

Completed acquisition by Landmark Information Group of Decision
Insight Information Group (Europe)

ME/6272/13

The OFT's decision on reference under section 22(1) given on 24 January 2014.
Full text of decision published 11 March 2014

Please note that the square brackets indicate figures or text which have been
deleted or replaced in ranges at the request of the parties or third parties for
reasons of commercial confidentiality.

PARTIES

1. **Landmark Information Group Limited (Landmark)** provides a wide range of services to the property industry, including the supply of environmental risk reports in connection with property transactions. Landmark is a subsidiary of dmg information, which is ultimately owned by Daily Mail and General Trust plc (**DMGT**).
2. **Decision Insight Information Group (Europe) Limited (DIIG)** is a reseller of property search reports, including environmental risk reports. Its core brand name in England & Wales is Searchflow and in Scotland is Millar & Bryce. DIIG achieved a UK turnover of approximately £[] in the year ending December 2012.

TRANSACTION

3. Landmark acquired the entire issued share capital of DIIG on 24 October 2013 (the **Merger**)¹ for a consideration of £75 million.
4. The parties notified the Merger to the Office of Fair Trading (**OFT**) on 14 November 2013.² The statutory and administrative timetable was subsequently suspended. The OFT's extended statutory deadline expires on 4 March 2014 and the extended administrative deadline expires on 27 January 2014.

JURISDICTION

5. As a result of the Merger, Landmark and DIIG have ceased to be distinct. The parties overlap in the supply of environmental risk reports to conveyancers. The share of supply test in section 23 of the Enterprise Act 2002 (**Act**) is met in relation to the parties' combined share of supply of environmental risk reports for commercial properties in the UK. The parties estimate that their combined share is [40-50] per cent.³ The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

6. As part of the due diligence process for a property transaction, a conveyancer purchases and assesses 'property search reports'. These reports contain information on one or more of a wide range of issues of interest to a property purchaser. An environmental risk report is an example

¹ Prior to the Merger, DIIG also incorporated a business known as Xit2, which performs certain workflow management functions in a property transaction context. Xit2 was carved out of the DIIG business prior to the Merger.

² The OFT accepted initial undertakings from the parties on 13 November 2013.

³ The parties estimate that DIIG's share is [40-50] per cent and Landmark's share is [0-10] per cent.

of a property search report which provides information on environmental risks in relation to a particular property or area.⁴

7. Property search reports can either be purchased from firms called 'resellers' who source them from the various upstream providers and typically sell them as a bundle, or directly from report providers.
8. The parties are primarily active at different levels of the supply chain, DIIG being active as a reseller and Landmark being primarily in the upstream market as an environmental risk report provider to resellers. The OFT has assessed market definition separately for the downstream and upstream levels below. Landmark is also active in a number of other property-related services, but none of these overlap with the DIIG business.

Downstream product market – supply of environmental risk reports to conveyancers

9. As set out above, environmental risk reports are a particular type of property search report which relate to a wide range of environmental risk associated with a property. Environmental risk reports vary by the type of risk(s) covered, and the depth and sophistication of the information provided. They can be purchased from resellers, either individually or as part of a bundle with other property search reports. Although the majority are purchased from resellers, they can also be purchased directly from environmental risk report providers such as Landmark and Groundsure.
10. In this section the OFT has considered whether it is appropriate to assess the Merger by delineating the environmental risk report market by reference to:
 - i. Reports supplied individually and in bundles;
 - ii. The type of environmental risk report;
 - iii. The complexity of the environmental risk report; and
 - iv. Reports supplied for residential and commercial properties.

⁴ The risks covered may include: potential land contamination (the most commonly purchased report), flooding risk, ground stability and radon risk. Reports may also carry a professional opinion interpreting the underlying data.

