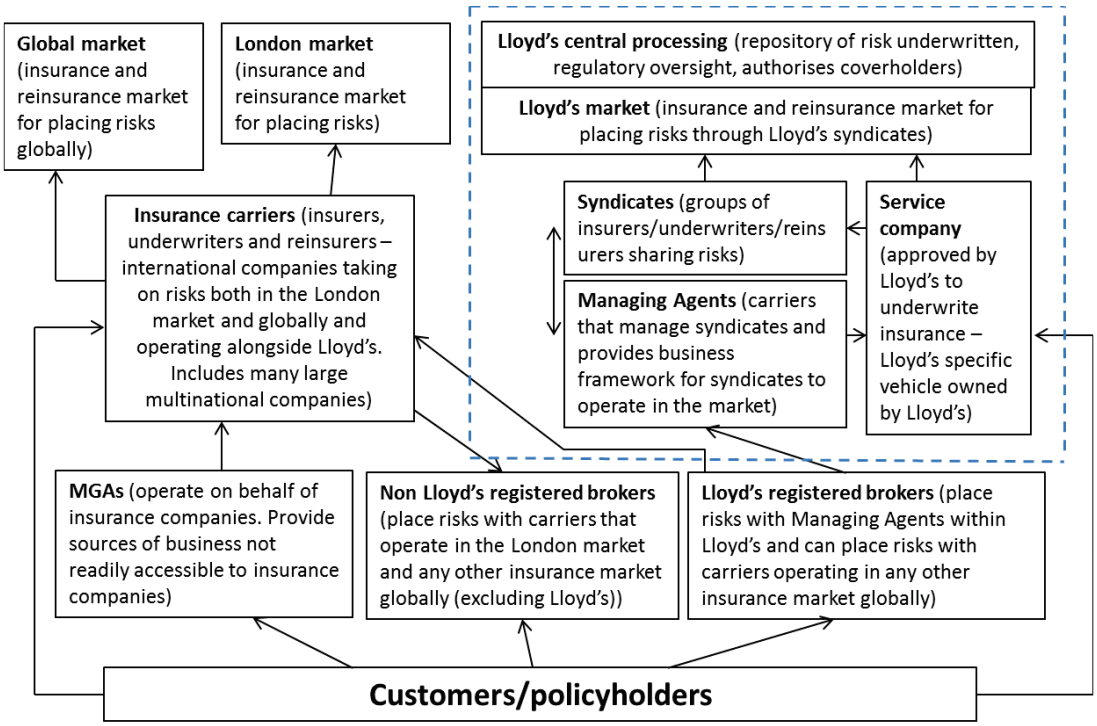
[7] This is notwithstanding the fact that Guidewire is the fastest growing and most successful provider of insurance software in the world, with significant financial and technical resources and revenue more than doubling in just three years.

2. AN OVERVIEW OF THE INSURANCE SECTOR

2.1 Insurance is the primary way by which businesses and individuals reduce the financial impact of a specific risk materialising. The risk is transferred to an insurer for a fee, who is able to pool the risk by insuring a number of different customers and/or a number of different lines of business.

2.2 The insurance market comprises of a range of different market participants involved in various stages of the insurance supply chain. Key market operators include insurers, reinsurers, brokers, managing general agents (**"MGAs"**) and underwriters. Figure 1 below provides a simplified structure of a commercial insurance market, including the interaction of the supply of insurance with Lloyd's of London. A brief description on each of the different market participants is set out below.

Figure 1: Simplified structure of a commercial insurance market



Insurers

2.3 An insurer (also known as an insurance carrier) is a company selling the insurance, and insurers are often large international companies taking on risks around the world. The insurer agrees to take on risks on behalf of its customer, in exchange for a fee (the premium). The insurance policy offered will cover the customer (the policyholder) for many of the costs they have to meet as a result of a risk occurring. The premium an insurer receives from a policyholder, and the terms and conditions of the policy, are based on the chances of the risk occurring and the estimated value in that event.[8]

2.4 Insurance is sold through a range of sales channels including through brokers, through MGAs (discussed further below), and through direct sales by insurers.

2.5 Insurance companies hire underwriters (discussed at paragraphs 2.12 to 2.14 below) to evaluate and accept business for insurers. More specifically, the underwriter will decide

[8] Insurers receive premiums on policies and pool these funds in order to invest them and increase the value of the pool. This pool of funds is subsequently used to pay an insured policyholder which makes a claim under the terms of their policy.

whether applications for insurance (i.e. risks) should be accepted, and if granted, the level of premium that should be charged and conditions of the cover.

Reinsurers

2.6 Reinsurance is essentially insurance of the risk borne by insurers, and is generally offered by specialist reinsurance firms (also known as reinsurance carriers). Reinsurers obtain business directly from insurers, and through insurance brokers.

2.7 Insurers are able to reduce their insurance risk by sharing this risk with one or more reinsurers in return for a share of the original premium received from the client. In the event of a claim, the reinsurer will compensate the insurer for a proportion of the risk which it has insured. The act of reinsurance, therefore, allows insurers to protect themselves against very large claims and increase their insurance capacity.

2.8 It is also possible for the reinsurer to reduce their risk of loss by passing-on the reinsurance cover provided to another reinsurance company (this is known as retrocession or retro-ceding), and is effectively reinsurance for reinsurers. The aim is to spread the risk of having to pay out very large claims amongst a number of different reinsurers.

Brokers

2.9 Insurance brokers act as an intermediary between customers and insurance companies. They use their knowledge and experience of risks and the insurance market to find and arrange suitable insurance policies for their customer. Insurance brokers collect information from their clients regarding their insurance requirements and risk profile, which are provided to underwriters for use in their risk assessments.

2.10 Reinsurance brokers act in the same way as insurance brokers but are an intermediary between insurers and reinsurers. They are generally used for complex reinsurance programmes or where insurance firms have limited reinsurance capacity and expertise. Reinsurance brokers earn a commission for finding and negotiating reinsurance contracts on behalf of the insurer (their customer).

2.11 Brokers are independent from insurance firms and therefore typically offer products from more than one insurer/reinsurer to ensure that their clients get the best deal in respect of price and terms. Brokers receive a commission for placement of insurance and reinsurance, and other services rendered (typically using their market knowledge to identify the appropriate insurance or reinsurance solution).

Underwriters

2.12 Underwriting is the process by which the risk of a potential customer is assessed. The risk, and thus the probability of a claim on a policy, determines whether the potential customer is eligible for insurance, the level of the premium and terms of the insurance contract.

2.13 An underwriter conducts detailed risk assessments of potential clients to determine their appropriate risk band. This classification of clients into risk bands enables the insurer to determine the appropriate premium and terms for the policy. Insurers develop underwriting guidelines which provide general rules for underwriters to follow when classifying risk. Underwriters use these underwriting guidelines to place business in insurance companies' books (i.e. acquire business on behalf of insurance companies).

2.14 Insurance companies typically employ in-house underwriters. However, it is also common for insurers to outsource their underwriting activity to third party underwriting agents.

Managing General Agents (MGAs)

2.15 MGAs are a type of insurer/broker who typically have authority to quote, set conditions, and bind insurance on behalf of an insurer, and typically handle specialist lines of business. Accordingly, MGAs perform certain functions ordinarily handled by insurers, such as underwriting, pricing, and settling claims.

2.16 The role of MGAs varies. At one extreme they operate as scheme brokers, whereby they formulate a specific proposition based upon a defined niche (e.g. caravan insurance) which streamlines the sales process, packages a better proposition and ultimately improves the benefit to both insured and insurer. A scheme broker performs similar functions to a traditional broker. At the other extreme MGAs also operate along similar lines to insurers/reinsurers with specific underwriting authority to write their own policies (although the insurer ultimately controls the capacity in relation to the amount of risk that the MGA can underwrite). Between these two extremes, exist MGAs which operate as a mix of both scheme brokers, and have underwriting authority to operate as a carrier.

2.17 MGAs benefit insurers in a number of ways; they are able to meet the demands of many small customers; they are able to tap into defined niche markets; they are able to enter new territories; and they are able to be more adaptable at a more granular level. In addition, the expertise of MGAs across certain specialised lines of insurance is often not available to insurers and would be more expensive to develop on an in-house basis.

Lloyd's of London

2.18 Lloyd's is an insurance marketplace (often referred to as the "Lloyd's market") where its members join together in order to insure and share risk. Historically a syndicate was formed from a group of Lloyd's names, this has transitioned to a world where syndicates are supported by corporate capital. Syndicates operate within Lloyd's managing agents (discussed further below). Syndicates cover either all or a portion of the risk and are staffed by underwriters. Lloyd's is home to 91 syndicates.[9]

2.19 Lloyd's members are typically global insurance groups or listed companies which provide the capital to support the syndicates' underwriting. Lloyd's of London states that "*The majority of business written at Lloyd's is placed through brokers who facilitate the risk-transfer process between clients (policyholders) and underwriters… Specialist underwriters for each syndicate price, underwrite and handle any subsequent claims in relation to the risk*."[10]

2.20 Policyholders cannot do business directly with Lloyd's syndicates. They must either hire a Lloyd's registered broker or deal direct with a service company (which is a Lloyd's specific vehicle owned and approved by Lloyd's to underwrite insurance). The role of Lloyd's brokers is to shop around the syndicates in order to obtain the best prices and terms for their clients. However, as shown in Figure 1, Lloyd's brokers are not restricted in relation to the insurance companies in which they can do business. Whilst Lloyd's registered brokers can place risks with syndicates in Lloyd's (through managing agents), they can also do business with carriers in any other insurance market outside of Lloyd's around the world.

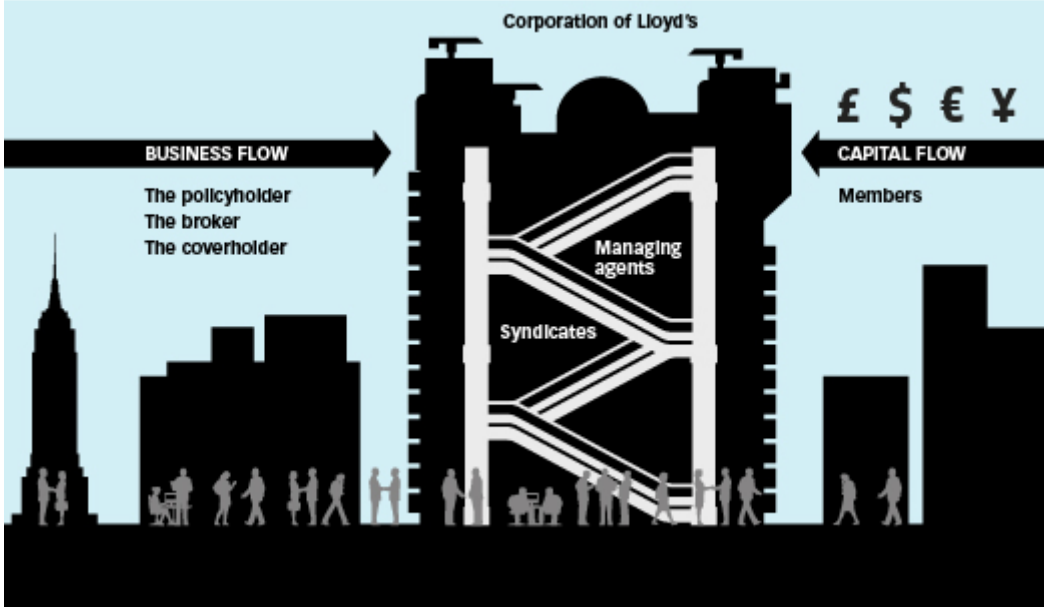
2.21 Figure 2 below provides an illustration of how Lloyd's operates.

---

9 http://www.lloyds.com/lloyds/about-us/what-is-lloyds/the-lloyds-market

10 http://www.lloyds.com/lloyds/about-us/what-is-lloyds/the-lloyds-market

Figure 2: How Lloyd's works



Source: Lloyd's of London.

2.22 In addition to the syndicates mentioned above, Lloyd's participants include:

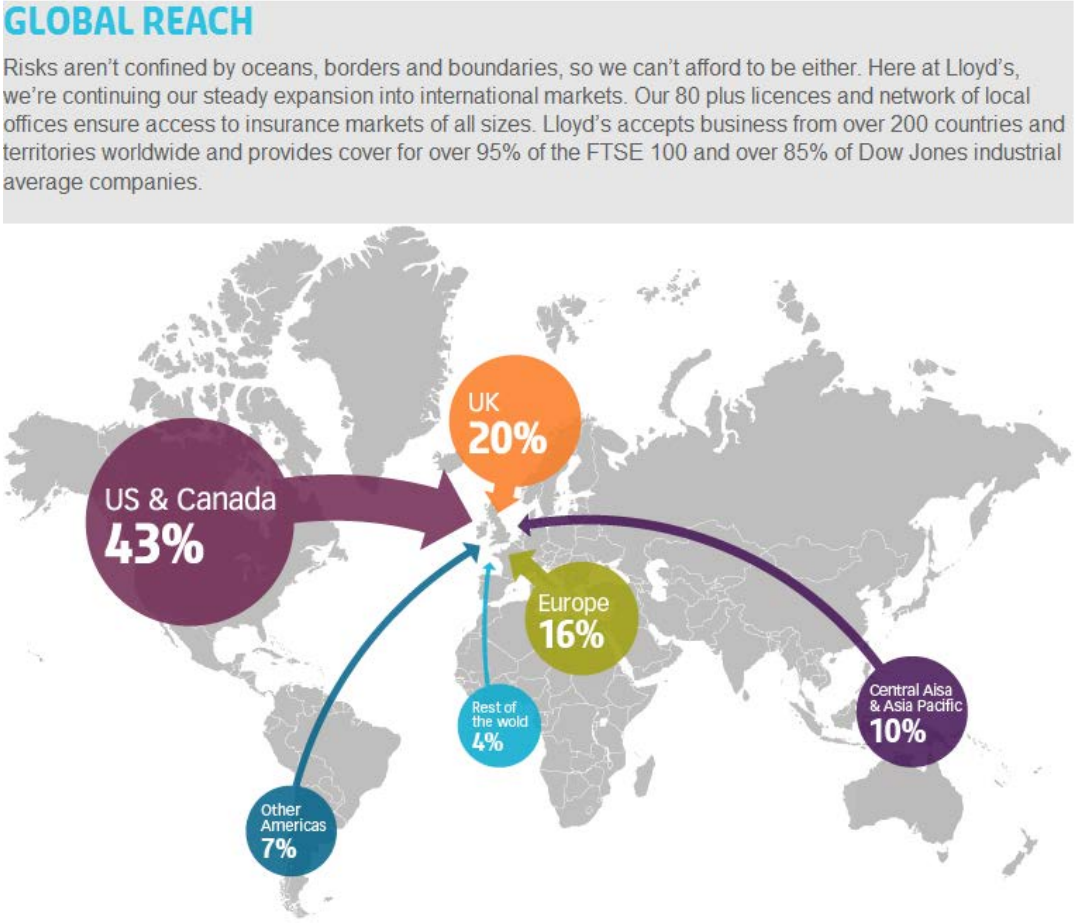
(a) Lloyd's brokers, which are broking firms that have been approved by Lloyd's (having met certain minimum standards). Lloyd's brokers are able to place business with Lloyd's underwriters (through Lloyd's managing agents). Each firm's suitability is assessed by Lloyd's before it can be accredited as a Lloyd's broker. Accredited Lloyd's brokers can purchase insurance in Lloyd's (as well as in any other insurance market place outside of Lloyd's) on behalf of customers;

(b) Coverholders (also referred to as service companies) are Parties with delegated binding authority by an insurer, providing it with rights to enter into contracts of insurance on the insurer's behalf (specifying the terms and conditions of the insurance contract). Coverholders are typically paid on a commission basis and effectively perform the duties of the actual insurer, for instance, collecting premiums, policy document issuance and sometimes claims handling; and

(c) Managing agents are companies set up to manage one or more syndicates, on behalf of the members who provide the capital. Members essentially delegate all responsibility for the management of the underwriting business of a syndicate to the managing agent. The managing agent, therefore, employs the underwriting staff and handles the day-to-day running of a syndicate's infrastructure and operations (for instance, claims processing). Managing agents are equivalent to insurance carriers outside of Lloyd's.

2.23 It is important to note that Lloyd's is not specific to the UK. Lloyd's has a licence to operate in over 200 countries and territories around the world and provides insurance and reinsurance services to customers on a global basis (as shown in Figure 3 below, which is copied from the Lloyd's website).

Figure 3: Lloyd's global presence



Source: Lloyd's of London.

2.24 A unique aspect of Lloyd's is the presence of the Central Fund. This is a "last resort" fund that underpins the participants within the Lloyd's market. The reason for the Lloyd's regulation is due to the disciplines demanded to ensure that no single participant underwrites massively loss making business that could potentially bring the market down (an experience suffered by the market in the mid 1980's that became the catalyst for the regulatory framework in place today).

2.25 The syndicated nature of this market (i.e. the sharing of large risks amongst a number of different insurers), created the need for a central bureau. This central bureau handles transactions between the market participants such as: claims payments; accounting settlement; placing; and document exchange.

2.26 The relevance of providing an overview of the insurance sector is that the market participants have a number of different software requirements. In this case regard, as set out further below, the principal overlap between the Parties is in relation to the supply of PAS that is used by managing agents within Lloyd's and by commercial insurance and reinsurance carriers outside of Lloyd's. Further detail in relation to the areas of overlap is set out in section 5 below.

3. THE PARTIES AND THE TRANSACTION

Xchanging

3.1 Xchanging Holdings Limited is a wholly-owned subsidiary of Xchanging plc and forms part of its corporate group (the "**Xchanging Group**"). The Xchanging Group provides business processing, technology and procurement services internationally for customers across multiple industries. Its clients are large organisations in processing areas such as accounting and procurement, as well as industry specific processing such as securities processing and insurance claims processing.

3.2 The Xchanging Group has over 7,200 employees in 10 countries, providing services to customers in 48 countries. It generated worldwide sales of £685.9 million in the financial year ended 31 December 2013, of which £430.5 million was generated in the UK.

3.3 The Xchanging Group was founded in 1999 by David Andrews with funding provided by General Atlantic. Prior to founding Xchanging, David Andrews was the managing partner of Anderson Consulting Western Europe and built up the Accenture (formerly known as Anderson Consulting) outsourcing business. In 2001, the Xchanging Group set up joint ventures with Lloyd's and the International Underwriting Association to provide centralised back office services to the Lloyd's market. In 2004, the Xchanging Group expanded its insurance activities through the acquisition of Rebus Insurance Services Holdings Limited and, as part of this acquisition, the Xchanging Group also acquired a small IT services operation in India. In 2007, the Xchanging Group listed on the London Stock Exchange.[11]

3.4 The Xchanging Group provides the following services:

(a) procurement – managing direct and indirect spend and sourcing strategies;

(b) business processing – addressing customers' complex back and middle office needs; and

(c) technology – design, build and run IT infrastructure and software.

3.5 The Xchanging Group provides industry specific processing for the following industries:

(a) banking and securities – processing securities transactions and retail investment accounting;

(b) insurance – processing of insurance policies, premiums and claims, and broker annuity;

(c) other financial services - IT systems and hosting for exchanges, processing services for fund managers, investors, as well as SWIFT managed infrastructure services to banks; and

(d) industrial, commercial and public – including retail, real estate, manufacturing and logistics, as well as services for the public sector in the USA and Asia-Pacific.

3.6 In the insurance market, the Xchanging Group offers carriers (insurers and reinsurers), brokers and MGAs its suite of specialist insurance software, Xuber. The Xuber platform is a common software architecture which underlies Xchanging's core insurance software products (Xuber for Insurers, Xuber for Reinsurers, Xuber for Brokers[12] and Xuber for MGAs).

---

[11] http://www.xchanging.com/system/files/uploads/financialdocs/InitialPublicOffering.pdf

[12] Xuber for Brokers is still to be developed.

3.7 The Xuber platform was launched in 2012 as a replacement for Xchanging's legacy products, and to consolidate and enhance Xchanging's historic software solutions.[13] Xuber for Insurers is a componentised PAS product, consisting of four modules: Xuber Policy, Xuber Claims, Xuber Billing and Xuber Ceding, and each module can be deployed separately or as part of a fully integrated end-to-end PAS product.

3.8 Xchanging's other insurance software products are listed below. Iris, Genius and Elgar are not actively marketed and have been replaced by the Xuber suite of products:

(a) Iris: a solution for Lloyd's, London and international reinsurance underwriters which supports insurance and reinsurance business and provides risk processing, claims management, technical accounting and ceded reinsurance functionality;

(b) Genius: a solution for the commercial Property & Casualty insurance market. It supports all major lines of business, including specialist and niche lines, handling multiple classes and complex policies;

(c) Elgar: a solution for excess of loss recoveries and general credit control system, developed to help efficiently administer all aspects of outward reinsurance programmes, to speed recovery and significantly improve cash flow; and

(d) Brokasure: designed to process business across the insurance and reinsurance marketplace supporting both the London Market and international broker. Brokasure provides automation of the entire broking lifecycle, including integration with other core systems and the provision of electronic accounting and placing functionality.

3.9 The Xchanging Group also offers a bordereaux management solution, Binder 360, which converts non-standard risk, premium and claim bordereaux[14] into standard formats.

3.10 Following its acquisition of Total Objects Limited[15], Xchanging acquired the following insurance software products:

(a) GLOBAL XLPro: designed to manage the entire outward reinsurance process (i.e. including both proportional and non-proportional reinsurance), it captures all the rules and methods that apply to each individual contract. Any operation performed by the system will review all the claim, premium and risk data against every contract according to pre-defined rules which will automatically identify all possible recoveries and costs;

(b) GLOBAL XB: a broking software solution, designed for insurance brokers and which covers every aspect of the broking process from obtaining the business to accounting and settlement;

(c) GLOBAL XII: a front office solution for MGA products which communicates with GLOBAL XB for automated processing for broking functionality;

(d) MessageCloud: a messaging gateway which manages ACORD, XML, web services and EDI messaging enabling data sharing between Coverholders, Lloyd's brokers, Underwriters and approved third parties; and

---

[13] Xchanging's marketing brochure for its Xuber platform is attached at Annex 4 (previously submitted at Annex 5 to the Parties' response to the s.109 Notice).

[14] Bordereaux are reports by an insurance company listing the risks to which it has been exposed but which it has reinsured.

[15] This transaction was notified to the CMA and cleared at Phase 1: https://www.gov.uk/cma-cases/xchanging-holdings-limited-total-objects-limited (Annex 45). The acquisition completed on 18 December 2014: http://www.xchanging.com/regulatory_news_article/39268 (Annex 46).

(e) BinderCloud: a managed service approach to straight through binder processing, which automates the bordereaux management process.

Agencyport (Europe)

3.11 The European aspects of Agencyport can trace their origins back to 1968 having held various company names including Box IT, Insurance Technology Insurance Solutions Ltd. The business was acquired by the Sword Group in 2009 and combined with Agencyport in the US to form the Sword Insurance business. In May 2011, Sword Insurance was acquired by Thomas H. Lee Partners (the "**Sellers**"), a private equity firm, as part of a management-led buyout.[16] In October 2011, Sword Insurance changed its name and brand to Agencyport Software.[17]

3.12 Before the sale of the business to Xchanging, Agencyport comprised two distinct Divisions - Agencyport Europe ("**Agencyport**") comprising the European operations of the Agencyport Software Group and Agencyport US, a US-based insurance software business, with offices in Boston (Massachusetts) and Portsmouth (New Hampshire). The US business provides portal solutions for high volume insurance carriers in the commercial and personal marketplaces, in particular through its AgencyPortal platform.

3.13 Agencyport US remains as a trading company and therefore Agencyport can no longer be a trading name for the European entity. The contracting entity is now Xchanging Software Europe Limited though, for the purpose of this paper, Agencyport remains the naming convention.

3.14 Agencyport is headquartered in London, with other offices in Cwmbran and Leeds, and has around 159[18] employees. Agencyport provides Policy Administration, billings and claims systems for Lloyd's (re)insurers, MGAs, commercial lines (re)insurers and International Private Medical Insurance (iPMI)/Private Medical Insurance (PMI) insurers.

3.15 The Agencyport PAS product was initially developed in the 1990's launched and targeted at carriers in the Lloyd's marketplace; it originally launched the first generation of the OPEN Box product (now OPEN Core Platform: Lloyd's) and later adapted this solution to launch a product targeted at non-Lloyd's commercial carriers (OPEN Co, now OPEN Core Platform: Commercial). Agencyport subsequently launched its OPEN Health product in 2001 and its OPEN Xposure, platform in 2002. Agencyport's current suite of OPEN products consists of:

- OPEN Core Platform: Lloyd's – core PAS tailored for the Lloyd's market;
- OPEN Core Platform: Commercial – PAS configured for companies and commercial carriers;
- OPEN Core Platform: Health – multi-channel PAS for domestic and international health insurers;
- OPEN Core Platform: MGA – multi-channel PAS configured for MGAs distributing insurance products;
- OPEN Xposure – a risk exposure and aggregation solution; and
- OPEN Data Warehouse – out-of-the-box data warehouse solution for clients of the OPEN Core Platform.

---

16 http://www.agencyport.com/Release.php?releaseId=2011.05.27 (Annex 47)

17 http://www.agencyport.com/Release.php?releaseId=2011.10.04 (Annex 48)

18 As at July 4th 2014.

Key events and acquisitions/divestments over the last 5 years

Xchanging

3.16 As part of its growth strategy, Xchanging has undertaken the following transactions in the last five years in the IT sector:

(a) acquisition of Total Objects Limited ("**TOL**"), an insurance software provider in 2014.[19] This transaction was notified to the CMA and cleared at Phase 1[20];

(b) acquisition of MarketMaker4, an e-sourcing technology company based in the US in 2013. The strategic rationale for this transaction was to expand Xchanging's offering in the procurement services division which supplies procurement outsourcing and related services. The MarketMaker4 offering was complementary to Xchanging's existing procurement business, which allowed Xchanging to provide an enhanced technology offering to the procurement services market;[21]

(c) acquisition of AR Enterprise, an Italian-based provider of software and IT solutions in 2012. AR Enterprise supplies software and IT solutions to the stockbroking and asset management industries in Italy. This was combined with an existing Xchanging business, Kedrios (also based in Italy), which also supplies stockbroking and asset management software. AR Enterprise's software solutions are specifically produced for the stockbroking and asset management markets, where participants have different software requirements to insurance market participants;[22] and

(d) acquisition of Data Integration Limited, one of the UK's leading networking, security and communication technology providers in 2010. Data Integration Limited specialised in network security, application optimisation, mobility solutions, high performance networks, IP telephony and open access networks. The acquisition of Data Integration Limited was executed with the aim of strengthening Xchanging's technology capabilities in network managed services and establishing a reseller platform.[23]

3.17 In addition, Xchanging has made a number of other acquisitions and disposals over the last five years in respect of other parts of its business, details of which can be found in the press releases on the Xchanging Group's website.

The transaction

3.18 The transaction involves the acquisition by Xchanging of the Agencyport business. There was no relationship between the Parties prior to the transaction apart from the transactional interactions with Xchanging in its capacity as a provider of the London bureau.

3.19 Xchanging understands that the Sellers took the decision to focus their strategy on the US market and therefore decided to divest the European operations of Agencyport Software, whilst retaining the US divisions. The Sellers appointed Arma Partners, an investment bank, to conduct a competitive auction for the Agencyport Europe business. Xchanging understands that a number of private equity firms and other trade buyers evaluated the

---

19 http://www.xchanging.com/regulatory_news_article/39268 (Annex 46).

20 https://www.gov.uk/cma-cases/xchanging-holdings-limited-total-objects-limited (Annex 45).

21 http://www.xchanging.com/news/xchanging-acquires-us-e-sourcing-technology-company-marketmaker4-expanding-technology-offering (Annex 49).

22 http://www.xchanging.com/news/acquisition-italian-fund-administration-business-ar-enterprise-srl (Annex 50).

23 http://www.xchanging.com/news/xchanging-acquires-data-integration-ltd (Annex 51).

business with a number of firms submitting proposals in response to the auction. Xchanging submitted an indicative offer of [✂] on 30 May 2014, with the final bid submitted on 19 June 2014. The transaction was completed on 4 July 2014 and announced on the same day. The acquisition was also announced in a press release[24] and also via RNS.[25] A copy of the Share Purchase Deed (Annex 1) was provided in the Response to the s.109 Notice.[26] The purchase price was £64.1 million in cash.

3.20 Full group structure charts for Xchanging pre- and post-transaction, dated 30 June 2014 (Annex 2) and 4 July 2014 (Annex 3), were provided in the Response to the s.109 Notice.[27] A simplified group structure chart, covering only entities that are active in, or whose activities relate to, the provision of insurance software in the UK was also provided in response to the FDL Initial Information Request.[28]

---

24 http://www.xchanging.com/news/xchanging-acquires-agencyport-europe (Annex 52).

25 http://www.xchanging.com/regulatory_news_article/37805 (Annex 46).

26 Annex 1 (previously submitted at Annex 1 to the Parties' response to the s.109 Notice).

27 Previously submitted at Annexes 3 and 4 respectively to the Parties' response to the s.109 Notice.

28 Annex 15 (previously submitted at Annex 4.1 to the Parties' response to Annex C of the Phase 2 First Day Letter).

4. RATIONALE FOR THE TRANSACTION

Revenue opportunities

4.1 Xchanging considers the transaction will provide significant benefits to customers of both Parties. Agencyport's software offering is highly complementary to its existing Xuber insurance software product range and provides a good strategic fit with the Xuber business. In particular, the transaction will enable Xchanging to expand into new markets, to add new products to its Xuber suite and to market its products (including the existing Agencyport products) to a wider range of customers. The transaction also supports Xchanging Group's strategy of investment in its products and intellectual property, and specifically increases its product range and IP assets in insurance.

4.2 As regards Agencyport, the transaction provides access to Xchanging's global capability and customer base, in particular in the US, together with an alignment to a strong brand and access to the finance and a broader skill set necessary to continue investments in the product portfolio.

Expansion into Health insurance market

4.3 [✂].

4.4 [✂].

Cross-selling products

4.5 [✂].

4.6 [✂].

Upgrade OPEN Xposure

4.7 [✂].

People

4.8 The transaction will contribute to the expansion and strengthening of Xchanging's talent pool within the Xuber business. The injection of high quality employees and strong management into the combined business would help support and achieve the aspirations of the enlarged business.

Cost synergies

4.9 Xchanging's valuation also estimates a net present value of cost synergies of [✂] arising from the transaction. This estimate includes the following cost synergies[29]:

[✂]

[29] Please see further the Project Asgard Board Briefing (June 2014): Annex 5, previously submitted at Annex 6 to Xchanging's response to the s.109 Notice.

5. OVERLAP BETWEEN THE PARTIES

Overview of horizontal overlaps

5.1 The CMA confirmed in its Decision that the main area of overlap between the Parties arises in the supply of PAS software for insurance carriers (defined at paragraph 5.6 below). The CMA also acknowledges, that although both Parties also supply software for MGAs, and business intelligence/data warehousing software, the overlaps in relation to these products are limited, and thus "*the CMA did not consider that the Merger gave rise to a realistic prospect of a substantial lessening of competition (SLC) in respect of these overlaps*".[30]

5.2 Figure 4 below sets out the areas of horizontal overlap between the Parties' insurance software products.

Figure 4: The horizontal overlaps between the Parties' software products

Customer type	Customer sub-type	Overlapping products	
		Xchanging	**Agencyport**
Carriers **- PAS software**	Lloyd's managing agents[1]	Iris (legacy product) Xuber for Insurers	OPEN Box, OPEN Box + (legacy product) OPEN Core Platform: Lloyd's
	Other carriers[1]	Iris (legacy product) Xuber for Insurers	OPEN Co, OPEN Co+ (legacy product) OPEN Core Platform: Commercial
MGAs	Lloyd's MGAs (coverholders)	Global XB + XII (TOL product) Can purchase components of Brokasure and Xuber for Insurers[2]	OPEN Core Platform: MGA
	Other MGAs	Global XB + XII (TOL product) Can purchase components of Brokasure and Xuber for Insurers[2]	OPEN Core Platform: MGA

Notes. (1) Xchanging has another legacy PAS software, Genius. However, as the CMA confirms, this does not compete with an Agencyport product.[31] **(2)** Although MGAs could, in theory, satisfy their software requirements by purchasing elements of Brokasure and Xuber for Insurers [✂].

5.3 In addition to the overlaps in the supply of software to carriers and MGAs, there is an additional overlap between the Parties in relation to business intelligence/data warehousing software, which fulfils a specific process that is distinct from the PAS.

5.4 Each of the overlaps are discussed in turn below.

Provision of PAS software to insurance carriers

5.5 As discussed at paragraph 5.1 above, the primary area of overlap between the Parties arises in the supply of PAS software for insurance carriers.

5.6 The Decision defines PAS software as providing "*a system of record for insurance policies that an insurance company has written. The system is used to manage various policy*

---

30 Paragraph 6 of the Decision.

31 Footnote 6 of the Decision.

administration processes including around marking quotations, processing contracts once agreed, managing transactions and administering policies."[32] The CMA confirms that there are two core types of PAS products available:

(a) full end-to-end (or full lifecycle) software which provides functionality to manage insurance policies throughout its entire lifecycle, including policy administration, claims management, billing administration, and the management of reinsurance; and

(b) componentised products which provide functionality for the specific elements of the full insurance policy life cycle. Separate modules are generally available for policy, billing, claims and reinsurance administration, and are attractive to customers that want to replace/upgrade specific components of the PAS software (rather than the entire PAS system).[33] Componentised solutions may also, depending on the supplier, be supplied together as a full end-to-end solution.

5.7 A more detailed overview and description of the functionality of PAS software is set out on pages 6-8 of the 2014 Celent report (Annex 13)[34].

Xchanging's Xuber for Insurers and Iris

The Xuber platform

5.8 Xuber for Insurers is part of the Xuber platform. The Xuber platform was launched in 2012 as a replacement for Xchanging's legacy products, and to consolidate and enhance Xchanging's historic software solutions.[35]

5.9 The Xuber platform is a common software architecture which underlies Xchanging's core insurance software products (Xuber for Insurers, Xuber for Reinsurers, Xuber for Brokers[36] and Xuber for MGAs). It contains technical components that deliver core business functionality and reusable common assets across the range of products. All products within the platform have been developed in a componentised framework, allowing the software to be deployed separately or as a fully integrated solution.

Xuber for Insurers

5.10 Xuber for Insurers was launched in 2012. As mentioned at paragraph 3.7 above, it is a componentised PAS product, consisting of four modules: Xuber Policy, Xuber Claims, Xuber Billing and Xuber Ceding.[37] Each module can be deployed separately (e.g. alongside other software from another provider), or together to form a fully integrated end-to-end PAS product. Xuber's marketing strategy primarily advertises each module as a stand-alone product, whilst noting the advantage of its deployment (with other modules) as a full lifecycle software solution.[38]

5.11 Xuber for Insurers supports a wide range of lines of business, including speciality and niche lines for Lloyd's and commercial carriers generally. It should be noted that Xchanging markets Xuber for Insurers (and in addition, previously sold its legacy Iris

---

32 Paragraph 27 of the Decision.

33 *Ibid.*

34 Previously submitted at Annex 34 to the Parties' response to the s.109 Notice

35 Xchanging's marketing brochure for its Xuber platform is attached at Annex 4 (previously submitted at Annex 5 to the Parties' response to the s.109 Notice).

36 Xuber for Brokers is still to be developed.

37 Xuber Ceding remains in development.

38 For instance, Xchanging's website markets the modules, Xuber Policy, Xuber Claims, Xuber Billing, Xuber Ceding as separate products (http://www.xuber.com/us/products).

software) to both Lloyd's and non-Lloyd's registered customers in the same manner and using the same marketing materials. As explained further below (see paragraphs 6.14 to 6.17), to the extent that additional specific functionality is required by Lloyd's carriers, this simply requires minor changes to the configuration of the platform.

Iris

5.12 Iris is Xchanging's legacy PAS software for carriers. It is a software product, specifically targeted at insurance and reinsurance underwriters, and provides risk processing, claims management, technical accounting and ceded reinsurance functionality. As some of Xchanging's existing carrier customers use Iris, it (along with other legacy software) was subsumed into the re-launched insurance software business, Xuber, to enable Xchanging to provide existing customers on legacy platforms with on-going service and support. However, Xchanging does not actively promote or sell any historic solutions, which have been superseded by Xuber.[39]

5.13 Xchanging has an additional legacy PAS product for carriers called Genius. It is an insurance processing platform, targeted at P&C insurers supporting all major lines of insurance, including specialist and niche lines, handling multiple classes of insurance and complex policies.[40] However, as the CMA confirms, this does not compete with an Agencyport product.[41]

Agencyport's OPEN Core Platform, OPEN Box and OPEN Co+

The OPEN Core Platform

5.14 OPEN Core Platform is Agencyport's software offering as part of the OPEN Suite. Similar to Xuber, it is a platform-based software solution (i.e. the platform, called OPEN Foundation, provides an underlying software framework for all Agencyport's OPEN Core products). The OPEN Foundation, and the Core Platform configurations are part of the OPEN Suite, which was launched in September 2013 to replace its legacy platforms.

5.15 Agencyport offers its OPEN Core Platform software in two configurations which cater for insurance carriers: OPEN Core Platform: Commercial and OPEN Core Platform: Lloyd's (which superseded its legacy products OPEN Co and OPEN Box, respectively).[42]

5.16 It is important to note that, although OPEN Core Platform: Commercial and OPEN Core Platform: Lloyd's are branded and marketed differently, the underlying foundation is exactly the same. The permutations of the software the Parties market to specific types of carriers are defined in configurations within the OPEN Core Platform software, and making limited adjustments where necessary to meet the business needs of the specific customer.[43] This is emphasised by the fact that OPEN Core Platform: Commercial was developed from OPEN Core Platform: Lloyd's.[44]

5.17 A key distinction between Agencyport's OPEN Core product and Xuber is that the OPEN Core Platform is not componentised (i.e. customers cannot purchase stand-alone modules

---

39 Annex 19 contains the Xuber marketing plan and details Xchanging's marketing costs for each product. As will be noted, none of Xchanging's marketing expenditure relates to Genius, Iris or Elgar. This is consistent with Xchanging's policy of not actively marketing these historic products and focusing on its Xuber platform.

40 Genius does not have Lloyd's messaging functionality and is not used by Lloyd's managing agents.

41 Footnote 6 of the Decision.

42 The OPEN Core Platform offers two further products, namely: OPEN Core Platform: Health, a specialist end-to-end product targeted at the health insurance sector, and OPEN Core Platform MGA which is discussed at paragraph 5.26 below.

43 This might include varying work flow processes or the graphical user interface.

44 Agencyport developed an insurance software that was targeted at Lloyd's registered carriers but subsequently rolled this out to all types of commercial insurers.

of the OPEN Core Platform software, and can only buy it as a full end-to-end product). This means that the software is only suitable for customers looking for a full end-to-end solution as opposed to those who are simply replacing/updating different components within the software package.

5.18 The difference of approach creates a natural divergence in potential and actual customers. Smaller companies with limited IT resource and budgets prefer end to end platforms as they are typically more cost effective to maintain. Larger companies with more complexity typically prefer to address specific system requirements in a piecemeal fashion. This leads to more complex and sophisticated system landscapes which require greater architectural discipline and skills within the insurer.

OPEN Core Platform: Commercial

5.19 This software is designed to provide a complete, out-of-the box solution for large commercial insurers (including national and multi-national carriers) which require a software package that will provide end-to-end coverage for insurance processing. The functionality offered, includes customer management, underwriting, claims, ceded reinsurance[45], collections and disbursement and financial accounting [✂].

OPEN Core Platform: Lloyd's

5.20 The OPEN Core Platform: Lloyd's software provides exactly the same end-to-end insurance processing services as the Commercial platform but is marketed specifically to Lloyd's registered managing agents. The main additional feature that is relevant for managing agents is the bureau messaging/interaction system required by the Lloyd's syndicates, which also supports the risk recording and transaction handling processes within Lloyd's.

Other overlapping products

Business intelligence/data warehousing software

5.21 Business intelligence/data warehousing products assist customers with data analysis and reporting. Both Parties offer software in this product space.

5.22 Xchanging's Xuber Analytics is a tool that has been developed specifically to provide analytics around the Xuber software suite. It provides reporting and query capability, and is only offered alongside the Xuber for Insurers suite (i.e. it is not sold as a separate, standalone product). Similarly, Agencyport's OPEN Data Warehouse is a reporting and analytics tool specific to OPEN suite products. OPEN Data Warehouse is not sold as a separate product because it is only compatible with the OPEN Suite of products, and thus only works alongside them.

5.23 In this connection, both Parties' analytics products do not compete with each other. Each Party's product was developed specifically for the respective software platform. Moreover, as Agencyport's product offering is tied to its OPEN platform, and not available on a standalone basis, it does not compete directly with Xchanging's product offering.

5.24 This is confirmed by paragraph 53 of the Decision which states that "*The CMA does not* […] *consider that the Parties compete directly in the area of business intelligence and data warehousing software because these products are not sold on a standalone basis with competition occurring instead in relation to the PAS software to which they are tied*". This

[45] Ceded reinsurance (as discussed at paragraphs 2.6 to 2.8 above) refers to the process by which insurers seek reinsurance of risk.

conclusion was verified by third party evidence which raised no concerns, and noted that there are several suppliers of business intelligence/data warehousing software.[46]

Software for MGAs

5.25 Both Parties supply software to assist MGAs with their business needs. Although Xchanging did not offer an end-to-end software developed specifically for MGAs prior to its acquisition of TOL[47], it will now supply TOL's MGA software, GLOBAL XII. This is a web-based application used by MGAs requiring a front office, online insurance administration system. It is a 'Quote & Bind' solution[48] enabling MGAs (acting as brokers) to rapidly build and launch on-line insurance products. GLOBAL XII is integrated into TOL's broking system software (GLOBAL XB) to provide MGAs with end-to-end functionality coverage (i.e. for business acquisition and subsequent management of the insurance policy). It is therefore more aligned with the functional requirements of MGAs with similar business models to brokers.

5.26 Agencyport supplies an end-to-end product for MGAs called OPEN Core Platform: MGA. This product is intended to serve those MGAs acting on behalf of carriers (e.g. administering insurance policies), and thus who have similar needs to carriers. The similarity of the product offering is reflected in the fact that Agencyport developed OPEN Core Platform: MGA as a variant of its general insurance software (OPEN Core Platform: Commercial).

5.27 As discussed in more detail below, the CMA concluded that the overlap arising in relation to MGA software products did not raise any competition concerns, noting that the overlap *"does not lead to a realistic prospect of an SLC on any plausible basis"*.[49]

Products in which the Parties do not overlap

5.28 In addition to the products described above, one or more of the Parties supply a variety of insurance software, processes and services:

(a) exposure modelling software for insurance carriers. Agencyport supplies OPEN Xposure, a risk assessment software which enables users to undertake in-depth evaluations of their aggregate exposure to risk. This includes modelling, analysis and stress-testing under various hypothetical scenarios. OPEN Xposure assists with, amongst other things, effective outward reinsurance planning and to fulfil regulatory requirements. Xchanging does not supply an overlapping product;

(b) outwards reinsurance software for insurance carriers. Xchanging has two outwards reinsurance products: Elgar (a legacy product) and Global XLPro (acquired under the Xchanging/TOL transaction). Both products assist users with managing their outwards reinsurance business (described at paragraphs 2.6 to 2.8 above). Agencyport does not supply an overlapping product;

(c) binder management solutions, which comprise of a range of software and services users can use to manage their bordereaux process.[50] Xchanging offers Binder 360,

---

46 Paragraph 54 of the Decision.

47 The Parties note that MGAs could potentially satisfy their insurance software requirements by purchasing components of Xuber for Insurers and Brokasure (Xchanging's broker policy lifecycle product). [✂].

48 "Quote & Bind" software solution are comprehensive applications which allow the user to quote, bind and issue a policy.

49 Paragraph 60 of the Decision.

50 Bordereaux reports are produced and received by a number of insurance market participants. They provide detailed information on position and exposure in relation to risks, premiums and claims. Bordereaux are typically not produced in a non-standard format, and often have missing or incorrect data entries. Accordingly, insurance market require solutions to assist with bordereaux management. This process can be completed manually (using

a back office outsourcing service, which converts and cleanses non-standard bordereaux into a standard format. It also offers BinderCloud (acquired as part of the Xchanging/TOL transaction) which is a cloud-based end-to-end bordereaux processing software platform. Agencyport does not supply an overlapping product; and

(d) software for brokers. Xchanging supplies Brokasure, and Global XB (acquired as part of the Xchanging/TOL transaction). Both products provide functionality to manage a broker's core business activities over the entire policy lifecycle, from initial enquiry and obtaining the business to risk management, accounting and settlement.

5.29 The CMA confirms (at paragraph 61 of the Decision) that no overlaps exist in relation to each of these products.

---

generic software such as Excel), in-house using software or could be outsourced to a back office outsourcing company.