Environmental risk reports sold individually and in bundles

11. Conveyancers typically source the required property search reports from a reseller that sources them from various upstream providers.⁵ The property search reports are most commonly sold by resellers in a bundle.⁶ An environmental risk report, for example, is a property search report which is often sold by resellers in bundles with other property search reports. However, a small proportion of environmental risk reports are supplied to conveyancers individually.⁷ Such individual sales can either be by report providers such as Landmark supplying reports directly to conveyancers, or resellers supplying them individually (that is not in a bundle with other property search reports). Where the OFT refers to reports supplied individually, this refers to both individual reports sold by report providers and those sold individually by resellers.
12. The parties estimate that only a small minority of all conveyancers purchase individual environmental risk reports directly from Landmark and Groundsure. It is not clear in which circumstances a conveyancer is more likely to purchase directly. The parties submitted that conveyancers who do so are likely to be those that do not use a reseller at all and therefore purchase all of their property search reports from the source further upstream.
13. Some conveyancers that purchase environmental risk reports in bundles from resellers told the OFT that they value being able to purchase environmental risk reports in a bundle from a single reseller. The reasons cited included ease of collection, price and service, and the value of having a one-stop shop for property search reports. Resellers and conveyancers also indicated that conveyancers are relatively price insensitive and would be unlikely to switch their purchase of an environmental risk report from their reseller in response to a five per cent price increase. The OFT considers that this evidence supports separate markets for the provision of individual sales of environmental risk reports and those sold within bundles.

⁵ Resellers also supply property search reports to investors, but to a far lesser extent.

⁶ Bundles of property search reports can either be predefined (with a single price) or individually compiled by the customer for each transaction. For the purposes of this decision, the OFT has used the term 'bundle' to refer to both pre-defined or individually compiled bundles.

⁷ The parties estimate that around [] per cent of environmental risk reports are purchased in a bundle.

14. In any event, the OFT has not found it necessary to conclude as no concerns arise either on the basis of all sales of environmental risk reports or a separate assessment of individual sales of environmental risk reports and those sold within bundles.
15. As regards a possible distinction between individual sales of environmental risk reports directly by the report provider and via a reseller, the OFT considers that a conveyancer is likely to consider them to be substitutable. This is corroborated by one reseller's view that the parties are competitors in the supply of environmental risk reports. Further, the parties' websites indicate that the prices of individual reports available through report providers and resellers are similar. Accordingly, the OFT considers the supply of individual environmental risk reports to conveyancers, directly or through resellers, to be a relevant frame of reference.

Types of environmental risk reports

16. When selecting a candidate market the OFT will typically begin with a narrowly defined set of products that customers consider to be close substitutes. In this case, the narrowest candidate market to be considered is each type of environmental risk report. From a demand-side perspective, a report covering one type of environmental risk is not substitutable for a report covering a different type of environmental risk.
17. The OFT has not found it necessary to conclude on this since, while the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, there are circumstances where the OFT may aggregate several narrow relevant markets into one broader one.⁸ Such circumstances include where competing firms supply a range of products that are not demand-side substitutes but where they have the ability and incentive to shift capacity between them, where the products are supplied by the same firms and the conditions of competition between the firms are the same for each product.
18. In this case, there are two main suppliers of environmental risk reports – Landmark and Groundsure. The parties submitted that both provide the full range of environmental risk reports, and that for each Landmark report there is a rival Groundsure report. Third party comments generally

⁸ Merger Assessment Guidelines, Joint publication of the CC and the OFT, Section 5.2.17.

confirmed this. Most resellers source environmental risk reports from both Landmark and Groundsure and are therefore also able to offer the full range of environmental risk reports.

19. In light of this, the OFT assessed the Merger on the basis of the supply of all types of environmental risk reports.

The complexity of the report

20. The OFT has previously concluded that the most appropriate frame of reference was the supply of environmental risk reports excluding detailed reports for commercial property supplied by environmental consultants.⁹ This was on the basis that these reports by consultants were more complex and considerably more expensive than the parties' products in that case.
21. In the acquisition by Landmark of Argyll, the OFT noted the parties' arguments that Landmark produced low end, less sophisticated computer-generated reports for the mass property market whereas Argyll produced high end, consultant-generated reports to large city law firms dealing with complex commercial property deals.¹⁰ In that case the parties submitted that the relevant market was likely to be the provision of environmental risk reports for all properties excluding more detailed consultant's reports known as Phase I and Phase II studies.¹¹ The OFT did not conclude on the issue in that case.
22. In this case the parties submitted to the OFT that the Landmark reports sold through resellers are relatively simple environmental risk reports. These reports source information principally from public sources and set it out in a single report. Landmark also supplies more detailed reports containing more detailed reviews of environmental issues relating to a site, but does not

⁹ Anticipated acquisition by DMG Information Limited of Sitescope Limited, OFT, 17 July 2003 (**DMG/Sitescope**).

¹⁰ Anticipated acquisition by EDR Landmark Group Limited of Argyll Environmental Limited, OFT, 5 October 2010 (**Landmark/Argyll**), paragraphs 16 and 17.