6. MARKET DEFINITION

PAS software

6.1 The CMA concluded in its reference Decision that, on a cautious basis, it was appropriate to consider the market in relation to the supply of PAS software to Lloyd's carriers (i.e. Lloyd's managing agents) only, and it did not discuss the supply of PAS to customers outside of Lloyd's any further in its Decision.[51] It also proceeded on the basis that the geographic market for the supply of PAS was restricted to the UK.[52]

6.2 The CMA appears to have reached this overly-narrow view solely on the basis of a selection of third party comments (the CMA admits that third party comments in relation to the geographic market were mixed), with limited regard to any other evidence. The Parties believe that this narrow approach to the product and geographic market definition does not reflect the realities of the global insurance markets, or the nature of competition in the market where the Parties supply PAS, and therefore provides an incorrect economic framework to evaluate the transaction. In particular, the evidence shows that:

(a) all insurance carriers (both within and outside of Lloyd's) have very similar PAS software requirements;

(b) the Parties supply a PAS product with the same software foundation to both Lloyd's and non-Lloyd's insurers, and indeed the Parties are not aware of any software provider that only supplies PAS software to Lloyd's managing agents;

(c) it is relatively easy to add the incremental Lloyd's functionality to any non-Lloyd's PAS;

(d) the conditions of competition to customers inside and outside of Lloyd's do not differ (contrary to the assertion made by the CMA);[53] and

(e) the supply of PAS systems to insurers is far wider than the UK (consistent with the global nature of the insurance markets in which the software is used).

6.3 Each of these points is discussed in turn below.

All insurance carriers have very similar software requirements

6.4 The Parties consider that the market is wider than the supply of software to Lloyd's managing agents, and should include all non-Lloyd's commercial carriers. This is because all carriers, whether Lloyd's managing agents or not, carry out the same activity: the underwriting of insurance. All carriers require software which is capable of carrying out functions related to insurance underwriting, namely:

(a) issuing and managing quotes;

(b) policy administration and transaction processing;

(c) claims management and processing;

(d) accounting and reporting; and

(e) outwards reinsurance.

---

[51] Paragraph 50 of the Decision.

[52] Paragraph 66 of the Decision.

[53] Paragraph 40 of the Decision.

6.5 Moreover, the Parties supply the same underlying software foundation (with very similar functionality) to all insurers, irrespective of whether they are Lloyd's registered or not.

6.6 In this regard, approximately [✂] per cent of the software functionality is common to all commercial insurers. This reflects the fact that insurers are all carrying out the same activity of writing insurance, and indeed many large risks may be split, with the same risk being underwritten in part by insurers in Lloyd's and in part by the commercial insurance markets in London and overseas.

6.7 The specific configurations required for Lloyd's managing agents are designed to provide relatively minor additional functionality representing only around [✂] per cent of the underlying code base of the Parties' carrier software. The key functionality included in the software supplied to Lloyd's managing agents relates to the interface with the Lloyd's bureau (which provides the central processing services in relation to all insurance transactions within Lloyd's). Lloyd's also has its own reporting requirements which managing agents have to produce, and there is some data that is specific to Lloyd's (e.g. Risk Codes) that managing agents are required to capture. However, these differences are not material, but have been significantly overstated by the CMA.

6.8 The considerable overlap in the PAS software needs of both Lloyd's and non-Lloyd's insurers enables software providers to supply the same underlying software foundation to all carrier customers. These software packages support both the standard insurance processing requirements of carriers and the administrative functionality used by Lloyd's managing agents. This is reinforced by the fact that:

(a) insurance companies frequently carry out a number of market activities and are active in a number of jurisdictions. In this regard, many managing agents are also carriers writing insurance on their own behalf (i.e. outside of Lloyd's) using exactly the same insurance software.[54] Third parties to the CMA's market test also confirmed that there is a trend for carriers with operations both within and outside of Lloyd's (including in overseas markets) to move towards a single end-to-end platform that can service their entire business needs.[55] [✂];

(b) both Xchanging's and Agencyport's platforms are set up so that different functionality can simply be selected/enabled when installing/configuring software for managing agent clients but simply remain dormant if not required. For example, the cash processing functions required by commercial carriers, but which are generally not required by Lloyd's managing agents (as these processes are handled by the Lloyd's bureau), can remain dormant when the software is installed;

(c) the Parties are not aware of any software provider that only supplies PAS software to Lloyd's managing agents, reflecting the commonality in the underlying functions of the product which can be supplied to other commercial carriers at virtually no additional cost;

(d) if a particular software package does not include the functionality for Lloyd's managing agents, the Parties consider that, for a modern architected software package that has a generic messaging capability, the necessary modifications to the code are straightforward and can be added relatively easily. The lack of complex technical nature of the software is reflected by the fact that a significant number of Lloyd's managing agents have developed bespoke in-house software solutions, there are number of software suppliers that have developed the Lloyd's functionality to serve a small number of customers, and third parties confirmed

---

54 For example, [✂] uses Iris to manage both its managing agent business (in Lloyd's) and its commercial business (outside Lloyd's) and CSC are able to support Swiss Re's European non-bureau and London Market operations with their product, SICS.

55 Paragraph 163 of the Decision.

that managing agents could sponsor the entry by non-Lloyd's suppliers (i.e. that a single contract was sufficient to develop the additional Lloyd's functionality); and

(e) the development of ACORD XML messaging within the Lloyd's bureau has further reduced any perceived barriers to entry into the Lloyd's market. PAS systems within Lloyd's historically needed to support Lloyd's specific EDIFACT messaging, especially the USM (Underwriter's Signing Message) and SCM (Syndicate Claims Message). This is no longer the case; it is now possible to take the Lloyd's bureau's ACORD 4 All service as ACORD XML messages, rather than as EDIFACT.[56] The availability of ACORD XML messaging is a significant development, which has resulted in new entry. For example, it has allowed CSC (a major supplier of PAS globally[57]) to adapt its European messaging solution to allow it to extend its support for Swiss Re from Europe to the London company subscription market and from there to Lloyd's.

6.9 As a result of the commonality in the requirements of customers, the Parties consider that there is limited distinction between the provision of software to Lloyd's managing agents from the software used by general insurance carriers outside of Lloyd's and in overseas markets.

The Parties supply the same PAS product to both Lloyd's and non-Lloyd's insurers

6.10 Xchanging's Xuber for Insurers and its legacy product, Iris, are both designed for Lloyd's and non-Lloyd's registered insurers, and for large multinational insurers operating across a number of different countries. The Xchanging products which are supplied to Lloyd's and non-Lloyd's customers are identical; the only distinguishing feature is the way in which the software is configured when the software is installed, with relevant features activated or left dormant, as required. Accordingly, developments made to the core PAS functions are automatically available to customers within and outside the Lloyd's market, and for customers outside the UK.

6.11 This is reflected in the deployments of Iris to both Lloyd's, non-Lloyd's and mixed customers. For example, [✂] uses Iris only to process syndicate business in Lloyd's, and so the Lloyd's functionality is activated in its configuration. In contrast, [✂] uses Iris to process company business only, and therefore the Lloyd's configuration is left dormant.[58] Other Xchanging customers, such as [✂], use the same software and system to manage both Lloyd's and non-Lloyd's insurance. [✂] are all examples of Agencyport customers where the insurer is using the same software foundation to underpin their operations for both Lloyd's and non-Lloyd's business. In total, out of the [✂] Iris customers in the UK, [✂] use Iris for processing non-Lloyd's business and just [✂] use Iris for processing Lloyd's business.

6.12 As regards Agencyport, the OPEN Core Platform suite offers two configurations targeted at insurance carriers: OPEN Core Platform: Lloyd's (marketed to Lloyd's carriers) and OPEN Core Platform: Commercial (marketed to non-Lloyd's carriers). Although differences in the branding and marketing exist, both of these OPEN Core Platform suite offerings are built upon exactly the same underlying software foundation. In reality OPEN Core Platform: Commercial and OPEN Core Platform: Lloyd's are by and large the same solution. Agencyport originally developed the root of OPEN Core Platform: Lloyd's to serve Lloyd's managing agents, and then subsequently widened the supply of the product

---

56 ACORD 4 All converts non-ACORD format messaging into to a standard ACORD format. This means that insurance carriers can now interact with the Lloyd's bureau irrespective of the format of the legacy messaging systems that they have in place.

57 See further paragraphs 8.12 to 8.16 below.

58 The same commonality in the functionality of the software across Lloyd's and non-Lloyd's customers is also relevant for Xuber for Insurers.

to commercial insurance carriers (a solution now marketed under a new brand name, OPEN Core Platform: Commercial), on the basis that the vast majority of the functionality was the same.

6.13 The significant commonality in PAS software requirements explains why many insurance software suppliers have concluded that the appropriate, and economically efficient method to develop carrier software is to produce holistic software solutions for the whole carrier market. These solutions have a single common infrastructure and code base that acts as a foundation for both Lloyd's and non-Lloyd's customers (both within and outside the UK).

It is easy to add the Lloyd's functionality to non-Lloyd's PAS

6.14 The CMA states that "*third-party evidence suggested that firms do not have the ability to supply software with Lloyd's specific functionality quickly with development and implementation taken several years and significant financial resources*."[59] The Parties disagree with this conclusion and consider that it is relatively straightforward for non-Lloyd's software suppliers to add the incremental functionality to their existing software to supply Lloyd's managing agents. All the necessary requirements to interface with the Lloyd's bureau are to the global ACORD standard.[60]

6.15 Estimating a cost for this would vary depending upon the application architecture, technology and the extent to which existing functionality could be reused by a vendor. However, as set out further in section 9, with the assumption of a competent functional base and a modern architecture and technology base, the Parties estimate that the investment costs of developing Lloyd's-specific functionality (in accounting terms) to an existing PAS system are low, in the region of £500,000 - £1,000,000 and take less than [✂] to develop, with the economic cost of entry (i.e. the incremental costs) being lower for a number of potential entrants. To put this into context, these costs could be covered through the award of a single Lloyd's contract (particularly as contracts are awarded over a number of years).[61]

6.16 This is consistent with the fact that:

(a) a number of Lloyd's managing agents have developed their own bespoke PAS software, which includes the relevant Lloyd's specific functionality. The fact that non-specialist software companies find it both feasible and economic to develop PAS software for a single deployment confirms that a specialist software company with an existing PAS system could readily add Lloyd's functionality to target a number of Lloyd's managing agent opportunities;

(b) there are a number of software suppliers that are currently actively supplying software to Lloyd's managing agents. The fact that there are at least 8 different suppliers (as acknowledged by the CMA), with some suppliers (e.g. eBaoTech [✂] and Eurobase [✂]) finding it economic to develop the requisite Lloyd's functionality for a small number of customers demonstrates that the investment costs of the Lloyd's functionality are not material;

(c) a number of third party comments highlighted the ease of entry. For example, in paragraph 163 of the Decision the CMA states that "*the CMA also received third-party comments that suggested that a Lloyd's Carrier with operations outside of Lloyd's may sponsor the entry of a credible non-Lloyd's supplier*." In other words, customers have confirmed that a non-Lloyd's PAS supplier could develop the

---

59 Paragraph 39 of the Decision.

60 ACORD, the Association for Cooperative Operations Research and Development, is a global, non-profit insurance standards association whose mission is to facilitate the development and use of data standards for the insurance, reinsurance, and related financial services industries. See https://www.acord.org/Pages/default.aspx.

61 [✂].

incremental Lloyd's functionality on the basis of a single contract from a customer. Not only does this demonstrate that barriers to entry are low, but it also demonstrates that managing agents have a significant amount of buyer power to defeat any potential price increase;

(d) as previously explained to the CMA, there are a number of recent examples of insurance software providers entering and either supplying Lloyd's managing agents (using their existing PAS systems) or bidding for tenders by Lloyd's managing agents. These include:

(i) Guidewire: Having won a tender to provide its Claim Center software to QBE's European operations, Guidewire has successfully built bureau messaging capability to process Lloyd's claims messages for QBE, and Guidewire was awarded a contract to supply Beazley with its Claim Centre software both within Lloyd's as well as globally. In this regard, Guidewire's marketing brochure states that: "*Following a number of highly successful implementations of Guidewire ClaimCenter® in the London Market, Guidewire has invested to produce London Market Messaging, aimed to deliver specialised functionality for insurers operating in this unique trading arena*."[62] [✂]; and

(ii) Zov Solutions: On 27 August 2014, Zov Solutions announced that Charles Taylor Insurance Services and Sciemus have selected its SID software as the core platform for a MGA recently established by Sciemus to write global power business in the London insurance market;[63] and

(e) it is clear from the CMA's Decision that during the Phase 1 process the CMA received evidence of a supplier (or suppliers) actually planning on developing the Lloyd's functionality in order to supply Lloyd's managing agents.[64] Not only was this information not disclosed to the Parties at any stage during the Phase 1 process, the Parties are unable to comment on the CMA's reasoning for dismissing this entry as being relevant to its assessment on the basis that the information is redacted in the Decision. Nonetheless, it provides clear and demonstrable evidence of entry taking place.

6.17 Accordingly, the Parties believe that it is incorrect to focus solely on the supply of PAS to Lloyd's managing agents when the same software can readily be adapted for customers either within or outside Lloyd's. [✂].

The conditions of competition do not differ between Lloyd's and non-Lloyd's customers

6.18 The CMA states in its Decision that "*the evidence also indicates that the conditions of competition between software with Lloyd's specific functionality and that without differ*".[65] More specifically, the CMA appears to support this conclusion on the basis that:

(a) "*the sizes of the respective markets differ in value*";[66]

---

62 The following provides evidence of Guidewire's messaging component for the London market (including Lloyd's): http://www.guidewire.com/assets/Resource-Attachments/Datasheet-Guidewire-ClaimCenter-LondonMarketMessaging.pdf (Annex 54)

63 http://www.zovsolutions.com/charles-taylor-insurance-services-and-sciemus-select-sid-as-a-core-platform/ (Annex 41)

64 Paragraphs 166-170 of the Decision.

65 Paragraph 40 of the Decision.

66 *Ibid.*

(b) "*third parties have confirmed that it is difficult and expensive for suppliers operating outside of Lloyd's to develop software for the Lloyd's market*";[67] and

(c) "*there are differences among the suppliers of, on the one hand, PAS software with Lloyd's specific functionality and, on the other hand, suppliers of PAS without Lloyd's specific functionality*".[68]

6.19 However, none of the factors identified by the CMA to support a conclusion that the conditions of competition differ between software with and without Lloyd's specific functionality are specifically relevant to the assessment of market definition, which focuses on the question of substitutability (i.e. in response to a relative change in prices of 5-10 per cent).[69]

6.20 In this regard, the fact that the size of the respective markets may differ has no bearing on the assessment of substitutability. The mere fact that there may be some different suppliers of software to non-Lloyd's customers does not in itself imply that there are differences in competition in the supply of PAS software to Lloyd's and non-Lloyd's customers, and does not support the conclusion reached by the CMA that "*competition may be more intense outside of Lloyd's*".[70] Moreover, as mentioned above, the Parties do not agree that it is difficult and expensive for suppliers operating outside of Lloyd's to develop the Lloyd's functionality, with the CMA's assessment being materially overstated.

6.21 Contrary to the conclusion reached by the CMA, the Parties consider that the conditions of competition for PAS are similar for both Lloyd's and non-Lloyd's customers. In particular:

(a) the Parties are not aware of any suppliers of PAS to Lloyd's customers that do not also supply an identical or very similar product offering to non-Lloyd's insurers. As mentioned above, the Xchanging products which are supplied to Lloyd's and non-Lloyd's customers are identical, with the only distinguishing feature being the way in which the software is configured when it is installed;

(b) contracts by both Lloyd's and non-Lloyd's customers are typically awarded on the basis of competitive tender. Moreover, the Parties face many of the same suppliers in tenders by non-Lloyd's customers as in relation to Lloyd's tenders (including Sequel, NIIT, Northdoor, CSC, Guidewire, Fineos etc.);

(c) many Lloyd's managing agents are also carriers writing insurance on their own behalf (i.e. outside of Lloyd's). Many of these customers are able to procure and use the same software product in both segments of the market, and have full visibility of pricing between the different segments of the market, which ensures that there are no material differences in the product offering;

(d) as mentioned above, third party comments to the CMA at Phase 1 confirmed that "*a Lloyd's carrier with operations outside of Lloyd's may sponsor the entry of a credible non-Lloyd's supplier*".[71] This demonstrates that, were prices to deviate materially between the Lloyd's and non-Lloyd's segments of the market, Lloyd's customers could readily support new entry into the Lloyd's segment of the market. In addition, there are examples of suppliers adding the Lloyd's functionality to their PAS software so as to be able to supply both Lloyd's and non-Lloyd's customers;

---

67 *Ibid.*

68 Paragraph 41 of the Decision.

69 Section 5.2, Merger Assessment Guidelines, A joint publication of the Competition Commission and the Office of Fair Trading, September 2010.

70 Paragraph 49 of the Decision.

71 Paragraph 164 of the Decision.

(e) [✂]. This indicates that Xchanging does not view Lloyd's and non-Lloyd's (or the UK) as separate markets;[72] and

(f) there is a high degree of commonality in the marketing of the software to the different users. As regards Xuber for Insurers, Xchanging use the same marketing materials to advertise Xuber for Insurers to Lloyd's managing agents and to other commercial insurers.[73] This reflects the fact that it is the same software product being supplied to different customers (with certain functions simply being "switched on" when the software is being configured to meet the customer's requirements), and there is a high degree of commonality in the functionality of the software used by Lloyd's managing agents and other commercial insurers.

6.22 In light of the above, the Parties do not consider that there are any material differences in the conditions of competition between Lloyd's and non-Lloyd's customers, with investment decisions being taken at a much broader level. Were any differences in the conditions of competition to emerge, the ease of entry (and the fact that a single Lloyd's managing agent could support entry) would ensure that competitive conditions remain similar between both segments of the market. Accordingly, the Parties consider that not only are they constrained in their pricing decisions from PAS suppliers with the requisite Lloyd's functionality, but also from PAS suppliers in the broader market (i.e. outside of Lloyd's).

6.23 Crucially, the CMA's reference Decision also focuses on future competition in the development of new PAS software, but such investment decisions will inevitably be made taking into account both the Lloyd's and non-Lloyd's customer opportunities (as evidenced by Xchanging's investment in Xuber). Therefore, in respect of considering competition in product development, a narrow market definition with respect to Lloyd's customers only is clearly not appropriate.

The supply of PAS systems to insurers is wider than the UK

6.24 The CMA states that it "*is minded to assess the geographic frame of reference for this merger as being the UK*",[74] although the CMA itself acknowledges that third party responses "*were mixed*" on this point.[75] More specifically, the CMA seems to justify this conclusion on the basis of an incorrect belief that a "*local presence*" is important.[76]

6.25 The Parties consider that this assessment is flawed; the relevant geographic market for the provision of software to insurance carriers is worldwide. This is consistent with the global nature of the insurance market, the multinational companies operating in the market, and the nature of software markets with very low transport/distribution costs. There are no barriers to participants in the insurance market purchasing software solutions from software providers around the world and indeed insurers are increasingly seeking a single software solution for their global business (e.g. Ironshore), without a local presence being required.

6.26 As regards the provision of software to Lloyd's registered managing agents, overseas companies can, and regularly do, tender for their business, and companies such as CSC (US-based) and eBaoTech (whose headquarters are in Shanghai) have won instructions to supply software to Lloyd's managing agents (see the bidding data referred to at

---

72 Price lists for Xchanging's Iris and Xuber for Insurers PAS software were provided in response to the CMA's s109 request at Phase 1.

73 It should be noted that Xchanging also use the same marketing material to advertise Xuber for Insurers to prospective customers irrespective of geographical location.

74 Paragraph 66 of the Decision.

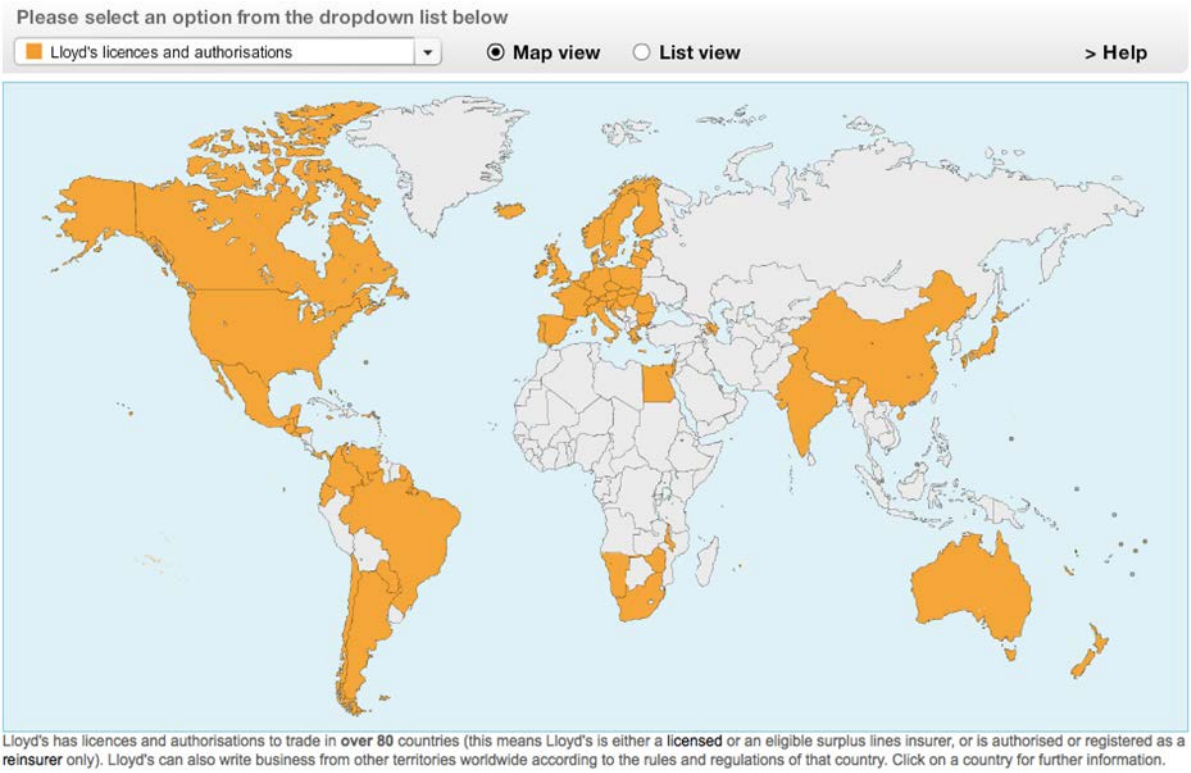
75 Paragraph 65 of the Decision.