¹¹ Phase I reports are desktop reports prepared individually by an environmental consultant and involving a physical visit to the site while a Phase II report is the product of a site visit and more intensive investigation which also involves the taking and analysis of samples from the site.

supply these reports through resellers. These may include a desktop study by an environmental consultant or even a site visit.

23. The OFT considers that, from a demand-side perspective, conveyancers are unlikely to consider the more complex reports generated by environmental consultants and the simpler reports to be substitutes. Furthermore, the parties only directly overlap in the supply of simpler environmental risk reports to conveyancers.
24. Therefore, on a cautious basis, the OFT assessed the Merger on the basis of the supply of environmental risk reports excluding complex reports. The OFT has not assessed the complex reports further and therefore uses the term 'environmental risk report' below to refer only to the non-complex environmental risk reports.

Environmental risk reports relating to residential and commercial properties

25. Environmental risk reports can relate to commercial or residential properties. The OFT has previously concluded that environmental risk reports for commercial and residential properties are supply side substitutes as it is easy for the upstream report providers to switch from producing one to the other.¹² The OFT considered similar arguments put forward by the parties in Landmark/Argyll, but did not come to a definitive view in that instance.¹³
26. In this case, however, the parties estimated that DIIG's share of supply of property search reports for commercial properties is [] than that for residential properties. One explanation for this difference may be that they exhibit differing competitive dynamics. Although the OFT considers that supply side substitution is likely, it has not been necessary for the OFT to conclude on this issue as the Merger would not give rise to concerns on either basis.

Conclusion on downstream product market

27. In light of the above, the OFT assessed the Merger on the basis of a downstream market for the supply of:

¹² DMG/Sitescope.

¹³ Landmark/Argyll, paragraphs 20 to 22.

- i. environmental risk reports to conveyancers;
- ii. individual environmental risk reports to conveyancers;
- iii. bundled environmental risk reports to conveyancers; and
- iv. environmental risk reports to conveyancers relating to commercial properties; and
- v. environmental risk reports to conveyancers relating to residential properties.

Downstream geographic market

28. The parties submitted that the market for the sale of environmental risk reports is UK wide because all major resellers provide services in all parts of the UK. Although the OFT has previously considered that the most suitable frame of reference for environmental risk reports would be the UK,¹⁴ the OFT notes that this conclusion related to the upstream market.
29. The OFT has therefore considered whether the appropriate geographic frame of reference for each of the product frames identified above should be narrower than UK wide.

The supply of all environmental risk reports

30. Given that Landmark is not active in Northern Ireland, the OFT has considered whether Great Britain is the appropriate frame of reference for the assessment of the Merger. Although the parties acknowledge that local and regional resellers operate alongside national players, they do not consider there to be any difference in competitive conditions in any part of the UK.
31. However, the OFT has considered whether it is appropriate in this case to define regional geographic markets on the basis that customer preferences vary between regions. The vertical nature of the Merger renders any variations in customer preferences important in the competition analysis due to the impact on relative upstream and downstream revenues and margins. These may give the merging parties' different levels of ability and incentive to engage in a foreclosure strategy.

¹⁴ DMG/Sitescope and Landmark/Argyll, paragraph 23.

Scotland and England & Wales

32. The OFT notes the following characteristics of the property search report market which indicate that the competitive environment may vary between Scotland and England & Wales:
- i. Some resellers operate principally in either England & Wales or Scotland and others operate in both but under different brands (for example, DIIG operates under 'Millar and Bryce' in Scotland);
 - ii. Resellers' shares of supply vary considerably (for example, DIIG has a much larger share of property search reports in Scotland than across the UK as a whole);
 - iii. One reseller submitted that, in Scotland, some sources of data are more readily available and Local Authorities do not compete to supply Local Authority reports, whereas they do within England & Wales; and
 - iv. There is some evidence that margins on property search reports may be [] in Scotland compared to England & Wales.
33. The parties submitted that the take up of a Landmark report is lower in Scotland than in England & Wales. One reseller attributed the lower take up in Scotland to the fact that it is the property seller (rather than the buyer) that is responsible for purchasing property searches. A seller may have less incentive to assess environmental risks compared to a buyer.
34. On a cautious basis, the OFT assessed the Merger on the basis of the downstream product markets in Great Britain and as well as in Scotland and England & Wales separately.