76 *Ibid.*

paragraphs 7.38 to 7.44 below). The CMA itself also acknowledges that eBaoTech has entered and started supplying Lloyd's managing agents without a UK presence.[77]

6.27 Moreover, as illustrated in Figure 5 below, Lloyd's has licences and authorisations to trade in over 80 countries, which demonstrates its clear international reach.

Figure 5: Geographical distribution of businesses with Lloyd's licences and authorisations



6.28 As explained above, as the vast majority of a commercial insurance software solution is the same for a Lloyd's managing agent as for any other insurance carrier, software providers from around the world are able to adapt existing solutions to supply managing agents quickly and easily without having to undertake significant investment. Moreover, whilst Lloyd's managing agents are all registered in the UK, a number of them have users based in different countries around the world, using exactly the same software product.

6.29 Further, providers of software to Lloyd's managing agents also supply their software to customers outside of the UK. By way of example:

(a) Guidewire Claims Centre is used to process claims for QBE (a Lloyd's managing agent, which also uses Iris PAS software), Beazley which uses Guidewire Claims Centre for both its Lloyd's and global insurance operations,[78] and is also utilised by over 100 carriers globally;

(b) Agencyport OPEN Foundation processes full lifecycle business for Lloyd's managing agents [✂];

(c) eBaoTech provides PAS software to Argo, a Lloyd's managing agent, as well as to carriers located in Asia;

---

77 Paragraph 42 of the Issues Letter.

78 Annex 29.

(d) SAP provides software to Munich Re in London as well as to large reinsurers throughout Europe;

(e) NIIT's PAS software, Subscribe, is used by Lloyd's managing agents and has also been rolled out in Singapore and in the Benelux countries; and

(f) CSC currently supply PAS to three Lloyd's managing agencies (Sirius, Renaissance Re, and IMSL (part of Vibe)) which, given the substantial size of their presence in the wider (re)insurance sector makes them a credible competitor within Lloyd's.

6.30 The Celent Report dated September 2014 (Annex 13[79]), confirms the market view that there are no significant barriers to competitors configuring their products to offer to Lloyd's customers. In its introduction, the Celent Report states: "*Another distinguishing characteristic of this market is its global nature. Originating perhaps with Lloyd's traditional ability to underwrite any risk brought to it, an increasing number of insurance enterprises are meeting broker and policyholder needs at Lloyd's, but also in the broader London Market, the EU, Bermuda, and other offshore locations, and within the US on both an admitted and nonadmitted basis*". This statement confirms the ease with which providers can take their existing products to new groups of customers. This also ties in with the examples the Parties have already cited in relation to their competitors expanding, for example Guidewire which has recently started offering a "London Market Messaging" add-on to its core platform and which supplies Lloyd's customers such as QBE and Beazley.

6.31 In addition, it should also be noted that a local presence is not required in relation to the software developers and support and maintenance staff. Xuber's development team and a large number of support and maintenance staff are based in its Gurgaon and Bangalore offices in India. In addition, it is of note that the Total Objects development team is based in St Petersburg, Russia.

6.32 In summary, the Parties consider that there is clear evidence that the provision of software to carriers (including to Lloyd's registered managing agents) is global in scope, a view confirmed by independent market research, and there are no impediments to competition affecting software providers based overseas.

Other overlapping products

Business intelligence software

6.33 In respect of analytical software (also referred to as business intelligence), both Parties have developed tools which permit data analysis and reporting, but in both cases these are modules which only support the Parties' respective insurance carrier products and are <u>not</u> sold on a stand-alone basis.

6.34 Xuber analytics is a tool that has been developed specifically to provide analytics around the Xuber software suite. It provides reporting and query capability. Xuber Analytics is only offered along with the Xuber for Insurers suite and is not sold as a separate, standalone product. Agencyport has a specific reporting and analytics tool (OPEN Data Warehouse) which only works within and alongside the OPEN suite of products. It is incompatible with other platforms and so is not available or sold as a separate product. The analytics products were therefore developed specifically for the respective software platform and do not compete with each other on a stand-alone basis as Agencyport's tool is only available as part of the OPEN platform.

6.35 As noted in the CMA's Decision, "*third-party responses to the CMA's market test suggest that there are several suppliers of business intelligence/data warehouse software*

[79] Previously submitted at Annex 34 to the Parties' response to the s.109 Notice

products. Moreover, no third party raised any competition concerns regarding this overlap between the Parties".[80] Accordingly, with regards to business intelligence software, the Parties consider that the CMA can leave the market definition open as the Parties do not compete directly in relation to the supply of these products as they are not sold on a standalone basis, and do not give rise to an SLC on any plausible basis.

Software for MGAs

6.36 As mentioned above, MGAs are a type of insurer/broker who typically have authority to quote, set conditions, and bind insurance on behalf of an insurer, and typically handle specialist lines of business. Accordingly, MGAs perform certain functions ordinarily handled by insurers, such as binding coverage, underwriting and pricing, appointing retail agents within a particular area, and settling claims.

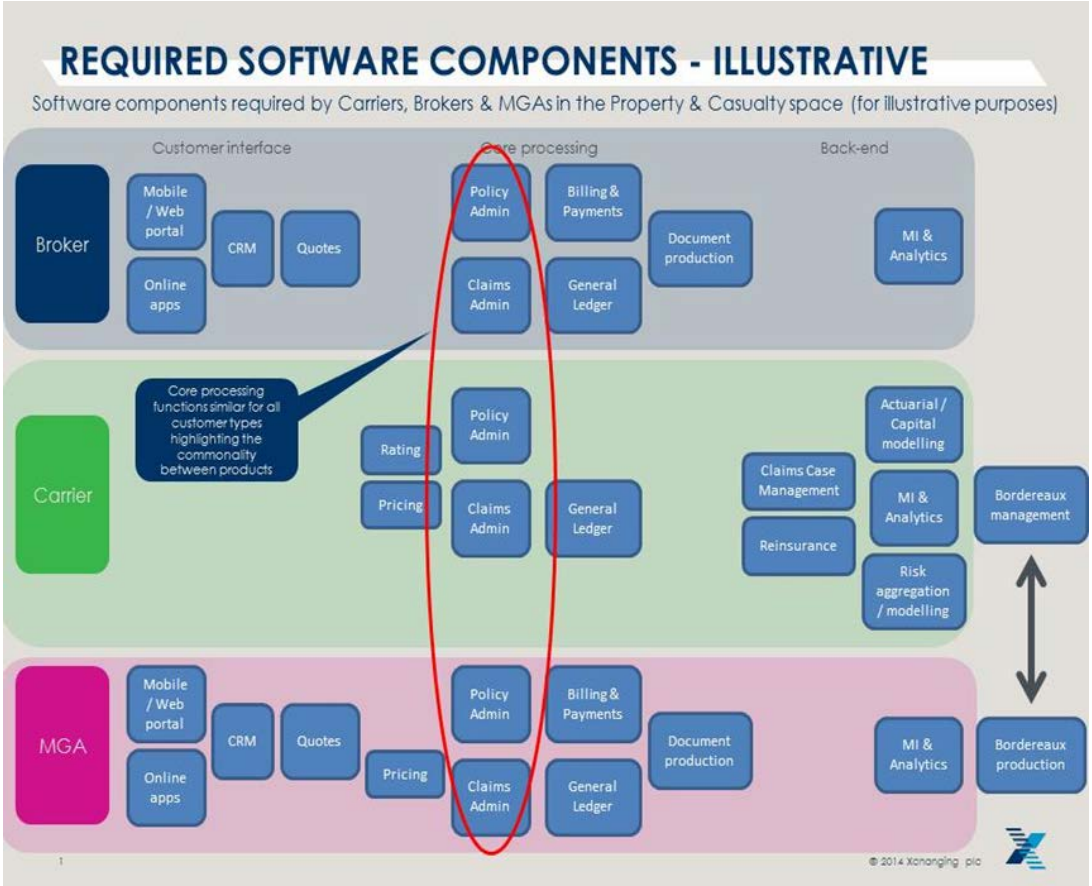
6.37 The role of MGAs varies. At one extreme they operate as scheme brokers, whereby they formulate a specific proposition based upon a defined niche (e.g. caravan insurance) which streamlines the sales process, packages a better proposition and ultimately improves the benefit to both the insured and the insurer. A scheme broker performs similar functions to a traditional broker. At the other extreme MGAs also operate along similar lines to insurers/reinsurers with specific underwriting authority to write their own policies (although the insurer ultimately controls the capacity in relation to the amount of risk that the MGA can underwrite). Between these two extremes, exist MGAs which operate as a mix of both scheme brokers, and have underwriting authority to operate as a carrier.

6.38 MGAs benefit insurers in a number of ways: they are able to meet the demands of many small customers; they are able to tap into defined niche markets; they are able to enter new territories; and they are able to be more adaptable at a more granular level. In addition, the expertise of MGAs across certain specialised lines of insurance is often not available to insurers and would be more expensive to develop on an in-house basis.

6.39 Accordingly, the software used by MGAs at one extreme is similar to that used by brokers and carriers (involving much of the same functionality) and is generally a "lighter" combined version of the broker and carrier software solutions (as shown in Figure 6 below). For instance, as a generalisation, broker packages do not have a pricing component (whereas carrier packages do), whereas typical carrier solutions do not have invoicing and document production component (whereas broker solutions do). This indicates that, on the supply-side, it is relatively easy for a provider of software to brokers and insurers to also supply MGAs.

[80] Paragraph 54 of the Decision.

Figure 6: Required software components



6.40 As regards software for MGAs, prior to the Agencyport acquisition, Xchanging did not produce an integrated software product aimed specifically at MGA customers. MGAs may, however, purchase a mix of Xchanging's Brokasure product (i.e. its broker software) and individual components of Xuber for Insurers, in order to fill the gaps in their existing software solutions, [✂].

6.41 TOL does, however, offer a software solution to MGAs, known as GLOBAL XII. GLOBAL XII is essentially a customer interface, which provides a front office solution for MGA products. GLOBAL XII communicates with GLOBAL XB (TOL's broker software) for automated processing to fulfil MGA requirements for broking functionality.

6.42 In contrast, Agencyport has a platform (OPEN Core Platform: MGA) that is specifically marketed to Managing General Agents acting on behalf of carriers. The similarity of the product offering is reflected in the fact that Agencyport developed its MGA product as a variant of its general insurance software. [✂].

6.43 In order to consider the market on the narrowest possible basis, the Parties have considered the supply of insurance software to MGAs separately, although, as noted above, there is a high degree of commonality between the software provided to brokers and carriers and that provided to MGAs. However, as noted in the CMA's Decision, the CMA can leave the market definition open "*because this overlap does not lead to a realistic prospect of an SLC on any plausible basis*".[81]

[81] Paragraph 60 of the Decision.

Geographic market for MGAs

6.44 The relevant geographic market for the supply of software to MGAs is worldwide. This is reflective of the global nature of the insurance markets, the multinational companies operating in these markets, and the nature of software markets with very low transport/distribution costs. There are no barriers to MGAs purchasing software solutions from software providers around the world. In particular, regulatory requirements do not create a barrier to supplying software across different geographic markets.

6.45 However, as mentioned above, the CMA can leave the market definition open on the basis that it does not give rise to an SLC on any plausible basis.

7. COMPETITIVE ASSESSMENT IN RELATION TO THE SUPPLY OF PAS

Competition between the Parties was limited pre-merger

7.1 Notwithstanding the concerns set out above in relation to the CMA's overly restrictive approach to market definition, even if the market were considered on a narrow basis in relation to the supply of PAS to Lloyd's managing agents in the UK, the evidence clearly shows that the competition between Parties pre-merger was limited. In particular:

(a) the Parties' market shares are not high and well below the level at which competition concerns generally arise;

(b) the bidding data over the last 5 years confirms that the Parties were not close competitors in bidding for contracts for Lloyd's managing agents;

(c) there are a number of strong competitors bidding for and winning contracts in relation to the supply of PAS to Lloyd's managing agents; and

(d) the Parties' products are differentiated (with Xchanging's Iris product being a legacy product) which reduces the extent to which they are viewed as substitutes.

7.2 Each of these points is considered in turn below.

The Parties' market shares are not high

Market shares on the basis of the number of customers

7.3 At the time of the Parties submission at Phase 1, the Parties supplied PAS to [✂]Lloyd's registered managing agents (Agencyport: [✂], Xchanging: [✂], with [✂]) out of the 60 registered and active Lloyd's managing agents (as listed on the Lloyd's website (link)).[82] This represents a combined share of supply by number of customers of [✂] (increment of [✂] per cent).

7.4 It should be noted, however, that [✂], which gives rise to a combined share of supply of just [✂] per cent (increment [✂] per cent). The Parties' combined share of customers in relation to a broader UK market including both Lloyd's and non-Lloyd's carriers is just [✂]per cent.[83]

7.5 Managing agents typically procure PAS both for themselves, and for the syndicates they represent (managing agents will often act on behalf of more than one syndicate). If the share of supply is considered in respect of the number syndicates purchasing PAS, the Parties' currently supply [✂] syndicates (Agencyport: [✂], Xchanging: [✂], with [✂]) of the 103 active Lloyd's syndicates in 2014 (as listed on the Lloyd's website (link)). This represents a combined share of supply of [✂] per cent, [✂].

7.6 It should be noted, however, that the Parties' shares of supply calculated on the basis of the number of customers are likely to be overstated. This reflects the fact that managing agents may use more than one PAS system. For example, managing agents may have acquired syndicates or merged with other managing agents ([✂]), which means that they may continue to purchase more than one legacy PAS solution. Accordingly, whilst the Parties have assumed that they supply each Lloyd's customer on an exclusive basis (as they do not have visibility as to which suppliers supply which managing agents and which syndicates), certain customers are likely to be using multiple systems. For example, [✂].

---

82 Note there are [✂] Xchanging customers listed in Table 1 below. [✂].

83 See the Parties' response to the Market Questionnaire.

7.7 Notwithstanding the fact that the Parties' shares of supply calculated on the basis of the number of customers are likely to be overstated, it is clear that the Parties' combined shares of supply are below the level at which competition concerns would generally arise (even on the most cautious basis adopted).

Market shares based on software spend

7.8 In relation to market shares calculated on the basis of PAS spend, Tables 1 and 2 below set out the Parties' Lloyd's PAS customers, and the annual revenue derived from the licensing and support/maintenance of PAS in 2013.

Table 1: Agencyport Lloyd's PAS customers

[✂]

Table 2: Xchanging Lloyd's PAS customers

[✂]

7.9 Of note, Tables 1 and 2 above shows that the Parties' combined turnover in relation to the supply of PAS to Lloyd's managing agents was [✂] in 2013 (Agencyport derived [✂] of revenue and Xchanging [✂]).[84] However, as mentioned above, [✂], which, based on 2013 revenue figures, would give rise to a combined turnover of [✂] (Agencyport revenue of [✂] and Xchanging revenue of [✂]).[85]

7.10 The difficulty with calculating market shares on the basis of spend is that information in relation to the total size of the market is not readily available, with contracts being bilateral and confidential. The Parties have not identified any industry reports setting out estimates of the size of the Lloyd's market for PAS by value. Accordingly, any share of supply estimates with a market size based on software spend will be inherently uncertain.

7.11 However, the Parties observe that Slides 4 and 5 of the Project Asgard Board Briefing pack (Annex 5[86]), estimated that the size of the market for PAS to Lloyd's managing agents was £50 million for the purposes of presenting the transaction to the Xchanging Board. The £50 million figure was calculated on the basis of the volume of GWP within the Lloyd's market in 2013 (£25bn)[87], and then multiplied by an estimate as to the proportion of revenue that Lloyd's insurers spend on software (0.2 per cent).[88] The figure of GWP within the Lloyd's market does not include revenue from MGAs, brokers, coverholders or the wider London carrier market.

7.12 On the basis of the market size estimate used by the Parties for assessing the transaction, this would mean that Xchanging and Agencyport have a combined market share by software spend of just [✂] (increment [✂]), and [✂] if the [✂]. However, despite this market size estimate being set out in contemporaneous evidence contained in a board report and directly relevant to the assessment of the transaction, the CMA has dismissed this market size estimate on the basis that it does not consider that "*this estimate is sufficiently robust*".[89]

---

84 The Parties have sought to extract revenue that was (i) obtained from other non-PAS products, such as Xposure for Agencyport and Elgar for Xchanging; and (ii) derived from the commercial arm of Lloyd's managing agents (i.e. in relation to their non-Lloyd's business).

85 If Agencyport's revenue from sales of Xposure with its PAS software to Lloyd's managing agents are included, the Parties' combined turnover was [✂] in 2013 [✂].

86 Previously submitted at Annex 6 to the Parties' response to the s.109 Notice.

87 From the Lloyd's Annual Report 2013.

88 i.e. 0.002 x £25bn = £50m.

89 Paragraph 74 of the Decision.

7.13 The CMA has, instead, then proceeded to provide its own estimate of total market size based purely on the GWP of managing agents (i.e. which is unrelated to the amount spent on PAS software and was not shared with the Parties during Phase 1), which clearly contains a number of errors.

The inconsistency in the CMA's market share calculations

7.14 The Parties understand that the CMA's estimate of the shares of supply of the Parties have been calculated on the basis of the GWP of the insurance underwritten by the Lloyd's managing agents that are supplied with software by the Parties, taken as a proportion of total Lloyd's GWP.[90] However, it is implicit within this methodology that GWP provides a reliable metric for estimating the spend of managing agents on PAS. On this basis, the CMA estimates that the Parties have a combined share of supply of [✂] (excluding in-house supplies), with Xchanging having a share of supply of [✂] and Agencyport having a share supply of [✂].[91] If in-house supplies are included, the CMA estimates that the Parties would have a combined share of supply of [✂] per cent (with each party having a share of [✂] per cent).

7.15 Notwithstanding the concerns expressed by the Parties in relation to calculating shares of supply on this basis, the CMA concluded that "*it can place some weight on the data*", despite rejecting the Parties' market size estimate as not being sufficiently robust.[92] The inconsistency in the CMA's approach is clearly evident from Tables 1 and 2 above. In particular, Table 2 shows that Xchanging derived [✂] in PAS revenue in 2013, which is around [✂]. However, the CMA's share of supply calculations indicate that Xchanging has a share of supply (excluding in-house supply) of [✂].[93]

7.16 Accordingly, it is clear that there are some very serious and manifest errors in the CMA's calculations, and the CMA was wrong to suggest that it can place weight on those calculations in its Decision.[94]

7.17 To further demonstrate the inaccuracy of the CMA's share of supply calculations, the Parties have assessed the correlation between the PAS spend derived by the Parties' Lloyd's managing agent customers in 2013 and the GWP of those managing agents. The simple intuition being that a high and positive correlation between PAS spend and GWP would suggest that GWP provides a reasonable proxy for the software spend of the Parties' customers. However, on the contrary, a low or negative correlation would indicate the opposite (i.e. that GWP provides a poor and unreliable proxy for PAS spend).

7.18 In order to carry out this analysis, the Parties have taken the GWP of the Parties' Lloyd's managing agent customers from Appendix 1 and Appendix 2 of Best's Rating of Lloyd's 2014,[95] and compared it to the PAS spend of those managing agent customers.[96] Figure 7 below shows that there is a general lack of any clear correlation between the GWP of the Parties' Lloyd's customers and their respective PAS spend. More specifically, the correlation coefficient between GWP and the PAS spend of the Parties' customers is just

---

90 Paragraph 85 of the Decision states that "*in the absence of revenue data for suppliers of PAS software other than the parties, the CMA considered a proxy value for the size of the relevant MA, in particular its gross written premium*."

91 Table 2 of the Decision.

92 Paragraph 88 of the Decision.

93 [✂].

94 One of the key failings of calculating market shares on the basis of GWP is that it assumes that Xchanging and Agencyport supply customers on an exclusive basis. Where customers use more than one PAS system (e.g. different components from different PAS software), this will result in the Parties' shares being overstated.

95 http://www.lloyds.com/~/media/files/lloyds/investor%20relations/ratings/2014/am%20best%20report%20september%202014.pdf (Annex 55).

96 A spreadsheet setting out the analysis is set out in Annex 20 to this submission.

0.29, which demonstrates that GWPs do not provide a meaningful or reliable proxy to calculate the Parties market shares.[97]

Figure 7 - comparison of the software spend of the Parties' Lloyd's managing agent customers against GWP

[✂]

7.19 In addition, the CMA also used the market share calculations on the basis of GWP to suggest that it shows that "*the parties have a stronger share of supply among large MAs*".[98] As Xchanging's [✂] the CMA's calculations on the basis of GWP, this clearly indicates that the CMA erred in its conclusion, which is evident from Figure 7 above.

7.20 The analysis set out in Annex 20[99] shows that the Parties' Lloyd's managing agent customers spent on average [✂] per cent of GWP on PAS in 2013 (with Agencyport's customers spending [✂] per cent of GWP on PAS, excluding any additional Xposure revenue). The fact that Agencyport's customers spend on average [✂] per cent of GWP on PAS software further supports the £50 million market size estimate contained in the Project Asgard Board Briefing.[100] On the basis of the £25bn of GWP in the Lloyd's market in 2013, this implies a total market size of spend on PAS of £37.5-£50.0 million (which is based on the same methodology used by the Parties to calculate the £50 million market size figure contained in the Project Asgard board report). This analysis suggests that, on the basis of the PAS spend of the Parties' own customers, the Parties' combined share of supply in relation to PAS spend in 2013 was between [✂] per cent (or between [✂] per cent in light of [✂]).

7.21 Accordingly, the Parties consider that the share of supply numbers presented by the CMA in Table 2 of the Decision are unreliable and should not have been attached any weight in the CMA's reference Decision. The inconsistency in the CMA's analysis and the lack of any clear correlation between the GWP and the PAS spend of Lloyd's managing agents demonstrates that the CMA's calculations have no merit, and the CMA was wrong to place weight on these calculations in its Decision. Moreover, based on the methodology applied by the Parties in the Project Asgard board report, and using evidence based on actual customer spend as a proportion of GWP, the Parties' data indicates, even on the most cautious basis, that the Parties have a combined market share of less than 25 per cent.

In-house supplies have been incorrectly excluded

7.22 In calculating market shares in Tables 1 and 2 of the Decision, the CMA has presented market shares excluding managing agents that have a bespoke in-house system. The CMA explains that it "*does not consider that in-house solutions pose a competitive constraint on the Parties*" on the basis that "*some*" third-party responses indicated that:

(a) in-house supply is not a credible option;

(b) building an in-house solution is highly complex (e.g. because of integration with Lloyd's standard messaging); and

---

97 Correlation coefficients range from +1 (which indicates that the two data series are perfectly positively correlated) to -1 (which indicates a perfect negative correlation between the two data series). A correlation coefficient of 0 indicates that there is no correlation between the two data series. Accordingly, the lower the correlation coefficient, the lower the degree of correlation between the two data series.