Regions within Great Britain

35. Further, the OFT notes the following characteristics of the property search report market which indicate that the competitive environment may vary within regions of Great Britain:
- i. The reseller competitor set varies between regions, with a mixture of national, regional and local resellers;
 - ii. The parties and third parties submitted that shares of supply of national resellers vary by region;

- iii. Some methods of obtaining property search reports differ by region;¹⁵ and
 - iv. One reseller submitted that margins vary by region.
36. [] estimated that the take up of Landmark reports in different regions varied substantially.¹⁶ They submitted that a [] proportion of property buyers may purchase an environmental risk report in regions where []. One reseller confirmed this trend and added that there may be less take up of environmental risk reports in areas where environmental risks are well known (for example, if the property is in a flood plain).
37. The OFT has therefore assessed the Merger on the following geographic frames of reference:
- i. Great Britain;
 - ii. Scotland; and
 - iii. England & Wales.
38. The OFT has also taken into account that customer preferences may vary at the regional level in the competitive assessment.
- The supply of environmental risk reports supplied individually and in bundles
39. Both individual and bundled reports can be supplied to conveyancers by resellers that range from operating on a local basis to a national basis. As set out above, the OFT received evidence that the shares of supply of report providers and resellers vary significantly across Great Britain.
40. In light of this, the OFT has assessed the Merger on the geographic frames of reference set out in paragraphs 37 and 38 above.

¹⁵ For example, one reseller submitted that a 'personal search', which is one method for obtaining a Local Authority search, is cheaper in some regions.

¹⁶ For instance, [] per cent of transactions in the North West but [] per cent of transactions in London.

Upstream product market – supply of environmental risk reports to resellers

41. Landmark is primarily active in the upstream market for the supply of environmental risk reports to resellers.¹⁷ Landmark and Groundsure are the two primary upstream providers of environmental risk reports to resellers.
42. The demand-side considerations set out above for the downstream product market are equally applicable to the upstream product market. This is because the demand in the upstream market is derived directly from the demand in the downstream market.
43. From a supply-side point of view, the OFT considered whether Landmark and Groundsure supply the same range of products, whether they are easily able to shift capacity between them, and whether the conditions of competition between them are the same for residential and commercial property reports.¹⁸ The parties submitted that Landmark and Groundsure both supply the full range of environmental risk reports. Although the parties were unable to estimate Landmark's share of supply separately for commercial and residential properties, they had no reason to believe that they would be materially different. No evidence came to light during the OFT's investigation to suggest that Landmark and Groundsure could not easily switch capacity between producing reports for these different types of property, or that the competitive proposition differs significantly between them.
44. Accordingly, the OFT has assessed the Merger on the basis of an upstream market for the supply of environmental risk reports to resellers.

Upstream geographic market

45. The parties submitted that the market for the sale of environmental risk reports is UK wide because both Landmark and Groundsure provide services in all parts of the UK. As set out above, the OFT has previously considered that the most suitable frame of reference for environmental risk reports would be the UK.¹⁹

¹⁷ It also sells a small proportion (approximately [] per cent) directly to conveyancer customers.

¹⁸ Merger Assessment Guidelines, Joint publication of the CC and the OFT, Section 5.2.17.

¹⁹ DMG/Sitescope and Landmark/Argyll, paragraph 23.

46. However, given that the demand in the upstream market is derived from the demand in the downstream market, the OFT considers that the factors considered above in relation to the downstream market equally apply to the upstream market. Accordingly, on a cautious basis, the OFT has assessed the Merger on the same geographic frames of reference as set out above for the downstream market without the need to reach a conclusion on this point.

Conclusion on frame of reference

47. In conclusion, the OFT has assessed the Merger on the basis of the following product frames of reference:
- i. the supply of environmental risk reports to conveyancers;
 - ii. the supply of individual environmental risk reports to conveyancers;
 - iii. the supply of bundled environmental risk reports to conveyancers;
 - iv. the supply of environmental risk reports to conveyancers relating to commercial properties
 - v. the supply of environmental risk reports to conveyancers relating to residential properties; and
 - vi. the upstream supply of environmental risk reports to resellers.
48. It has assessed the impact of the Merger on those markets on the basis of the following geographic frames of reference:
- i. Great Britain;
 - ii. Scotland; and
 - iii. England & Wales.
49. The OFT has also taken into account that customer preferences may vary at the regional level in the competitive assessment.