98 Paragraph 88 of the Decision

99 Annex 20.

100 Annex 5 (previously submitted as Annex 6 to the Parties' response to the s.109 Notice).

(c) insurance carriers do not necessarily have the know-how to efficiently build their own system.[101]

7.23 The Parties consider this reasoning to be incorrect. In particular, the CMA is conflating the development of an in-house system using the carrier's own internal know-how and resources with a bespoke system that is developed in-house under the supervision of the carrier using expert software developers that are contracted in to develop the product. Whilst these bespoke systems are described as "in-house" solutions, they are systems designed, installed and implemented by expert software engineers (i.e. similar to the out-of-the-box solutions developed and provided by the Parties and their competitors).

7.24 The fact that a number of managing agents continue to use bespoke in-house systems, including a number of managing agents such as Mitsui, Antares and Catlin (the largest of all managing agents) and are not at a competitive disadvantage from doing so, clearly demonstrates that such solutions provide a viable alternative option to the out-of-the-box solutions provided by the Parties. Moreover, it also demonstrates that specific bespoke systems can be developed with the requisite Lloyd's functionality relatively easily and on the basis of the requirements of a single customer. It also demonstrates that there are software engineers with the requisite skills to develop bespoke systems with Lloyd's functionality, which can clearly be used to develop systems for other managing agents.

7.25 In addition, the fact that the CMA has dismissed bespoke in-house solutions entirely as providing a competitive constraint on the Parties highlights that the CMA's analysis suffers from a form of binary fallacy. In particular, it is the sum of all competitive constraints that is relevant to the competitive assessment, and not whether each supplier/option (including in-house solutions) in isolation is sufficient to constrain the Parties' behaviour.

7.26 It is also noteworthy that the CMA received evidence during its Phase 1 market test that Lloyd's managing agents could sponsor entry of software suppliers into the Lloyd's market.[102] In other words, a single customer contract would be sufficient for a non-Lloyd's PAS supplier to develop software with the requisite Lloyd's functionality. In this regard, there is no clear distinction between a customer sponsoring entry by contracting in external software engineers to develop a bespoke software product (which would be classed as an in-house PAS system), as opposed to sponsoring entry by the same (or similar) software engineers to develop an "out of the box" solution, similar to that supplied by the Parties.

7.27 Accordingly, were prices in relation to the supply of PAS to Lloyd's managing agents to increase by 5-10 per cent (i.e. in line with the CMA's SSNIP test), it is incorrect to suggest that managing agents would not consider exploring the option of developing a bespoke in-house solution, which would guard against any further price increases, particularly in light of the third party comments which confirmed that customers can sponsor entry.

Bidding data over the last 5 years

7.28 As mentioned above, the Parties do not consider that their combined share of supply in relation to the supply of PAS to Lloyd's managing agents is high (and certainly not as high as presented by the CMA). In any event, legacy market shares may not provide a reliable indicator of the nature of current competition in the market (as they reflect legacy contracts and not contracts coming up for renewal). In particular, Xchanging's PAS (Iris), which is supplied to all of Xchanging's Lloyd's customers, is a legacy product which is no longer actively marketed.

7.29 In this regard, when customers take on long-term contracts, a supplier's market share at any particular point in time may not accurately reflect the competitive constraint that it

---

101 Paragraph 83 of the Decision.

102 Paragraph 163 of the Decision.

exerts on the next "competition" (i.e. the next contract to come up for renewal), particularly if its market share is reflective of legacy contracts and/or products. For instance, in its assessment of the acquisition by Arcelor of the HRSPP business of Corus SA, in a market where a number of long-term contracts were also present, the Competition Commission (**"CC"**) concluded that "*this market does not appear to us one in which the precise distribution of market shares is likely to lead in any definite way to different levels of market power*".[103] Bidding data also provides a more informative source of information to assess the closeness of competition in situations where market shares may be unreliable (e.g. in differentiated product markets).

7.30 Accordingly, the Parties consider that the CMA should have placed significantly more weight on the bidding data provided by the Parties, which reflects the competition for Lloyd's managing agent contracts over the last five years, rather than an artificial metric for calculating shares of supply (as discussed above).[104]

Unilateral effects in bidding markets

7.31 In order to provide a framework for assessing unilateral effects, the following describes how unilateral effects occur in markets in which contracts are typically awarded on the basis of competitive tenders (i.e. bidding markets).

7.32 It should be noted that, in most cases, contracts to supply PAS to Lloyd's managing agents are awarded on the basis of competitive tender (taking into account the specific requirements of the customer, such as whether any customisation is required, or existing data needs to be migrated from existing software). The theory of harm being considered by the CMA, therefore, is that the merger may result in higher prices when bidding for tenders by Lloyd's managing agents, on the basis that there is one fewer participant in the tender.

7.33 In this regard, the CC explained the nature of unilateral effects concerns in these sorts of markets in its recent *Tradebe Environmental/Sita* (2014) report. The CC stated that "*to win a tender process the winner must beat the next best offer. Unilateral effects will be most likely where the parties ranked first and second in tenders merge*".[105] [emphasis added] The CC went on to state that "*the merger is most likely to be harmful in situations where the merger parties were the two most competitive bidders for a customer as this constraint is then removed*".[106] The OFT/CMA has also applied a similar analytical approach to assessing bidding markets in a number of recent cases by focusing on the extent to which the Parties are the two lowest priced bidders in tenders (e.g. Capita/IBS).

7.34 The intuition behind unilateral effects concerns in bidding markets is that unless the merging parties are the two lowest price bidders (and are constraining each other in the prices at which they bid for tenders), competition will not be affected by the merger and

---

103 Competition Commission, *Arcelor SA and Corus Group plc* (February 2005) paragraph 6.77. This is consistent with the approach adopted by the OFT/CMA in a number of previous cases, notably in relation to the supply of software services. For example in *IBS/Capita*, the OFT found that the merged entity's market share for the supply of R&B software services to local government was 35-45% (increment 10-20%). However, as in the *Northgate/Anite* merger decision, the OFT concluded that shares of installed or legacy contracts are unlikely to be the best measure of competition conditions. The OFT therefore went on to examine data in relation to newly tendered contracts over a five year period.

104 This is consistent with the approach adopted by the OFT/CMA in a number of previous cases, notably in relation to the supply of software services. For example in *IBS/Capita*, the OFT found that the merged entity's market share for the supply of R&B software services to local government was 35-45% (increment 10-20%). However, as in the *Northgate/Anite* merger decision, the OFT concluded that shares of installed or legacy contracts are unlikely to be the best measure of competition conditions. The OFT therefore went on to examine data in relation to newly tendered contracts over a five year period.

105 Paragraph 6.52.

106 *Ibid.*

the tendering authorities will never have to pay higher prices.[107] This reflects the simple fact that there are no tenders in which the winning bid could be higher if the merging parties bid together (as their prices are either being undercut or fully constrained by the pricing of other suppliers). Accordingly, unless the parties are the two lowest bidders in tenders, prices are constrained by other bidders.

7.35 It should also be noted that in bidding markets, the presence of fewer bidders may still secure a more competitive outcome than may otherwise be the case in non-bidding markets. In *Stericycle/Ecowaste* (2012), the CC acknowledged that competition in bidding markets can result in "*competitive outcomes with fewer firms than might otherwise be the case*".[108] [emphasis added], and went on to note that under certain circumstances, "*two firms may provide enough competition to give rise to a fully competitive outcome*."[109] The basic intuition is that in sealed bid tenders, which is the type of tender commissioned by managing agents, firms will be forced to bid at their most competitive price in order to be in with a realistic chance of winning the tender.

7.36 However, the Parties are concerned that the CMA misunderstood the concept of unilateral effects in bidding markets at Phase 1. In particular, the CMA's Decision appears to focus heavily on the issue as to whether the conditions of an "idealised bidding market" are present in this case (i.e. the circumstances in which just 2 bidders may be sufficient to produce a fully competitive outcome), which is not the situation that is relevant to this case. In particular, the CMA has failed to consider whether a market structure that results in:

(a) at least 3 strong bidders (with the CMA acknowledging that the Parties are not the closest competitors);[110]

(b) more than 5 other suppliers that are already active in the Lloyd's market and bidding for contracts;

(c) examples of entry taking place (and a third party confirming that it was planning on entering the Lloyd's market); and

(d) customers confirming that they are able to sponsor entry,

is sufficient to produce a competitive outcome.

7.37 The relevance of setting out the theoretical background in relation to the assessment of unilateral effects in bidding markets is that it provides a framework for assessing the bidding data provided by the Parties. As set out further below, it is clear that, over the last 5 years, the Parties were not close competitors in bidding for tenders by Lloyd's managing agents and there were a significant number of other competitors both bidding for, and winning, those tenders. Accordingly, it is not sufficient for the CMA to simply allege that "*a reduction in the number of competitors could harm competition*".[111] As mentioned above, if the parties are not frequently the two most competitive bidders, the merger is unlikely to give rise to unilateral effects concerns.

Bidding data confirms that the Parties are not close competitors

---

107 As explained by Bishop and Walker in "The Economics of EC Competition Law, concepts, application and measurement", paragraph 12.009, "*if the two firms are never the lowest and next lowest priced firms in a tender, the buyer will never have to pay a higher price post-merger. This is because there are no tenders in which the winning bid could be higher if the two firms bid as one*".

108 Paragraph 7.102.

109 Paragraph 7.103.

110 Paragraph 132 of the Decision.

111 Paragraph 104 of the Decision.

7.38 Set out in Annex 14 to this response is a table in relation to all tender/contract opportunities by Lloyd's managing agents that the Parties were aware of over the last five years.[112]

7.39 The data at Annex 18 shows that the Parties are aware of [✂] tenders/contracts by Lloyd's managing agents which took place over the last five years[113]. In relation to these contracts:

(a) [✂];

(b) [✂];

(c) [✂];

(d) [✂];

(e) [✂]; and

(f) [✂].

7.40 Moreover, the Parties are not aware of them being first and second choice in relation to any tenders/contracts that have taken place over the last 5 years, which is ultimately the relevant benchmark for assessing unilateral effects in bidding markets (as confirmed by the CC in its recent Tradebe Environmental/Sita (2014) report).

7.41 This is in stark contrast to the position in *Capita/IBS*, for example, which was referred to the Competition Commission for a Phase 2 investigation, and subsequently resulted in an adverse finding. In that case, the OFT found that Capita and IBS had a significant share of newly tendered contracts, with Capita wining 40-50% of contracts and IBS 20-30%. In addition, the Parties bid against each other in the vast majority of cases and one or other of them was successful in 70-80% of occasions when they both tendered.

7.42 If the CMA were to look at the bidding data on a broader basis (i.e. to include commercial insurers as well as Lloyd's managing agents), there were [✂] tenders which the Parties were aware of over the last 5 years. The Parties were successful in relation to [✂] (Agencyport [✂] and Xchanging [✂]) of these [✂] tenders. This evidence demonstrates that:

(a) [✂];

(b) [✂]; and

(c) [✂].

7.43 This evidence clearly demonstrates that the Parties were not close competitors in relation to the supply of PAS over the last five years, irrespective of whether the market is considered narrowly in relation to the supply of PAS to Lloyd's managing agents only or more broadly to include both Lloyd's managing agents and commercial insurers. Indeed, the CMA accepts in its Decision that "*the bidding data suggests that the Parties were not each other's closest competitors in the previous five years, because this was a period in which Xchanging was not successful in tenders*".[114]

---

112 Previously submitted at Annex 1 to the Parties' response to the CMA's Request for Further Information dated 24 October 2014

113 Previously submitted to the CMA Phase 1 case team by email on 25 November 2014 at 16:08 as Updated Annex 1

114 Paragraph 129 of the Decision.

7.44 It should also be recalled that the Parties do not have full visibility of all tenders that have taken place (in particular, where neither party were invited to participate). Accordingly, whilst this bidding analysis clearly shows that the Parties were not close competitors over the last 5 years, this analysis is likely to materially overstate the Parties' positions as they do not have visibility of all the tenders that have taken place. However, there is no need to speculate on the magnitude of this unknown universe of tenders as even on the basis of the overstated bidding data it is clear that the Parties were not close competitors in the pre-merger situation.

There are a number of strong competitors bidding for and winning contracts

7.45 As set out above, the data at Annex 18 shows that the Parties are aware of [✂] tenders/contracts by Lloyd's managing agents which took place over the last five years. [✂].

7.46 Due to the nature of the tender processes, the Parties are not always aware of which other providers were invited to bid, which provider was selected, and have little information in relation to tenders where neither of them were invited to tender. However, of note, Annex 18 refers to competition for tenders/contracts from Sequel, CSC, NIIT/Room, eBaoTech, Guidewire, Northdoor, and Fineos. This is notwithstanding the fact that, due to the incomplete visibility of tenders and rival bidders, this analysis is likely to materially overstate the Parties' position over the last 5 years.

7.47 Accordingly, as discussed further in section 8 below, this analysis demonstrates that there are a number of strong competitors (in addition to Sequel and NIIT) that are [✂]. In addition, the CMA's market share calculations demonstrate that there are at least eight PAS suppliers with existing Lloyd's customers. To suggest that only Sequel and NIIT are credible competitors to the Parties is disingenuous as it fails to acknowledge [✂] and the position of other PAS suppliers in bidding for, and winning, Lloyd's contracts.

Product characteristics differentiate the Parties

7.48 There are a number of factors which show that Agencyport's OPEN Core software and Xchanging's Xuber/Iris software are differentiated and therefore not close competitors for customers.

7.49 In particular, Xuber for Insurers is a componentised solution, which means that it is able to sell the four individual components of its PAS software separately (Xuber Policy, Xuber Claims, Xuber Billing and Xuber Ceding) as well as to supply it as part of a fully integrated end-to-end platform. In contrast, Agencyport's OPEN Core Platform: Lloyd's software is not componentised and can therefore only be offered as a fully integrated end-to-end solution. The OPEN Suite is a portfolio of solutions in the sense that there are separate solutions marketed at specific customers: for example, the platform is sold as a separate configuration for Lloyd's (OPEN Core Platform: Lloyd's), commercial customers (OPEN Core Platform: Commercial), health customers (OPEN Core Platform: Health). However, unlike Xuber, each offering cannot be separated into component parts.

7.50 In other words, while Xchanging may sell a standalone claims components to a Lloyd's customer, from Agencyport they would only be able to acquire the full OPEN Core Platform: Lloyd's product. This means that Agencyport's software is unlikely to be suitable for those customers simply looking to replace/update different components of its PAS system, rather than looking to replace the PAS system altogether.

7.51 [✂][115] [✂][116] [✂].

---

[115] AP Management presentation at page 61, submitted at Annex 15 to the Parties' response to the s.109 Notice (note that the CMA incorrectly cited slide 20 of this presentation).

7.52 Accordingly, in terms of assessing both current and future competition (i.e. within a 2 year period, consistent with the period in which the CMA assesses whether new entry is timely, likely and sufficient), the Parties consider that it is only relevant to assess the transaction on the basis that Xuber is componentised whilst Agencyport's OPEN Core Platform is not, [✂].

7.53 It should also be noted that third party comments received by the CMA also confirm that the componentisation or otherwise of a platform is a product differentiator. As the CMA notes at paragraph 116 of the Decision, a number of third parties suggested that componentised solutions are attractive to customers (because they allow for incremental change of an MA's PAS software), whilst at least one third party considered that "*the market continues to prefer end-to-end solutions*".[117] The differences in the preferences of consumers and the characteristics of the Parties' products indicates that the Parties are largely targeting different audiences, which further corroborates the bidding data set out above.

7.54 In this regard, it should also be noted that CMA has readily dismissed the competitive constraints provided by a number of different suppliers (e.g. Guidewire and Fineos) on the basis that they have been competing for Lloyd's customers in relation to the claims component of the PAS software only, and not in relation to the overall end-to-end solution.[118] However, customers that are tendering to replace the claims component of their PAS are likely to have a clear preference towards a componentised solution and therefore are unlikely to view OPEN CORE as a sufficient alternative. Those customers are however likely to view Xuber's componentised solution as a viable solution, and therefore they are relevant to the assessment of the closeness of competition between the Parties. In addition, the fact that the likes of Guidewire and Fineos have already developed the requisite Lloyd's messaging functionality for the claims component of their PAS indicates that they could readily extend that functionality to other components of their PAS systems to compete on the full end-to-end solution (and that is the Parties' expectation).

The Parties will not become close competitors in future

7.55 The CMA accepts that "*the bidding data suggests that the parties were not each other's closest competitors in the previous five years because this was a period in which Xchanging was not successful in tenders*".[119] However, the CMA also considers it "*to be important to assess the closeness of competition not only on the basis of recent wins and current offerings, but also on the basis of competitors plans for, and investment in, product development and improvement in the competitive offering*".[120] As Xuber was launched in 2012, and is still subject to on-going development, the reason for the CMA's future assessment is that it may become a closer competitor to Agencyport in future.

7.56 However, the CMA's assessment of the future closeness of competition between the Parties appears to be based on selective reliance on the Parties' internal documents. The CMA's reasoning as to why Xchanging may be expected to become a closer competitor to Agencyport appears to be that:

(a) "*Xchanging had invested* [✂] *in developing and marketing Xuber*";[121]

(b) "*Xchanging forecasts that Xuber's market share of licence and services in Lloyd's/London/UK will be* [✂] *- with its carrier licence income increasing* [✂];[122]

---

116 Issues Letter, paragraph 76.

117 Paragraph 116 of the Decision.

118 Paragraph 136 of the Decision.

119 Paragraph 129 of the Decision.

120 *Ibid.*

121 Paragraph 121(a) of the Decision.

(c) "*Xchanging intends* [✂] *showing a 'mild' interest which are largely in respect of 2013 and 2014*";[123] and

(d) "*Xchanging intended to* [✂]*, implying that Xchanging considered* [✂].[124]

7.57 The CMA also goes on to suggest that "*the Parties' tender data and third parties' responses to the market test indicate that Agencyport has a strong offering in PAS software to Lloyd's carriers at present*", and that this is supported by the Parties' internal documents.[125]

7.58 The Parties consider that this limb of the CMA's theory of harm is entirely speculative, has not been supported by any factual evidence, and does not meet the requisite legal standard for an adverse finding. In particular, the CMA seems to imply that there is a direct causation between Xchanging's investment in Xuber, and the guaranteed future success of the product. In addition, the CMA has failed to consider Xuber's investment against a counterfactual scenario which considers other PAS suppliers both responding to and investing in their own products (i.e. it is unrealistic to suggest that Xuber alone is the only supplier investing in software development particularly when there is evidence of recent and new investment and entry by other suppliers).

7.59 [✂].

7.60 Moreover, the CMA's claim that "*Agencyport would have sought to respond to the product developments of its competitors*"[126] is highly speculative. In particular, and as noted previously, Agencyport's OPEN Core platform was launched in September 2013 to replace its legacy platforms. Given the lifecycles associated with such PAS software, it is unlikely that Agencyport would have launched any additional new software platforms for a relatively long period of time. As such, it is unlikely that Agencyport would have sought to respond to any rival product launches in the near future, and certainly less likely than for other rivals (with less recent software upgrades or investment).

7.61 In the context of any forward looking competition assessment, it is important to note that the outcomes are inherently more uncertain, particularly in the context of investments that are not guaranteed to succeed. The CMA must therefore place significantly more weight on the current state of competition between the Parties (as evidenced by the bidding data) rather than trying to engage in an extensive "crystal ball" gazing exercise, particularly given the nature of dynamic software markets.

Investment in Xuber is aimed at global commercial insurance software spend, not the Lloyd's marketplace

7.62 The CMA's reference to Xchanging having invested [✂].[127] Accordingly, the Parties are concerned that the CMA has sought to overstate the level of investment that is specific to the market being considered (i.e. Lloyd's managing agents in the UK).

7.63 In this regard, Xchanging launched Xuber in 2012 as a new platform which would support its full suite of solutions globally. The Xuber marketing brochure[128] evidences this global, single platform strategy. The Project Asgard Board Briefing pack also states that Xuber is

---

122 Paragraph 121(b) of the Decision.

123 Paragraph 121(c) of the Decision.

124 Paragraph 121(d) of the Decision.

125 Paragraph 122 of the Decision.

126 Paragraph 150 of the Decision.

127 Xuber Five year business plan (22 April 2013), slide 8, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

128 Annex 4 (previously submitted as Annex 5 to the Parties' response to the s.109 Notice).

a "global business", provides a "componentised global core processing system for insurance and reinsurance", provides a "global wholesale broking" solution, a "full ceding solution", and offers "comprehensive analytics solution for insurance and reinsurance".[129]

7.64 [✂]. Xchanging's internal documents (including the Project Asgard Board Briefing document) estimate that the global (outsourced) software spend by commercial insurers is approximately £2 billion.[130] It is manifestly clear that a Lloyd's market of £50 million (or significantly less, as estimated by the CMA in Table 2 of the Decision) could not profitably support a platform which has incurred such investment to develop. This is further demonstrated by Xchanging's expected returns from the investment, which at [✂] far outweighs the CMA's estimate of the Lloyd's market size.[131] It is also noteworthy that the Project Asgard Board Briefing document identifies the key global competitors to Xuber including [✂].[132]

7.65 [✂].[133]

7.66 Accordingly, whilst the CMA has focused on the supply of PAS to Lloyd's managing agents in its competitive assessment, it is clear that it has materially overstated Xchanging's investment spend that is associated with that market. These concerns are further heightened by the fact that the CMA has concluded that "*Xchanging has developed a new product in response to the superior offerings of its competitors (which includes Agencyport) and was actively competing with Agencyport pre-Merger*".[134] This is not factually correct. Xchanging's business plans clearly show that Xchanging's [✂].

[✂]

[✂]

7.67 [✂].[135] [✂].[136]

7.68 [✂]:

(a) [✂];

(b) [✂];

(c) [✂];

(d) [✂]; and

(e) [✂].

---

129 Project Asgard board briefing (June 2014), slide 4, Annex 5 (previously submitted as Annex 6 to the Parties' response to the s.109 Notice).

130 Project Asgard board briefing (June 2014), slide 5, Annex 5 (previously submitted as Annex 6 to the Parties' response to the s.109 Notice). Xuber Five year business plan (22 April 2013), slide 18, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

131 Xuber Five year business plan (22 April 2013), slide 8, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

132 Project Asgard board briefing (June 2014), slide 5, Annex 5 (previously submitted as Annex 6 to the Parties' response to the s.109 Notice).

133 Xuber Five year business plan (22 April 2013), slide 28, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

134 Paragraph 127 of the Decision.

135 Xuber Five year business plan (22 April 2013), slide 20, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

136 For example, the CMA only typically considers entry within a 2-year period to be timely likely and sufficient.

7.69 [✂].

7.70 [✂][137] [✂].

7.71 [✂].

[✂].

7.72 [✂].

7.73 [✂].

7.74 [✂][138]. [✂].

7.75 [✂].[139]

[✂]

7.76 [✂].

7.77 [✂][140].[✂].

7.78 [✂][141].

7.79 [✂].

[✂]

7.80 [✂]:

(a) [✂][142]; [✂][143]

(b) [✂];

(c) [✂].

7.81 [✂].

[✂]

7.82 [✂],[144] [✂].[145]

7.83 [✂][146] [✂]:

---

137 Paragraph 121(b) of the Decision.

138 See page 13 of the Xchanging's 2012 Annual report, Annex 6 (previously submitted as Annex 8 to the Parties' response to the s.109 Notice).

139 Xuber Five year business plan (22 April 2013), slide 28, Annex 7 (previously submitted as Annex 13 to the Parties' response to the s.109 Notice).

140 Previously submitted at Annex 9.1 to the Parties' response to Annex C of the Phase 2 First Day Letter.

141 Paragraph 128(b) of the Decision.

142 Xuber and AP Final Budget, Annex 42 (previously submitted by email to the Phase 1 case team on 20 November 2014 18:55).

143 Revised Xuber Marketing Plan 2015, Annex 43 (previously submitted by email to the Phase 1 case team on 20 November 2014 18:55). The top priority items are those marked with Priority "P1*" and Owner "CF".

144 Paragraph 121(c) of the Decision.

145 *Ibid.*

(a) [✂];

(b) [✂]; and

(c) [✂].

7.84 [✂].

7.85 [✂].

7.86 [✂].

7.87 [✂][147] [✂].

7.88 [✂]:

(a) [✂];

(b) [✂][148] [✂]; and

(c) [✂].

7.89 [✂].

7.90 [✂].

[✂]

7.91 [✂][149] [✂].

7.92 [✂].

7.93 [✂].

Agencyport has a strong product offering

7.94 The CMA's reference Decision observes that "*Agencyport has a strong offering in PAS software to Lloyd's Carriers at present*".[150] The CMA then appears to rely on this to support its view that in the future Xchanging and Agencyport will become closer competitors. This analysis is flawed. In particular, the CMA has significantly overstated the strength of Agencyport's current product offering, and has failed to consider Agencyport in the same dynamic context as its assessment of Xuber (as discussed in the following paragraphs).

7.95 In its assessment of the current strength of Agencyport's product offering, the CMA has relied on the Parties' bidding data, third party responses to the market test and Agencyport's internal documents to support its view that Agencyport has a strong offering in PAS software to Lloyd's managing agents. When considered in the round, the Parties strongly believe that the evidence does not support the CMA's view.

<u>Tender data</u>

---

146 Xuber Solutions: Analysis of forecast Xuber Sales – Conversions, Annex 44 (previously submitted to the Phase 1 case team by email on 11 November 2014 18:36).

147 Paragraph 121(c) of the Decision.

148 Annex 5 (previously submitted as Annex 6 to the Parties' response to the s.109 Notice).

149 Paragraph 121(d) of the Decision.

150 Paragraph 122 of the Decision.

7.96 Recent tender data clearly demonstrates that Agencyport is not a strong competitor in the supply of PAS software to Lloyd's Carriers. As set out in Annex 18[151], Agencyport:

(a) [✂];[152]

(b) [✂]; and

(c) [✂].

7.97 The identification of Agencyport as a strong competitor on the basis of tender data is also inconsistent with the CMA's assessment of other competing suppliers. By way of example, the Parties are aware that Northdoor won at least 3 tenders/contract during this same period,[153] yet the CMA has dismissed Northdoor as a credible supplier of PAS for Lloyd's carriers,[154] notwithstanding the fact that "*in response to the CMA's market test, several third parties identified Northdoor as a credible alternative to their current supplier*".[155]

7.98 In addition, the bidding data over the last 4 years shows contracts wins by [✂], all of which won at least as many tenders as Agencyport. Accordingly, to suggest that Agencyport is currently a strong competitor in the Lloyd's market is inconsistent with the actual evidence.

Internal documents

7.99 The CMA also refers to statements from an Agencyport internal document in support of its view that Agencyport is a strong competitor (Agencyport Management Presentation, April 2014).[156] The Parties would observe that those quotes are taken from an Agencyport document which was used to present to bidders with the purpose of selling the Agencyport business in Europe and therefore describes the Agencyport offering in a particularly favourable light (i.e. it is a sales document).

7.100 It is also clear that a number of the comments from this document cited by the CMA as evidence that Agencyport is a strong competitor are not factually correct. In particular, the references to Agencyport [✂] and having a [✂] are inconsistent with both the bidding data and Agencyport's Lloyd's market share. Even on the basis of the CMA's own market share calculations, Agencyport only has a market share of between [✂] per cent of Lloyd's Carriers by GWP, and [✂] per cent by number of Lloyd's managing agents, [✂].[157] These market shares are well below the level associated with [✂] and are typically too low to justify a [✂] (given that NIIT was larger).

7.101 The Parties would also observe that the CMA appears to have selectively placed evidential value only on those parts of the Agencyport Management Presentation which support its views (such as comments on the strength of the Agencyport offering), whereas no weight

---

151 Previously submitted by email as Updated Annex 1 to the CMA Phase 1 case team on 25 November 2014 at 16:08

152 As noted in the Response to Issues Statement, given that there are likely to be additional tenders/contracts over this same period which the Parties are not aware of, the bidding data in Updated Annex 1 to the Response to the Issues Statement (Annex 18 of this submission) will overstate the competitive positions of the Parties and their respective success in winning tenders/contracts during this period.

153 See Annex 18 (previously submitted as Updated Annex 1 of the Response to the Issues Statement, submitted by email to the CMA Phase 1 case team on 25 November 2014 at 16:08).

154 Paragraph 144 of the Decision.

155 Paragraph 143(a) of the Decision.

156 Annex 8 (previously submitted as Annex 15 to the Parties' response to the s.109 Notice).

157 On the basis of the Parties' £50m Lloyd's market size estimate (set out in section 7), Agencyport would have a share of just 11.1 per cent (excluding Cathedral and Omega who are no longer Agencyport customers), and on the basis of the Lloyd's market size estimate of £37.5m-£50 (based on the actual PAS software spend of the Parties' Lloyd's customers), Agencyport would have a share of just 11.1-14.8 per cent.

appears to be placed on other statements in the document which are contrary to the CMA's view ([✂]).

Third party comments

7.102 The CMA also relies on third party comments from its market testing to support its view that Agencyport is a strong competitor.

7.103 Neither the Parties nor their advisers have been given access to third parties' comments from the CMA's market testing and therefore cannot make observations on the specific comments upon which the CMA is relying. The Parties would observe, however, that the veracity of such responses depend significantly on how the relevant questions were framed. In this regard, the Parties would not be surprised if the market testing results overstated the competitive position of, and competitive dynamic between, the Parties. Market test questionnaires, by their very nature, draw to the attention of respondents to the activities of the merging parties and therefore can elicit overstated responses as regards the market positions of, and extent of competition between, the merging parties. In contrast, the activities of competitors (which might not be specifically identified by the CMA in the actual questions) are likely to be understated. This framing problem can skew the results creating a distorted view of the market dynamics.

7.104 As regards the veracity of the market testing results more generally, the Parties would also observe that respondents might not have tendered for PAS software for 7 years or more and, therefore, their knowledge of current market dynamics (including key suppliers) at the time of responding might not be accurate. Indeed, the CMA states in paragraph 139 of the Decision that "*a majority of customers responding to the market test had not tendered their PAS in seven years or longer*."[158] It is not clear to the Parties whether the CMA attempted to identify respondents which might not have a current and accurate view on the relevant markets and accordingly applied less weight to their views, particularly in light of the fact that new software has been developed by a number of suppliers within the last 2-3 years.

7.105 Lastly, the Parties would observe that the CMA should not simply assume that the historical/current market position of Agencyport will continue in the future, especially in circumstances where its analysis assumes considerable and successful investment by Xchanging in its PAS software. In this regard, to the extent that CMA considers there to be a 10 year product life cycle, the CMA must consider all parties, and not just Xuber, in a dynamic context in its assessment of future competition. The Parties set out their more detailed views on the relevant counterfactual below.

Counterfactual – investment by other PAS suppliers

7.106 It is clear from the CMA's Decision that its assessment of future competition suffers from a number of significant failings and inconsistencies in relation to the counterfactual scenario. Whilst the CMA has adopted a forward looking dynamic analysis in the context of assessing the future competitive constraint from Xuber ([✂]), it has adopted a static analysis in relation to the assessment of the future competition from Agencyport and the other PAS suppliers (assuming that Agencyport is, and will remain, a strong competitor, whilst no other supplier will invest in their software products, despite evidence to the contrary).

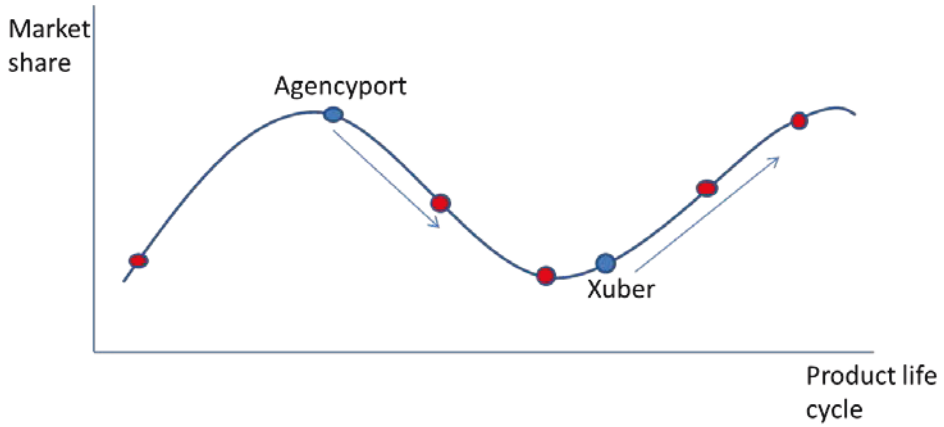
7.107 In this regard, to the extent that there is any credibility in the CMA's 10-year lifecycle hypothesis, any projection of future competition needs to take account of the various different stages of the life cycle of (i) Agencyport; (ii) Xuber; and (iii) all other competitors supplying PAS in the Lloyd's market, rather than simply assuming that all but Xuber would remain static at the pre-merger level.

---

[158] Paragraph 139 of the Decision.

7.108 Figure 10 below, provides an illustration of the product lifecycle considered in a dynamic context for all market participants (with the red circles representing various different competitors at different stages of their product lifecycle). Based on the CMA's reasoning, Xuber is currently considered to be a weak competitor, whilst Agencyport is considered to currently have a strong market position.

Figure 10: illustration of product life cycle



7.109 It should be noted that Xchanging's competitors are also investing in their products for insurers and will clearly continue to do so going forward. For example, a number of Xchanging's competitors, including those identified by the CMA, have recently announced revisions, updates or new investment:

(a) As recently as October 2014, NIIT announced the launch of its +ADVANTAGEsuite software.[159] This is a new PAS platform which, like Xuber, is designed as a highly configurable platform that can be adapted to the needs of special classes of business. The COO of NIIT commented in the press release that "*In today's competitive and rapidly evolving commercial insurance landscape, companies that can quickly add new lines of business or rapidly enter new markets will gain significant competitive advantage*;"

(b) In July 2014, SBS announced that it had received private equity backing from HgCapital.[160] The stated objective behind the investment is specifically to expand its position in the London market; and

(c) Guidewire's R&D expenditure in developing its products highlights its future growth intentions. As mentioned further below, Guidewire's 2014 Form 10-K (Annex 22) indicates that Guidewire's product development expenditure has increased from $49.1m in 2012 to $76.2m in 2014, and the Guidewire presentation (Annex 23) indicates that Guidewire is "*Investing primarily in Europe*".

7.110 Accordingly, there is no reason to believe that Xchanging in isolation will become a closer competitor to Agencyport in future when a number of other rivals have also made significant investments and will continue to do so in future. [✂], which demonstrates the need to consider the investments (and future competitive constraints) of rival PAS suppliers.[161]

7.111 In summary, to the extent that the CMA's assessment of the transaction focuses on the degree of future competition between the Parties, it is important that an equivalent standard is applied to assessing future competition between the Parties as it is to

159 http://www.niit-tech.com/niit-technologies-launches-advantagesuite (Annex 56).

160 http://www.sequel.com/news/hgcapital-announces-investment-in-sequel-business-solutions (Annex 57).

161 Previously submitted at Annex 19 of the Parties' response to the s.109 Notice.

assessing competition from other suppliers. Given the inherently uncertain nature of software markets, it is also important that there is sufficient certainty (to meet the CMA's balance of probabilities test) that any forward looking analysis will materialise in practice. In this regard, as set out above, the Parties believe that the future success of Xuber is highly uncertain and it is highly speculative to allege that the Parties would have become close competitors in future such that it would have resulted in an SLC.

8. OTHER MARKET PARTICIPANTS

There are a number of strong competitors

8.1 The CMA's Decision asserts that the Parties are close competitors in relation to the supply of PAS to Lloyd's managing agents (although not "*necessarily closest competitors*"[162]), and that they face competition primarily from SBS and NIIT (i.e. that the merger is effectively a 4 to 3 scenario). Although the CMA has acknowledged the existence of other smaller competitors, it has suggested that these are not particularly close competitors, because it considers that these competitors have no Lloyd's carrier customers for their PAS software.[163] The CMA has therefore only recognised two credible competitors to the Parties and, despite evidence supplied by the Parties to the contrary, it has dismissed other competitors as not being credible.

8.2 The CMA's conclusions on the Parties' competitors are inconsistent and founded on responses from third parties which are in fact mixed; the CMA itself acknowledged that it had received "*mixed comments*" from third parties on the Merger's effect on competition[164]. In addition, the CMA noted that "*a majority of customers* […] *had not tendered their PAS software in seven years or longer*".[165] Information provided by such respondents should therefore be treated with some caution, as their knowledge of the market is likely to be historic.

8.3 Notably, the CMA did receive input from third party respondents to the CMA which stated that there was a sufficient choice of suppliers at present.[166] Most of the respondents that had been to market recently identified Sequel and NIIT as strong competitors. However, third parties also mentioned Northdoor, Guidewire, CSC and Eurobase as competitors to the Parties.[167] Despite this feedback, the CMA has dismissed these competitors as not credible. The Parties have provided additional evidence below to support their submissions that these competitors are effective and close competitors.

8.4 In its Decision, the CMA indicates that it has received one tender scorecard from a third party, which ranked suppliers following an IT-led market review.[168] The CMA has placed undue weight on the evidence of one tender scorecard. A sample of one is itself clearly insufficient, in particular as scorecards and competitive assessments are subjective and heavily influenced by the customer's particular requirements. The CMA's focus and reliance on a single competitor scorecard assessment is therefore unreliable and inappropriate. For an objective assessment of the extent of competition in these markets, the CMA should have regard to the external industry reports submitted by the Parties and referenced in this submission.

8.5 As a result of the above failings in its analysis, the Parties consider that the CMA has significantly overstated the extent of competition between them and that it has materially understated the strength of competitors in relation to the supply of PAS. The Parties do not consider that the CMA's analysis of the competitive landscape has been carried out on a consistent or reliable basis and that it has failed to give sufficient consideration to the external research reports and internal documents supplied by the Parties.

---

162 Paragraph 132 of the Decision.

163 Paragraph 136 of the Decision.

164 Paragraph 139 of the Decision.

165 *Ibid.*

166 *Ibid.*

167 Paragraph 140 of the Decision.

168 Paragraphs 123 and 141 of the Decision.

8.6 The Parties set out below an analysis of their major competitors and of external research reports and internal documents, which show that there is a significant constraint on the Parties provided by a large number of competitors.

NIIT

8.7 Despite third parties identifying NIIT as a strong competitor, the CMA has suggested that there is a limited competitive constraint provided by NIIT.[169] As set out below, NIIT is a major provider of software to Lloyd's managing agents and will continue to provide a high level of competition due to its large customer base and the recent launch of its new +ADVANTAGEsuite.

8.8 In particular, the CMA has stated that the poor reputation of NIIT shows that it is not a strong competitor and that it will be even weaker due to the launch of the Xuber product. The CMA has failed to provide any evidence in this respect and has also failed to recognise [✂].[170] The Parties also question whether the overall market perception of NIIT is actually negative; for example, the Parties understand that NIIT is well thought of by several managing agents and, as set out below (paragraph 8.9(c)), [✂].

8.9 Accordingly, the Parties consider that NIIT is a major player in the provision of software to Lloyd's managing agents and will continue to be so in future for the following reasons:

(a) NIIT had the highest number of Lloyd's managing agents pre-merger (14).[171] Any alleged negative sentiment regarding NIIT has not impacted on its installed base;

(b) NIIT has invested heavily in its software. In October 2014, it launched its new +ADVANTAGEsuite software. The Advantage suite is an end-to-end commercial insurance platform which is described as being "*highly configurable*";[172] and

(c) [✂].

8.10 On the basis of the above, NIIT is clearly a credible provider with a strong market presence as a provider of PAS software to Lloyd's carriers and the CMA is incorrect to down play the competitive constraint that it places on the Parties.

Summary of other competitors

8.11 The Parties have provided below a summary of five additional software providers which they consider to be major competitors but which have been dismissed by the CMA in its Decision (excluding Sequel which the CMA accepts is a strong competitor). In each case, the Parties have provided a summary of each competitor's activities and why they consider them to be credible competitors.

CSC

8.12 In its Decision the CMA has stated that CSC is not a credible competitor due to the fact that (i) CSC has a very small number of customers which tend to be smaller managing agents, and (ii) that its software does not have good Lloyd's functionality as it is designed for large commercial insurers.[173]

---

169 Paragraph 142 of the Decision.

170 See Annex 12 (slide 6) to this submission (previously submitted at Annex 19 to the Parties' response to the s.109 Notice).

171 See Table 1 of the Decision.

172 http://www.niit-tech.com/niit-technologies-launches-advantagesuite (Annex 56).

173 Paragraph 143(b) of the Decision.

8.13 However, CSC supplies [✂].[174]

8.14 As mentioned above, the recent move to ACORD XML messages in the London company and Lloyd's marketplaces has also allowed CSC to adapt its European messaging solutions to allow it to extend its support for Swiss Re from Europe to the London company subscription market and from there to the Lloyd's market.

8.15 Third party responses provided to the CMA are also contradictory to the CMA's findings. Some third parties mentioned CSC as a competitor to the Parties.[175] Further, other third parties had also noted a recent trend for larger London Market underwriters to purchase end-to-end platforms to service both their London Market and other business units, attracting bigger suppliers such as CSC.[176]

8.16 Therefore, despite the CMA's assertion that CSC has a small number of customers at present, it is easily capable of expanding its offering to PAS for Lloyd's carriers in line with the trend identified in third party responses to the CMA. The Parties consider CSC to be a credible competitor and [✂].[177]

eBaoTech

8.17 In its Decision, the CMA stated that eBaoTech is not a credible competitor, noting that (i) responses to its market test suggested that it is a weak competitor,[178] and that (ii) it was one of a number of competitors identified by the Parties that had no Lloyd's carrier customers for its PAS software and that the Parties had failed to provide sufficient evidence to the contrary.[179] In making this assessment, the CMA has failed to give consideration to a number of points in the evidence submitted to it by the Parties.

8.18 First, eBaoTech has demonstrated that its PAS solution can attract sizeable Lloyd's insurance providers. In 2011 eBaoTech won a contract to supply ArgoGlobal, a global insurance provider with 10 offices worldwide, which provides a variety of Lloyd's products through its Syndicate 1200.[180]

8.19 Second, in recent years eBaoTech has had consistent commercial success on a global scale, and continues to grow rapidly. The CMA stated in its Decision that the most appropriate geographic frame of reference for the acquisition is the UK.[181] However, as outlined in section 6 of this submission, such an approach is too narrow and is therefore flawed. Global market data shows that eBaoTech has the potential to increase its share of the UK market. Although the Parties understand that, at present, eBaoTech has [✂] in the UK, a recent report prepared by Gartner shows that eBaoTech is the eleventh largest insurance software vendor by global revenue, and the fourth fastest growing with 18 per cent growth in 2013.[182] Further, eBaoTech recently received a US$36 million private

---

174 See: http://www.renre.com/

175 Paragraph 140 of the Decision.

176 Paragraph 163 of the Decision.

177 Paragraph 135(e) of the Decision.

178 Paragraph 65 of the Decision.

179 Paragraph 136 of the Decision.

180 http://www.argo-global.com/pages/about-us/argoglobal (Annex 58).

181 Paragraph 66 of the Decision.

182 See Annex 17, Gartner Report, 17 April 2014, page 3 (previously submitted at Annex 14.1 of Parties' response to Annex C of the Phase 2 First Day Letter).

equity investment from US-based FTV Capital, which invests in innovative, high growth companies; this is a significant indicator of eBaoTech's potential for future growth.[183]

8.20 Third, eBaoTech's GeneralSystem is a highly competitive product. The Celent report describes GeneralSystem as a "*modern, functional system being deployed in multiple countries in Europe*", that is "*strong and versatile*" and "*likely to be of interest to small and medium-size insurers across EMEA*".[184]

8.21 The above shows that eBaoTech is a successful vendor, and has both the business relationships and the resources to capitalise on its recent tender win, and increase its market share in Lloyd's. eBaoTech is well placed to compete actively with Lloyd's PAS vendors and it is [✂].[185]

Eurobase

8.22 The CMA acknowledged in its Decision that [✂] credible competitor,[186] and that third parties had also stated that Eurobase is a competitor to the Parties.[187]

8.23 The fact that Eurobase is a credible competitor is further supported by the fact that it supplies PAS to seven of the 60 Lloyd's managing agents, which are as follows:

(a) Beazley (supplies Lloyd's PAS software);[188]

(b) Newline Underwriting Management Ltd (supplies Lloyd's PAS software);[189]

(c) Canopius Managing Agents;[190]

(d) Capita Syndicate Management Limited;[191]

(e) Chaucer Syndicates Limited;[192]

(f) Hiscox Syndicates Ltd;[193] and

(g) Meacock.[194]

8.24 Despite the above and the CMA's acknowledgement of Eurobase as a competitor, in its Decision the CMA contradicts itself by concluding that Eurobase is not a credible competitor. The CMA based its conclusion on a second set of third party responses which

---

183 http://www.ebaotech.com/nl/2013/02/ebaotech-closes-36-million-growth-equity-investment-to-accelerate-global-expansion-2/ (Annex 59).

184 See Annex 11, Celent Report, *EMEA Policy Administration Systems –General Insurance, Property & Casualty ABCD Vendor View*, January 2014 p.53 (previously submitted at Annex 18 to the Parties' response to the s.109 Notice).