COMPETITIVE ASSESSMENT

50. The OFT considered whether there is a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the Merger through the following theories of harm:

- i. Horizontal unilateral effects in the supply of environmental risk reports;
- ii. Input foreclosure of resellers; and
- iii. Customer foreclosure of either rival resellers or Groundsure through a panel management system.

51. The harm that may arise as a result of each theory is dealt with individually below.

HORIZONTAL UNILATERAL EFFECTS

52. Given the parties' overlap in the supply of environmental risk reports to conveyancers, the OFT considered whether the Merger might result in a SLC through a loss of competition in this market. Such a reduction of competition could result in an increase in price or a deterioration in quality, range or service to conveyancers. The parties do not overlap in the supply of bundled environmental risk reports to conveyancers nor in the upstream supply of environmental risk reports to resellers.

Market Shares and remaining competition

53. Table 1 below sets out estimated market shares on the basis of the supply of (i) all environmental risk reports and (ii) environmental risk reports sold individually.

Table 1: Estimated market shares for the supply of environmental risk reports in Great Britain

	All environmental risk reports sold*, per cent	Environmental risk reports sold individually **, per cent	Environmental risk reports relating to commercial properties*,	Environmental risk reports relating to residential properties*,

			per cent	per cent
DIIG	[20-30]	[10-20]	[40-50]	[10-20]
Landmark	[0-10]	[20-30]	[0-10]	[0-10]
Combined	[20-30]	[30-40]	[40-50]	[20-30]
STL	[0-10]	[10-20]		
PSG	[10-20]	[5-15]		
TM	[10-20]	[10-20]		
Others	[40-50]	[20-30]		
Total	100	100		

Source:

* [].

** [], third parties, OFT estimates. Where third party estimates were not available, the OFT has assumed that 10 per cent of sales were unbundled.

54. The figures in Table 1 show that the parties account for around [20-30] per cent (increment of around [0-10] per cent) of total sales of environmental risk reports in Great Britain. Taking into account only environmental risk reports sold individually, the parties account for [30-40] per cent (increment of around [10-20] per cent) of sales in Great Britain. The parties would be the two largest suppliers. On either basis, the parties' combined share would be unlikely to give the OFT cause for concern.
55. The parties estimated combined share of supply of environmental risk reports relating to commercial property transactions is [] than that for residential. However, the OFT notes that the increment is relatively low ([0-10] per cent).
56. The OFT also considered the impact of the Merger on the supply of environmental risk reports supplied to conveyancers on a regional basis. Across England & Wales the parties estimate the increment attributable to Landmark to be consistently low and, as such, the loss of competition would be relatively limited in each region. In Scotland, based on market size estimates submitted by the parties, their combined share would be approximately [50 to 70] per cent.
57. The market share estimates set out above may indicate that the parties may be close competitors for the supply of environmental risk reports relating to commercial property transactions and reports supplied in

Scotland. However, there is evidence that there are other competitors active in the supply of these reports.

58. Although the OFT was not provided with estimates of market shares for the supply of individual environmental risk reports by third parties in Scotland, one third party did highlight a significant reseller active in Scotland, Scottish First. Another major reseller told the OFT that it has recently entered the market in Scotland.

Closeness of competition

59. It is not clear to what extent market shares may overstate a loss of competition given that the parties may principally cater to different customer groups (that is Landmark to conveyancers willing to construct their own bundles and DIIG to conveyancers that value a one stop shop).
60. The OFT asked third party resellers whether they considered Landmark and DIIG to be in competition with each other in the supply of environmental risk reports. The response was mixed, and two major resellers did not consider them to be competitors at all. Further, the OFT only received a very limited number of complaints from conveyancers in respect of the horizontal overlap between the parties.
61. Finally, the vast majority of environmental risk reports sold by DIIG are sold in bundles, whereas Landmark does not sell bundles of property search reports at all.

Conclusion on horizontal unilateral effects

62. The parties are significant suppliers of environmental risk reports. This is particularly the case with regard to individually supplied reports, reports relating to commercial property transactions and reports supplied in Scotland. However, there is evidence that there are significant competitors in the market which are likely to constrain the parties, and the parties are, to some extent, likely selling to customers with different preferences. Further, the OFT received very limited complaints from conveyancers in respect of any horizontal effects of the Merger. Accordingly, the OFT does not consider that the Merger would result in a realistic prospect of a SLC

through the loss of horizontal competition in the supply of environmental risk reports to conveyancers.