185 See Project Asgard Board Briefing slide 5, Annex 5 (submitted at Annex 6 of the Parties' response to the s.109 request)

186 Paragraph 135(e) of the Decision.

187 Paragraph 140 of the Decision.

188 See Annex 25.

189 See Annex 26.

190 Listed as a client on Eurobase's website, see: http://www.eurobase.com/group/client-list

191 *Ibid.*

192 *Ibid.*

193 *Ibid.*

194 *Ibid.*

suggested that Eurobase has not been successful in winning customers, and that it has performed poorly in recent tenders.[195]

8.25 These contradictory third party claims are clearly incorrect. Eurobase has secured two Lloyd's managing agents in the last three years (Beazley and New Line Underwriting Management), specifically for the purposes of providing PAS solutions through its Synergy software. In addition, the fact that Eurobase has already formed commercial relationships with five other Lloyd's managing agents means that it is able to market its PAS solution to those entities and that it is a strong competitor to the Parties.

8.26 It is not clear to the Parties why the CMA has chosen to rely upon one set of third party responses over another. [✂]. Therefore, the CMA is incorrect in discounting Eurobase as a credible competitor.

Guidewire

8.27 In its Decision, the CMA suggested that Guidewire only supplies its claims software to Lloyd's carriers. The CMA concluded that for this reason, Guidewire does not compete with the Parties in the supply of PAS software.[196] Further, the CMA stated that it has received no evidence that Guidewire has any customers for PAS software for Lloyd's carriers or that it was due to win any.[197]

8.28 [✂].

8.29 Guidewire also has the opportunity to win contracts to provide PAS software to Lloyd's carriers by virtue of its current customer base, which includes five Lloyd's managing agents (Beazley, Catlin, QBE, Tokio Marine and Torus). In 2013 Catlin selected Guidewire's InsuranceSuite software for underwriting, rating, policy administration, billing and claims management for its US business.[198] Although many of Guidewire's customers which are Lloyd's carriers do not currently use its PAS solution, Guidewire has formed commercial relationships with these customers which it will be able to use to its advantage in future tenders.

8.30 Further, Guidewire is a huge global competitor which, like Eurobase, is growing rapidly.[199] Guidewire invests heavily in software development and the Celent report described Guidewire's investments into its suite of products as being "*noticeable in the last two years*".[200] This observation was further supported by the Gartner report, which identified Guidewire as the world's fastest growing insurance software provider (27.4% growth) and as the world's fourth largest insurance software vendor by revenue in 2013.[201]

8.31 In this regard, Guidewire's has consistently invested heavily in developing its software offerings and, over the last three years, it has invested over 20 per cent of its annual revenue per year into research and development, with its development expenditure increasing by over 50 per cent in just 2 years, as set out below:

---

195 Paragraph 143(c) of the Decision.

196 Paragraph 136 of the Decision.

197 Paragraph 143(d) of the Decision.

198 http://www.guidewire.com/news-and-events/press-releases/2013/catlin-group-selects-guidewire-solution-for-underwriting-rating-policy-administration-billing-and-claims-management/ (Annex 60).

199 Guidewire's 2014 Form 10K (Annex 22) clearly shows that the company is growing extremely quickly. In particular, Guidewire's revenue has more than doubled over the last three years.

200 See Annex 13, Celent Report September 2014, page 58 (previously submitted at Annex 34 to the Parties' response to the s.109 Notice).

201 See Annex 17, Gartner Report, 27 April 2014, page 3 (previously submitted at Annex 14.1 to the Parties' response to Annex C of the Phase 2 First Day Letter).

(a) 2014: US$ 76.178 million (21.14% of annual revenue);

(b) 2013: US$ 62.991 million (20.95% of annual revenue); and

(c) 2012: US$ 49.056 million (21.74% of annual revenue).[202]

8.32 Guidewire's investment into developing its products highlights its future growth intentions. This ambition is supported by a Guidewire presentation, which also shows an increase in expenditure on product development from 2013 to 2014 and further states that Guidewire is "*Investing primarily in Europe*".[203]

8.33 Guidewire is therefore a credible competitor with an excellent market reputation, and which is growing rapidly. The CMA is therefore incorrect in stating that Guidewire does not provide a competitive constraint on the Parties on the basis that it only provides claims software to Lloyd's carriers.

Northdoor

8.34 In its Decision, the CMA has suggested that bidding data is likely to be most probative in its assessment of the present conditions of competition where those data relate to the period following the launch and development of Xuber (i.e. from 2012).[204] The CMA has failed to note that, since Xuber's launch in 2012, Northdoor has won at least one Lloyd's contract [✂].

8.35 The Parties consider that the CMA is incorrect to dismiss Northdoor as a credible competitor on the basis that:

(a) despite the CMA's assertions to the contrary, Northdoor does supply large and established Lloyd's carriers and it has been successful in recent tenders (it won a tender by Torus, a large managing agent, in 2012);

(b) the Celent report shows that Northdoor has at least 8 customers in the Lloyd's market, which is the same number of customers as NIIT and SBS and the report further states that Northdoor has had a "*a clear impact in the London market and wider European insurance industry*";[205] and

(c) in response to the CMA's market test, several third parties identified Northdoor as a credible alternative to their current supplier.[206]

8.36 The CMA has based its analysis of the strength of Northdoor as a competitor on a scorecard analysis which was provided to it by a third party.[207] As set out in paragraph 8.4 above, the CMA is incorrect to conduct its analysis solely on this basis, and to ignore all evidence to the contrary.

8.37 Northdoor is a credible competitor which has a strong presence in the supply of PAS software to Lloyd's carriers and it is a viable alternative PAS supplier to customers in the Lloyd's market.

Evidence of other smaller competitors

---

202 See page 27 of Annex 22, Guidewire 2014 Form 10K.

203 See slides 96 and 97 of Annex 23, Guidewire presentation entitled "Software Analyst Day"

204 Paragraph 130 of the Decision.

205 See Annex 13, Celent Report dated September 2014, p.102 (previously submitted at Annex 34 to the Parties' response to the s.109 Notice).

206 Paragraph 143(a) of the Decision.

207 *Ibid.*

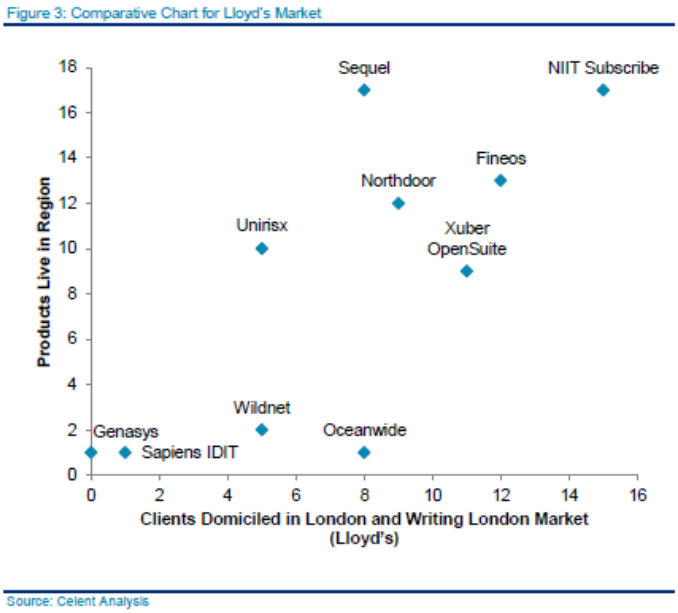
8.38 In addition to the five competitors discussed above (and the two competitors accepted by the CMA (NIIT and Sequel)), the Parties also face competition from a large number of other actual and potential competitors. Documentary evidence illustrating this competition was previously submitted by the Parties at Phase 1 and is summarised again below.

External research reports

8.39 In respect of the competitors with whom Xchanging and Agencyport compete in the provision of PAS to Lloyd's managing agents, the Parties consider that the Celent report provides the most authoritative, independent analysis of rival software suppliers.[208]

8.40 This report profiles 20 vendors and identifies the following 10 competitors to the Parties which are active in the provision of PAS software to Lloyd's managing agents: Fineos; Genasys; NIIT; Northdoor; Oceanwide; Open Gi London; Sapiens; SBS; UNIRISX; and Wildnet Group Ltd. The Celent Report also provides a useful comparative chart for the Lloyd's Market, which provides a snapshot of the competitive landscape:

Figure 11: Celent report - snapshot of the competitive landscape



8.41 The above comparative chart clearly shows that NIIT, Sequel, and Northdoor have at least 8 customers in the Lloyd's market. While the CMA has accepted that NIIT and SBS are credible competitors to the Parties, it has not considered Northdoor as being a viable alternative PAS supplier to customers in the Lloyd's market.[209] The CMA's approach also appears to be inconsistent with third parties' responses to the CMA's market test, which identify Northdoor as a credible alternative to their current supplier.[210] Accordingly, the rationale for the CMA's finding that Northdoor does not constitute a fifth credible supplier of PAS for Lloyd's carriers is not clear to the Parties.

8.42 In addition to the software providers listed in the Celent report, the Lloyd's website also lists numerous providers of administrative software within the Lloyd's market. Of note,

---

208 See Celent Report (September 2014), Annex 13 (previously submitted at Annex 34 to the Parties' response to the s.109 Notice).

209 Paragraph 145 of the Decision.

210 Paragraph 143(a) of the Decision.

the Lloyd's website lists 40 different software providers, including many of those mentioned in the Celent report (as set out above).[211]

Internal documents and monitoring of competitors by the Parties

8.43 The Parties' internal documents show that there are a number of credible competitors, in addition to those accepted by the CMA. The Parties have previously submitted the following documents to the CMA, in which they identify and monitor competitors for the supply of PAS:

(a) [✂].[212] [✂];

(b) the Project Asgard board report, produced by Xchanging, lists examples of competitors in the Lloyd's market to be [✂];[213] and

(c) an Agencyport Management presentation, lists [✂][214] as some of Agencyport's key competitors.[215]

8.44 In its Decision, the CMA noted that the list of competitors provided to it by Xchanging includes details of its competitors across all lines of its business in the UK, rather than focusing only on those competitors active in the supply of software with specific Lloyd's and/or London Companies market capabilities, or on those competitors whose products have PAS functionality.[216]

8.45 The fact that the list of competitors provided to the CMA covers a broader spectrum than that desired by the CMA cannot serve as grounds for disregarding the list altogether, as the CMA's Decision appears to do. By way of example, [✂], and has been successful in winning tenders by Lloyd's managing agents, and yet the CMA has had no regard to this.

8.46 Accordingly, the CMA's suggestion that only SBS and NIIT are close competitors to the Parties is inconsistent with the Parties' internal documents, which refer to a much broader range of key competitors.

Bidding data

8.47 The bidding data presented by the Parties at Phase 1, and referred to in section 7 above, shows that over the last five years, Agencyport won [✂] of a possible [✂] tenders/contracts, whilst Xchanging won [✂] tenders/contracts ([✂] of which was in relation to [✂]). This means that [✂] out of the [✂] contracts ([✂] per cent of all contracts by Lloyd's managing agents over the last 5 years that the Parties were aware of) were awarded to competitors.

8.48 Due to the nature of the tender processes, the Parties are not always aware of which other providers were invited to bid, which provider was selected, and have little information in relation to tenders where neither of them were invited to tender. However, of note, the bidding data refers to competition for tenders/contracts from SBS, CSC, NIIT/Room, eBaoTech, Guidewire, Northdoor, and Fineos. This is notwithstanding the fact

---

211 http://www.lloyds.com/the-market/tools-and-resources/electronic-distribution/technology-vendors

212 See Annexes 9 and 10 (previously submitted respectively at Annexes 16 and 17 to the Parties' response to the s.109 Notice). In particular, see Annex 10 for detailed competitor profiles.

213 See Annex 5, slide 5 (previously submitted at Annex 6 of the Parties' response to the s.109 Notice).

214 In response to the CMA's question at paragraph 93(a) of the Issues Letter, please note that the reference to "mi" in this presentation is to Open GI (MI) (http://www.opengi.co.uk/mi/mi_page-05.htm).

215 See Annex 8 (slide 14) (previously submitted at Annex 15 of the Parties' response to the s.109 Notice).

216 Paragraph 138 of the Decision.

that, due to the incomplete visibility of tenders and rival bidders, this analysis is likely to materially overstate the Parties' position over the last 5 years.

8.49 This analysis further demonstrates that there are a number of competitors (in addition to the SBS and NIIT) that are actively bidding for and winning tenders/contracts against the Parties. In the Decision, however, the CMA has failed to give due consideration to the bidding data and has ignored the clear evidence that it presents. The CMA concluded that the bidding data was not "*the most probative evidence*",[217] however the evidence on which it relies in this conclusion (namely third party responses and its assessment as to the current competitive position of Xuber) is contradictory and unsupported by the factual evidence.

Press releases

8.50 In addition to the bidding data provided by the Parties, the press releases listed below clearly show that in recent years, a number of rival suppliers have been actively bidding for and winning contracts in relation to the supply of software to Lloyd's managing agents. In each case, a link to the press release has been provided in brackets:

(a) eBaoTech was awarded a contract to supply its GeneralSystem software to Argo in 2011 (see link)[218];

(b) Eurobase has been awarded the following contracts by Lloyd's managing agents over the last three years:

(i) Beazley awarded Eurobase a contract to supply its Synergy software in 2011 (see link)[219]; and

(ii) Newline Underwriting Management Ltd, awarded Eurobase a contract to provide its Synergy software for both its Lloyd's and Companies insurance operations in 2012 (see link)[220];

(c) Fineos was awarded a contract to supply its Claims software to Allied World in 2014 (see link)[221];

(d) Guidewire was awarded a contract to supply its Claims software to QBE in 2009 (see link)[222], and to Beazley in 2010 (see link)[223];

(e) Northdoor has been awarded the following contracts by Lloyd's managing agents over the last few years:

(i) Torus awarded Northdoor a contract in 2012 for it to supply its NdexInsure software (see link)[224];

(ii) WR Berkley awarded Northdoor a contract in 2009 for it to supply its NdexInsure software suite (see link[225] and link[226]); and

---

217 Paragraph 131 of the Decision.

218 See Annex 24 to this submission

219 See Annex 25 to this submission

220 See Annex 26 to this submission

221 See Annex 27 to this submission

222 See Annex 28 to this submission

223 See Annex 29 to this submission

224 See Annex 30 to this submission

225 See Annex 31 to this submission

(iii) Northdoor awarded contract to provide NdexInsure to Dale Underwriting Partners, part of Asta Managing Agency, in 2013 (see link)[227]. Of note, the press release states that "*Northdoor has a strong track record working with Lloyd's start-ups and has delivered similar projects with companies such as WR Berkley, Ark Syndicate and Managing Agency Partners. Northdoor's NdexInsure solution has repeatedly satisfied Lloyd's as an effective solution for start-ups and existing Syndicate businesses*".

(f) SBS has been awarded the following contracts by Lloyd's managing agents over the last few years:

(i) Brit awarded SBS contracts in 2013 and 2014 for it to supply its Eclipse Underwriting software (see link[228] and link[229]);

(ii) Faraday awarded SBS a contract for it to supply its Eclipse Underwriting software in 2009 (see link)[230];

(iii) Markel transferred all of its core administration policies onto the SBS platform in 2013 (see link)[231];

(iv) R&Q awarded SBS a contract for it to supply its underwriting software in 2013 (see link)[232]; and

(v) Starr awarded SBS a contract to handle all of the firm's Lloyd's, companies and non-bureau London business (see link)[233];

(g) Unirisx was awarded a contract by Beazley in 2013 to provide software solutions in relation to three speciality lines of insurance (Marine, Environmental and Kidnap and Ransom products) (see link)[234]; and

(h) Zov Solutions was awarded a contract in August 2014 by Charles Taylor Insurance Services and Sciemus (its client) for Zov to supply its SID software as the core platform for a MGA recently established by Sciemus to write global power business in the London insurance market (see link)[235].

8.51 The above tender wins by the Parties' competitors must be seen in the light of the evidence [✂].

This is not a 4-3 merger

8.52 For the reasons set out above, the CMA has clearly ignored several credible and effective competitors in its conclusion that there are only four credible, competing competitors, of which two are the Parties.

---

226 See Annex 32 to this submission

227 See Annex 33 to this submission

228 See Annex 34 to this submission

229 See Annex 35 to this submission

230 See Annex 36 to this submission

231 See Annex 37 to this submission

232 See Annex 38 to this submission

233 See Annex 39 to this submission

234 See Annex 40 to this submission

235 See Annex 41 to this submission

8.53 The CMA's analysis of the competitive landscape is inconsistent and incorrect. The bidding data submitted by the Parties demonstrates that over the last five years there have been number of competitors providing PAS software for Lloyd's carriers. Of the [✂] tenders of which the Parties are aware, [✂] of all contracts were won by the following competitors:

(a) SBS;

(b) NIIT;

(c) Northdoor;

(d) CSC;

(e) Guidewire; and

(f) FINEOS.

8.54 In general, the CMA has incorrectly dismissed or overlooked the competitive threat offered by a number of competitors, largely it appears as a result of third party comments questioning the credibility of those competitors. [✂].

8.55 Based on the evidence set out above, it is clear that there are a number of other competitors which provide a competitive constraint in relation to the supply of PAS in the Lloyd's market. However, the CMA has failed to recognise that it is the sum of all competitive constraints that is relevant to the competitive assessment, and not whether each supplier/option (including in-house solutions) in isolation is sufficient to constrain the Parties behaviour. The fact that certain competitors were not identified as "strong" suppliers, does not mean that they are totally irrelevant to the competitive assessment.

9. BARRIERS TO ENTRY AND EXPANSION

9.1 The CMA concluded in its Decision that "*barriers to entry and expansion were high in this market* [in relation to the supply of PAS to Lloyd's managing agents]"[236] and that it "*does not have sufficient evidence to conclude that entry by suppliers from outside of Lloyd's or expansion by existing suppliers will be timely, likely or sufficient*".[237] However, this conclusion is based exclusively on a subset of (negative) third party comments, whilst ignoring evidence to contrary, including evidence from other third parties of actual evidence taking place. In fact, the wider body of evidence consistently point towards barriers to entry and expansion being low.

9.2 In this regard, the Parties note that, the Phase 1 Decision (e.g. at paragraphs 166 to 168), shows that the CMA received actual examples of entry (or planned entry), which lead the CMA to conclude that entry was likely.[238] However, the details in relation to this entry were not disclosed to the Parties at any point during the Phase 1 investigation. As the Decision is heavily redacted, the Parties are unable to comment on why this entry was dismissed by the CMA, and, in particular, how it could continue to maintain that barriers to entry and expansion are high in light of this entry.

Barriers to entry into the Lloyd's market are not high

9.3 The Parties consider that the CMA has materially overstated the barriers to entry into the Lloyd's market for a number of reasons. In particular:

(a) the core functionality of PAS to Lloyd's and non-Lloyd's customers is the same;

(b) sunk investment costs of developing the additional Lloyd's functionality are low and can be recouped by a single contract;

(c) there is past evidence of effective entry into the Lloyd's market, with a number of suppliers (of varying size) currently supplying PAS software to Lloyd's managing agents, as well as evidence of planned future entry;

(d) Lloyd's managing agents can (and do) use bespoke in-house systems, and third parties confirmed that customers can sponsor entry, which suggests that developing the Lloyd's functionality is not particularly costly or onerous; and

(e) reputation does not act as a barrier to entry or expansion.

9.4 Each of these points is considered in turn below.

The core functionality of PAS to Lloyd's and non-Lloyd's customers is the same

9.5 As discussed in paragraphs 6.4 to 6.9 above, the same underlying insurance software (with the same functionality) is supplied to all insurers, irrespective of whether they are Lloyd's registered or not.[239] This is because the core PAS functionality is demanded by almost all customers. In particular, all PAS solutions are built around a central policy and claims administration system (see paragraph 1.3 above), which provides functionality intrinsic to operating within the insurance sector.

---

236 Paragraph 13 of the Decision.

237 Paragraph 179 of the Decision.

238 Paragraph 168 of the Decision.

239 All carriers, whether Lloyd's managing agents or non-Lloyd's registered carriers, carry out the same activity: the underwriting of insurance. Accordingly, all carriers require software which is capable of carrying out functions related to insurance underwriting, namely: (a) issuing and managing quotes; (b) policies transactions; (c) claims management and processing; (d) accounting and reporting; and (e) outwards reinsurance.

9.6 In this regard, the Parties estimate that approximately [✂] per cent of PAS functionality is common to all commercial insurers. This reflects the fact that all insurers carry out the same activity of writing insurance. In addition, as large risks are often divided between different types of insurers (with the same risk being partially underwritten by Lloyd's, London and overseas commercial insurers), all insurers require software with processing capabilities to manage these policies.

9.7 Accordingly, the software supplied by non-Lloyd's software providers already caters for the majority of the requirements of Lloyd's managing agents, with the incremental Lloyd's needs limited to functionality for Lloyd's bureau communication and meeting Lloyd's reporting requirements. These additional software requirements are limited in scope and do not require material changes in the existing software infrastructure. Moreover, the continued standardisation of much of the Lloyd's functionality under the ACORD global standard allows Lloyd's software functionality to be added with reduced integration time, at lower cost and lower implementation risk.

9.8 The commonality in the functionality of the PAS software is highlighted by the fact that Xchanging's Xuber for Insurers and its legacy product, Iris, are both designed for Lloyd's and non-Lloyd's registered insurers, and for large multinational insurers operating across a number of different countries. The Xchanging products supplied to Lloyd's and non-Lloyd's customers are identical; the only distinguishing feature is the way in which the software is configured when the software is installed, with relevant features activated or left dormant, as required.

9.9 This means that developments and upgrades made to the core PAS functions are automatically available to customers within and outside the Lloyd's market, as well as for customers overseas. The competitive dynamic in relation to developments to the core functionality of the PAS software are therefore in relation to competition in this much broader product space, with the relevant Lloyd's functionality, once developed, simply being tagged on to any new software development or upgrade.

The sunk investment costs of developing the Lloyd's functionality are low

9.10 The existence of core features required by all market participants (discussed at 6.4 to 6.9 above) means that non-Lloyd's carrier software suppliers only need to develop Lloyd's specific functionality to supply Lloyd's carriers, and thus require little by way of additional investment to supply these customers. However, the CMA states that "*a number of third parties submitted that the sunk investment cost in entering the supply of PAS software to Lloyd's carriers would be substantial…*".[240] The Parties disagree with this conclusion, and consider that describing sunk investment costs as "substantial" grossly overstates the "real" incremental investment costs a non-Lloyd's supplier is actually likely to face.

9.11 The main additional functionality that would need to be added to an existing commercial product would be support for Lloyd's-specific messaging. (There are some minor specific Lloyd's reporting requirements that the solution would need to fulfil, all of which could be handled by an insurance software product with a reasonable report generating capability).

9.12 The exact development cost would depend on the system that the developer already has in place (some systems might be easier to include additional functionalities than others), the development process used by a developer, and the extent to which the developer's software already has some messaging capability (the development costs for Lloyd's-messaging would be lower if the developer's software already has other in-built messaging capabilities).

9.13 [✂], assuming that this messaging functionality is built completely "from scratch". This is based on the actual current and expected future total man-days of development time

[240] Paragraph 160 of the Decision.

involved in developing Xuber's messaging functionality, multiplied by an average daily wage paid for each man-day. Specifically, [✂] man-days have currently been expended in the development of Xuber's Lloyd's and London messaging functionality, and it is expected that an additional [✂] man-days are required to complete development, giving a total development time of [✂] man-days.[241] This is then multiplied by the average daily wage of [✂] to arrive at a total estimated cost of [✂].

9.14 Importantly, however, this figure includes development man-days that are common across the London and Lloyd's functionality and, hence a proportion of those man-days would not need to be incurred if the messaging functionality was being developed solely for Lloyd's (as opposed to also being developed for the London commercial marketplace). For example, a significant proportion of the development costs were incurred in developing the user interface that would enable the processing of suspended messages, receiving messages from XAG systems, and the ability to deal with USM and SCM transactions. Each of these functionalities (and many others) is developed jointly for both the Lloyd's and London messaging systems.

9.15 Moreover, if a developer was already developing (or already had developed) software that provided messaging functionality for the London market, the incremental cost of adding Lloyd's messaging functionality would be relatively small. For example, adding Lloyd's policy and claims templates and Lloyd's specific technical and business validation protocols to pre-existing messaging functionality would cost substantially less than the [✂] it cost to develop Lloyd's and London messaging functionality from scratch. As such, much of the [✂] development costs of Xchanging's software applies to both the Lloyd's and the London messaging functionalities - in other words, the costs incurred that are specific to the Lloyd's messaging functionality are likely to be substantially lower than this figure.

9.16 The Parties estimate that the investment costs of developing Lloyd's specific functionality (in accounting terms) to an existing PAS system are low, within the range of £0.5-1.0 million, with the likely economic costs of entry (i.e. the incremental costs) being lower for a number of potential entrants. In particular, the majority of costs incurred in software development projects are in relation to the salaries of the software engineers, who are already employed by the PAS software providers. As the wage costs of these software engineers are essentially fixed (i.e. incurred by the supplier irrespective of whether it decides to develop the additional Lloyd's functionality or not), a large proportion of these costs are not incremental to the cost of developing Lloyd's functionality (particularly if the software engineers have any spare capacity). Accordingly, it is likely that a number of suppliers will be able to develop the incremental Lloyd's functionality to a non-Lloyd's software solution at an incremental cost well below that estimated by the Parties.

9.17 The Parties note that the same third party evidence which the CMA relied upon to conclude that investment costs are high, <u>severely</u> overestimates the cost of entry at "*up to £10 million*" (quoted in the Phase 1 Issues Letter, although subsequently excluded from the Decision)[242]: <u>ten times higher</u> than the Parties upper bound estimate. The inconsistency in the £10 million cost of entry figure is highlighted by a comparison with the CMA's market share calculations (in Table 2 of the Decision). More specifically, a £10 million entry cost implies that an entrant would have to invest the equivalent of 38-51 per cent of the total market revenue for a year in order to enter the Lloyd's market. If the £10 million figure is correct, this suggests that the market should only support a very small number of (possibly large) suppliers (owing to the high sunk costs of entry). As mentioned above, Xchanging's [✂].

---

241 The [✂] figure for the current total of man-days expended in development was obtained from Xchanging's "timesheet" records, and the [✂] figure for the expected required man-days to complete the software was obtained from Xchanging's own estimates.

242 Paragraph 107 of the Phase 1 Issues Letter.

9.18 However, on the contrary, there are at least eight different suppliers of varying sizes (as acknowledged by the CMA) already active in the Lloyd's market, as well as various bespoke in-house solutions. The fact that a number of small suppliers (with shares of supply of [✂] per cent[243]) have been able to successfully enter and operate at the scale, suggests that the sunk investment costs for entry are low, and do not act as a material barrier to entry. Moreover, the fact that the CMA received third party comments that customers can sponsor entry further highlights the implausibility of the CMA's conclusion that entry costs are high.

9.19 Accordingly, it is unclear why the CMA still deems that entry costs are high, when it is clear that, and appears to have been accepted by the CMA (owing to its exclusion from the Decision) that the £10 million figure quoted by third parties is blatantly wrong.

A single contract is sufficient to recover the initial investment

9.20 Based on the Parties' Lloyd's customers, the average annual PAS spend of a Lloyd's managing agent was [✂] in 2013. Figure 12 below plots an entrant's fixed investment cost to add the incremental Lloyd's functionality to an existing PAS system (based on the Parties' £0.5-£1.0 million estimate) against cumulative revenues from the award of a single contract, based on the average spend of the Parties' customers.

9.21 As contracts are typically awarded with a duration of 5-10 years, and the CMA notes (at paragraph 139 of the Decision) that most third party customers have not tendered their contract for seven years or longer, Figure 12 shows that the Lloyd's investment can be recovered by winning a single Lloyd's contract. More specifically, a single contract generating annual revenues of [✂] would allow an entrant to recover the initial investment in the Lloyd's functionality within [✂] years. Assuming, on a conservative basis, that an entrant was awarded a long-term contract for seven years, the entrant could generate revenues of [✂] over the period, against an investment cost of £0.5-£1.0 million. Clearly, the longer the contracting period, the higher the revenue of a new entrant relative to the initial investment cost.

9.22 Moreover, as discussed further below, once the initial sunk investment costs to develop the Lloyd's functionality have been incurred, a PAS supplier has the incentive to compete aggressively for additional Lloyd's customers. This reflects the fact that the marginal cost of supplying PAS software to an additional Lloyd's customer are very low as the initial investment cost has already been incurred (and sunk).

Figure 12: An entrant's investment costs of the Lloyd's functionality vs cumulative revenues from the award of a single contract

[✂]

9.23 The Parties consider that the analysis set out above confirms that entry costs are not high and that entry could take place on the basis of the award of a single Lloyd's contract. This also supports the comments received from third parties that customers could sponsor the entry of a credible non-Lloyd's supplier on the basis that winning a single contract would be sufficient to cover the incremental costs of entry into the Lloyd's market.[244]

9.24 As general rule of thumb, the CMA considers the "timeliness" of entry within a two year period. The Parties estimate that developing the incremental Lloyd's functionality could be achieved within [✂] (and less if more manpower resources are devoted to it), rather than the two to three years suggested by certain third party responses.[245] This includes the initial software design, implementation, testing and integration with the existing non-

[243] Shares of supply (on a count basis) are based on the CMA's estimates reported in Table 1 of the Decision.

[244] Paragraph 163 of the Decision.

[245] Paragraph 160 of the Decision.

Lloyd's carrier software. The nature of software production is that, once the product is developed, the product can be rolled out to a number of different customers quickly and easily at low costs.

There is evidence of effective entry into the Lloyd's Market

9.25 The CMA has incorrectly stated that the Parties have provided no examples of previous cases of sufficient entry to the supply of Lloyd's carrier PAS software by non-Lloyd's suppliers.[246] However, the Parties have provided a number of recent examples of non-Lloyd's insurance software providers either supplying Lloyd's managing agents (using their existing PAS systems) or bidding for tenders by Lloyd's managing agents. In particular, as discussed above at paragraph 6.16(d)(i), Guidewire won contracts to provide its ClaimCenter software to QBE's European business (including in the Lloyd's market) and to Beazley's Lloyd's and global insurance operations, and Zov Solutions supply Charles Taylor Insurance and Sciemus.

9.26 The CMA (at paragraphs 111 and 164) has dismissed Guidewire as a relevant example of entry because the contract was restricted to a claims management solution only. However, the claims management component is a fundamental part of any PAS software, and competes directly with Xchanging's Xuber product. In this regard, a number of customers prefer to create an end-to-end PAS software by combining software components from different suppliers, which, once individual components have been purchased, reduces the likelihood of those customers choosing an end-to-end product like Agencyport's OPEN Core.[247] Accordingly, whilst Xuber for Insurers is likely to be the closer competitor to Guidewire (as it also offers a componentised claims solution), increasing demand for componentised PAS software [✂].

9.27 The entry by Guidewire provides evidence that a supplier considered developing Lloyd's functionality financially viable for only a part of a PAS system, supporting the Parties' position on the feasibility of entry.[248] In particular, once the Lloyd's functionality has been developed, it would be relatively straightforward to add that functionality onto the other componentised products within their PAS software. [✂].

9.28 In addition, the Parties note that the Celent report dated January 2014 identifies 52 credible PAS vendors active in EMEA in 2014 who would face limited barriers to entry/expanding into developing new products, and would therefore have the incentive to expand into supplying Lloyd's customers.[249] For instance, Accenture purchased Duck Creek in July 2011 to extend its reach into the Commercial Property & Casualty global software market by strengthening its software business, particularly its Policy Administration offering. The Accenture group employs over 250,000 people globally and derived revenue of $28.6bn in 2013.

9.29 As noted above, it is clear from the Decision that the CMA received evidence of actual new entry that was about to take place during its Phase 1 investigation, which resulted in the CMA concluding that entry was likely. Whilst the CMA dismissed this entry on the basis that it would not be of a sufficient scale to constrain the Parties,[250] it clearly provides evidence that is inconsistent with the CMA's conclusion that entry barriers are high. Moreover, when considering the competitive constraints on the Parties, the Parties believe that CMA erred by considering whether the new entrant in isolation would be of a

---

246 Paragraph 164 of the Decision.

247 [✂].

248 The Parties also note that QBE's European operations use Zov Solutions, SID in combination with KnowledgeCenter's (acquired by Charles Taylor in 2013) Document Management and Workflow system and Guidewire for ClaimCenter for claims management.

249 Annex 11 (previously submitted as Annex 18 to the Parties' response to the s.109 Notice).

250 Paragraph 171 of the Decision.

sufficient scale to constrain the Parties. In this regard, it is the sum of all competitive constraints that is relevant to the competitive assessment, including the rival suppliers already in the Lloyd's market as well as any new entry.

9.30 Accordingly, in light of the fact that there are a number of examples of entry actually taking place in the Lloyd's market, including entry which was identified by the CMA during the market test, the Parties consider that this evidence supports the view that entry barriers are low.

Lloyd's managing agents can (and do) use bespoke in-house systems and sponsor entry

9.31 The ease of entry in relation to the supply of PAS the Lloyd's managing agents is further highlighted by the fact that a number of Lloyd's managing agents currently use their own bespoke in-house PAS system.

9.32 The Parties believe that eight Lloyd's managing agents currently use a bespoke in-house PAS system. These include, [✂]. The fact that a number of managing agents continue to use bespoke in-house systems, including the largest managing agent by GWP [✂], and are not at a competitive disadvantage from doing so, clearly demonstrates that such solutions provide a viable and realistic alternative to the out-of-the box PAS software of the Parties.

9.33 As set out in section 7 above, the Parties consider that the CMA's reasoning for excluding in-house supplies as providing a competitive constraint to the Parties to be incorrect.[251] In particular, the CMA is conflating the development of an in-house system using the carrier's own internal know-how and resources with a bespoke system that is developed in-house under the supervision of the carrier using expert software developers that are contracted in to develop the product. Whilst these bespoke systems are described as "in-house" solutions, they are systems designed, installed and implemented by expert software engineers.

9.34 The Parties consider that the examples of in-house supplies provide further evidence to demonstrate the ease and likelihood of new entry. In particular, specific bespoke systems can be developed with the requisite Lloyd's functionality relatively easily (using external software engineers), and on the basis of the requirements of a single customer. This indicates that a single customer contract is sufficient to recover the development costs (which further supports the evidence set out above). Moreover, software engineers are available on the open market with the requisite skills to develop bespoke systems with the requisite Lloyd's functionality, which can clearly be used to develop systems for other managing agents.

9.35 It is also noteworthy that the CMA received evidence during its Phase 1 market test that Lloyd's managing agents could sponsor entry of software suppliers into the Lloyd's market.[252] In other words, a single customer contract would be sufficient for a non-Lloyd's PAS supplier to develop software with the requisite Lloyd's functionality. In this regard, there is no clear distinction between a customer sponsoring entry by contracting in external software engineers to develop a bespoke software product (which would be classed as an in-house PAS system), as opposed to sponsoring entry by the same (or similar) software engineers to develop an "out of the box" solution, similar to that supplied by the Parties.

---

251 As set out in section 7.22 above, the CMA has concluded in its Decision that it "*does not consider that in-house solutions pose a competitive constraint on the parties*" on the basis that "some" third-party responses indicated that: (i) in-house supply is not a credible option; (ii) building an in-house solution is highly complex (e.g. because of integration with Lloyd's standard messaging); and (iii) insurance carriers do not necessarily have the know-how to efficiently build their own system.

252 Paragraph 163 of the Decision.

9.36 Accordingly, were prices in relation to the supply of PAS to Lloyd's managing agents to increase by 5-10 per cent (i.e. in line with the CMA's SSNIP test), the Parties believe that it is incorrect to suggest that managing agents would not consider exploring the option of developing a bespoke in-house solution or attempting to sponsor entry.

Reputation and experience do not act as a barrier to entry

9.37 The CMA notes that certain third parties stated that "*…suppliers need an established reputation and experience in order to represent a credible alternative for customers and to successfully compete in the Lloyd's* market".[253] The CMA goes on to note that having an installed user base is important for successful entry because it allows suppliers to gain experience, facilitating quality improvements and provides reference clients (important for reputation and credibility).[254] It also states that infrequent switching makes it difficult for suppliers to gain the necessary reputation and credibility.

9.38 Again, the Parties consider that the CMA has materially overstated the importance of reputation and experience as a barrier to entry. [✂]. A new entrant is highly unlikely to suffer from such concerns. Furthermore:

(a) the historical entry of various PAS suppliers into the Lloyd's market shows that having an installed user base within the Lloyd's market is not critical for a new entrant to enter and win customers. In fact, a number of different suppliers have been able to successfully enter into supplying Lloyd's software, and win contracts to supply Lloyd's managing agents, without facing any material reputational disadvantage. Moreover, a number of successful Lloyd's PAS suppliers are relatively small, confirming that having an installed user base is not important;

(b) the fact that "self-supply" and the sponsorship of entry are viable options suggests that having a reputation for the supply of PAS software to the Lloyd's market, and, in particular, experience of supplying Lloyd's managing agents, does not amount to a material barrier to entry;

(c) the CMA's conclusion that the infrequent switching of Lloyd's managing agents makes it difficult for a new entrant to gain the necessary experience to improve the quality of their products, and win customers is not correct. As discussed at paragraphs 6.4 to 6.9, the majority of the functionality of the PAS software (around [✂] per cent) is common to both Lloyd's and non-Lloyd's customers. The quality of the common features rather than the incremental Lloyd's functionality are the crucial determinant of a product's quality, and the potential entrant's reputation. Accordingly, non-Lloyd's PAS suppliers are able to gain any necessary reputation and experience in relation to the common functionality of the PAS software from their existing customers within the wider London and commercial markets;

(d) existing experience within the Lloyd's market and references to existing Lloyd's customers are not critical to build and successfully integrate Lloyd's functionality, or "signalling" to the market that you can credibly supply software to Lloyd's customers. This is evidenced by the fact that non-Lloyd's PAS suppliers such as Guidewire, have (and do) credibly and successfully bid to supply the Lloyd's market; and

(e) third parties have confirmed that there has been a recent trend for larger London Market underwriters to purchase end-to-end platforms that can service both their London market and other business units, attracting bigger suppliers such as Guidewire and CSC.[255] In this regard, it is the overall quality of the PAS offering and

---

253 Paragraph 161 of the Decision.

254 Paragraph 161 of the Decision.

255 Paragraph 163 of the Decision.

the ability to service the customers entire business needs across all segments of the market that is relevant to the assessment of whether the supplier is credible, and not whether they have the specific Lloyd's functionality, which can be developed at a relatively low cost.

9.39 Moreover, the Parties note that if, as the CMA has concluded, reputation within the Lloyd's market is an important determinant of winning business, [✂]. These include:

(a) [✂]";

(b) [✂]";

(c) [✂]"; and

(d) [✂]".[256]

9.40 Accordingly, whilst the Parties do not believe that reputation and credibility in the Lloyd's market are particularly important, the launch of Xuber for insurers (which represents a materially different solution to Xchanging's legacy product, Iris) [✂].

Barriers to expansion into the Lloyd's market are not high

9.41 As set out at paragraph 10.1(d)(i), the Parties are aware of at least 7 other software providers that are currently supplying PAS to Lloyd's managing agents (plus a number of managing agents with their own in-house systems). These include NIIT, SBS, Northdoor, CSC, Eurobase, eBaoTech and Guidewire. The fact that these suppliers are already supplying software to Lloyd's managing agents (and credibly bidding, and being shortlisted for tenders) demonstrates that they already have the software with the requisite Lloyd's functionality.

9.42 In this regard, the Parties disagree with the CMA's conclusion that barriers to expansion are high for small rivals (i.e. other than NIIT and SBS), which the CMA suggests is supported by the fact that their shares of supply have not increased, and credibility is a an important factor.[257]

9.43 Given the nature of software markets, once the initial investment costs in the software have been made, the marginal cost of supplying an additional customer with PAS are extremely low. Accordingly, once a supplier has invested in developing the requisite Lloyd's functionality and is already in the market, the incentive is to compete aggressively in order to win new customers and generate higher profits on the fixed (and sunk) investment cost. In this regard, the OFT acknowledged in Bottomline Technologies/Albany Software (2012) that "*there are few constraints on competitors' ability to increase [software] volumes significantly in response to increased demand. In particular, the marginal cost of selling additional copies of existing software is low…*".[258]

9.44 In addition to the low marginal cost of supplying PAS software to additional customers, it is clear that rival suppliers (including the smaller suppliers) do not face any material capacity constraints in order to increase volumes to new customers. In particular, the Parties note that to the extent that additional resources are required to provide installation, support and maintenance services, these resources (which largely consist of

---

256 Annex 12, Xuber Marketing Plan – UK Q3/Q4, page 6 (previously submitted at Annex 19 to the Parties' response to the s.109 Notice).

257 It is noteworthy that the CMA only considered a snap shot analysis of market shares (in 2013). Accordingly, it is unclear how it was able to draw the conclusion that shares of supply have not increased.

258 OFT Decision, Anticipated acquisition by Bottomline Technologies (de), Inc. of Albany Software Limited, ME/5475-12 (September 2012) paragraph 59.

additional IT support staff) can simply be recruited from the open market (either on a permanent or temporary basis).

9.45 Moreover, as discussed above (at paragraphs 9.37 to 9.40 above), the Parties do not believe that a Lloyd's specific reputation and experience from having an installed Lloyd's user base is important for entry, and even less so for any subsequent expansion. The inconsistency in the CMA's reasoning is highlighted by the fact that there are a number of PAS suppliers (of varying different sizes) already in the Lloyd's market. If reputation and credibility were a material barrier to entry, then it is unlikely that these suppliers would have been able to win any Lloyd's customers following entry. However, as they are already active in the Lloyd's market, they are now able to demonstrate their experience and credentials to other Lloyd's customers.

9.46 Accordingly, given the nature of software markets, and the lumpy nature of the contracts on offer, the Parties do not believe that there are any material barriers to expansion for PAS suppliers already with customers in the Lloyd's market.

10. BUYER POWER

10.1 The Parties note that Lloyd's managing agents also possess a degree of buyer power in relation to the procurement of PAS software. This largely reflects the way PAS software is procured (i.e. through competitive tender), but also the range of "outside options" available to Lloyd's managing agents, including, as confirmed by third parties in the CMA's market test, the ability to sponsor entry. In this regard, the following points are relevant to the assessment of buyer power in relation to the supply of PAS software:

(a) competition is generally undertaken by way of a competitive tender process where Lloyd's managing agents invite PAS suppliers to bid for a contract. Buyers are well informed and have significant know-how to critically assess and compare alternative bids, and to negotiate good contracting terms. Customers can also control and vary their contract process so as to ensure competitive bids (e.g. by varying the length of contracts);

(b) tenders occur relatively infrequently, and supply contracts run for a number of years. For instance, the CMA notes (at paragraph 139 of the Decision) that a number of customers responding to the market test have not retendered their contracts in seven years or longer. As the Parties only have a limited number of managing agent customers, the loss of one or two customers would have a significant impact on the parties' businesses for a long period of time. As third party evidence confirms, going forwards, contract sizes are likely to increase substantially due to customer preferences to purchase a single software solution for their Lloyd's, London market and other business units.[259] Losing a single contract could therefore, have a substantial impact on the on-going profitability of the business;

(c) the up-front fixed investment costs required to develop PAS software makes retaining customers even more important. The loss of a customer, particularly a large customer, could result in a key contribution to fixed costs being lost which would result in a significant reduction in profitability. [✂]; and

(d) customers have access to a large pool of suitable alternative PAS suppliers. In particular:

(i) as set out in Section 8 above, there are at least 7 other PAS suppliers already active in the Lloyd's market, and a number of other PAS suppliers with a software solution outside of the Lloyd's market. This is clear from the significant number of competitors which regularly bid for contracts, and the limited recent success both Parties have had in winning new customers;

(ii) there is evidence of new entry taking place into the Lloyd's market as well as new entry that is imminent (as confirmed by the CMA's market test);

(iii) the sunk investment cost associated with investing in the incremental Lloyd's functionality can be recovered by securing a single contract. Moreover, once the investment has been incurred, the marginal costs of supplying an additional customer with PAS software are low; and

(iv) as third parties confirmed in the CMA's market test, customers (particularly those with operations outside the Lloyd's market) would be willing to sponsor entry of a credible non-Lloyd's supplier by offering entrants contracts with sufficient revenues to make the requisite Lloyd's investment. Accordingly, the pool of outside options for Lloyd's managing agents extends beyond those suppliers already in the Lloyd's market.

---

[259] Paragraph 163 of the Decision.

10.2 The above factors suggest that Lloyd's managing agents are in a strong bargaining position vis-à-vis the PAS software suppliers when procuring PAS software. In addition, it should also be noted that all customers do not need to hold countervailing buyer power for a constraint to exist on the market. This is because the ability of certain customers to exercise buyer power (e.g. by sponsoring entry or encouraging a smaller supplier to expand) will create additional credible suppliers in the market which will change the market structure and dynamics of competition for all customers.