INPUT FORECLOSURE OF RESELLERS

63. The OFT considered whether, following the Merger, the parties would have the ability and incentive to foreclose rival resellers supplying property search bundles by raising the price of Landmark environmental risk reports or refusing to supply them at all. Such a strategy could make it harder for rival resellers to compete, potentially reducing competition in the sale of property search reports and resulting in an increase in price or a deterioration in quality, range or service to conveyancers.²⁰

Ability to foreclose

64. The factors that will affect the merged parties' ability to foreclose rival resellers include:
- i. The cost of the input relative to all costs of the final product;
 - ii. The extent to which rival resellers can avoid the price increase by switching to Groundsure reports; and
 - iii. The extent to which cost increases are passed through to conveyancers.

(i) The cost of the input relative to all costs incurred by resellers

65. Environmental risk reports are usually supplied by resellers as part of a bundle with other property search reports. The higher the proportion of the total costs incurred by a reseller in supplying property search report bundles accounted for by environmental risk reports, the greater the ability of the parties to foreclose rival resellers by raising the price of Landmark reports.
66. Figures provided by the parties show that the proportion of DIIG's total costs accounted for by environmental risk reports varies depending on the bundles, but in over [] per cent of cases they account for less than [] per cent of the total costs incurred by DIIG. Some third parties estimated the proportion to be slightly higher, but overall the evidence indicates that

²⁰ Merger Assessment Guidelines, Joint publication of the CC and the OFT, Section 5.6.9.

environmental risk reports account for a relatively low proportion of the total costs incurred by resellers.

(ii) The extent to which rival resellers can avoid the price increase by switching to Groundsure reports

67. Rival resellers' ability to avoid a price increase depends on their ability to include environmental risk reports from Landmark's main rival, Groundsure, rather than Landmark in the property search report bundles sold to their clients. In this regard, the OFT notes the following:

- i. [] that Landmark accounts for around [70-80] per cent of the supply of environmental risk reports.²¹ This high market share may indicate that Groundsure is a relatively weak competitor to Landmark and that many rival resellers may not be able (or willing) to switch to using Groundsure reports.
- ii. []. Resellers and conveyancers generally confirmed this, although some conveyancers do have a preference for one over the other.
- iii. Almost all resellers offer conveyancers a choice of Landmark or Groundsure reports. The evidence shows that in general, although conveyancers are at liberty to choose between the Landmark and Groundsure report, in practice the reseller often exerts influence over that choice or chooses on their behalf.
- iv. [] third parties indicated that switching between Landmark and Groundsure is relatively easy, with limited reprogramming and training costs. Switching data provided by resellers is consistent with this.
- v. [], due to the ease of switching between Landmark and Groundsure reports and the relationships that conveyancers have with resellers, conveyancers would be more likely to switch between reports with their current reseller than to switch their bundle of purchases to another reseller. Although several resellers told the OFT that in the event that they were unable to supply Landmark reports, they would likely lose customers, only

²¹ This varies by region. For example, the parties estimate that they sell reports in [] per cent of property transactions in Greater London.

one of 11 conveyancers said that they would switch reseller in those circumstances.²²

68. Although there may be a small proportion of conveyancers that would switch reseller in the event that Landmark reports were no longer available through their current reseller, the evidence shows that, on balance, resellers are largely able to avoid a price increase by switching their customers to Groundsure reports in response to a foreclosure attempt by the merged parties.

(iii) The extent to which cost increases are passed through to conveyancers

69. If higher Landmark prices would not be passed on by resellers to conveyancers then it is unlikely that an attempted foreclosure strategy would affect conveyancer demand. The OFT notes in this respect that some resellers currently use Landmark and Groundsure recommended resale prices in their pricing to conveyancers. However, this does not necessarily indicate that resellers would pass on increases in the recommended resale price that were not, for instance, reflected in the pricing of Landmark reports on DIIG's website. It also does not mean that resellers would continue to use a Landmark recommended resale price if, for instance, Landmark increased the price charged to resellers.
70. Given that data received from [] third parties shows that environmental risk reports account for a relatively low proportion of the total costs incurred by resellers, and [] for these reports, they might have some ability to absorb price increases. This would similarly apply to any corresponding price increase that Groundsure may impose on resellers in response to Landmark raising its prices. Further, given that conveyancers have influence over which environmental risk report is purchased and switching appears relatively easy, resellers might be able to avoid passing on a price increase to many conveyancers by persuading them to switch to Groundsure reports.

Conclusion on ability

71. The OFT considers, on the basis of the evidence set out above, that the parties' ability to foreclose rival resellers is limited. This is because many

²² The OFT has assumed that a similar response would result from partial foreclosure (that is if Landmark increased the price of its reports to rival resellers).

conveyancers consider the Landmark and Groundsure reports to be similar, switching between them is relatively easy, and resellers have influence over which report conveyancers purchase. On a cautious basis, however, the OFT has considered below whether the parties would have the incentive to pursue such a foreclosure strategy.

Incentive to foreclose

72. The incentive to adopt a foreclosure strategy depends on whether the upstream profits that would be lost in the supply of environmental risk reports to resellers would be outweighed by the gain in profits in the downstream supply of property search reports to conveyancers.

Total foreclosure

73. Landmark's sales to rival resellers represent over [] per cent of its revenue and therefore a total foreclosure strategy would result in a loss of significant revenue and margin. The parties submitted that the volumes they would anticipate recapturing downstream would be too small to make foreclosure of resellers worthwhile. This, they argue, is because if Landmark were to refuse to supply its reports through rival resellers then those resellers would simply move their customers to Groundsure. Not only would it be less costly for a conveyancer to do so, but the nature of the resellers' relationships with conveyancers also means that this is more likely. This argument is consistent with the parties' internal documents and third party comments.
74. The OFT has calculated the proportion of conveyancers required to switch reseller for total foreclosure by the parties to be profitable using the parties' margin and revenue figures. It has conducted the analysis for Great Britain and then considered whether the analysis might vary for England & Wales, Scotland, and by region.
75. Analysis conducted by the OFT based on margin data [] shows that the level of switching to DIIG required for a foreclosure strategy to be profitable []. However, on the basis of evidence from conveyancers that almost all would switch to a Groundsure report rather than switch reseller, the OFT does not consider that a foreclosure strategy is likely to reach the

required level. The OFT therefore does not consider that the parties would have the incentive to engage in a total foreclosure strategy in Great Britain.

Further delineations by geographic area and type of property

76. As set out above, the upstream and downstream markets may be delineated by England & Wales and Scotland, by region within Great Britain, and (with respect to the downstream market) by whether the property to which the transaction relates is commercial or residential.
77. The OFT was provided with evidence that the market shares (and in some cases margins) vary for each of these possible frames of reference. The required proportion of customer switching for a foreclosure strategy to be profitable may therefore differ from those set out above for Great Britain. The OFT does not have sufficient data to conduct the analysis for each possible frame of reference. However, the OFT notes that:
 - i. in any region there are resellers who are active across a wider area, including those that operate nationally; and
 - ii. many resellers supply property search reports relating to both commercial and residential transactions.
78. Consequently, any attempt by the parties to foreclose rival resellers in a region or with respect to a particular type of property would likely result in them losing upstream sales across a wider set of reports.
79. Furthermore, any attempt to foreclose only resellers operating in a particular geographic area (but not, for instance, national resellers selling regionally) may be less likely to be profitable given that some customers of foreclosed rivals may switch to any one of the other national players rather than to the parties. A similar argument may pertain to commercial and residential transactions. Resellers are generally active in selling property search reports relating to both commercial and residential properties. Any attempt to foreclose rivals from one type of report would likely result in the parties losing sales in the other.
80. In conclusion, the OFT considers that the incentive for the parties to pursue a total foreclosure strategy in any particular area or type of property may deviate from the analysis set out above. However, for any frame of reference where a foreclosure strategy might be more profitable, the likely

loss of additional sales upstream from resellers reducing demand across the parties' wider activities would likely mitigate for such an increase in incentive. The OFT therefore considers that the conclusion set out above for Great Britain applies equally to the other frames of reference.

Partial foreclosure

81. The OFT has considered whether the parties' incentive to pursue a partial foreclosure strategy would be any different to a total foreclosure strategy. There are more factors that could be taken into account when assessing the incentive for the parties to engage in partial foreclosure, such as the price sensitivity of conveyancers.
82. For any given price rise, the gain in profits in property search bundles will be less where conveyancers do not react strongly to changes in price. Some third parties' responses indicated that conveyancers were relatively price insensitive to the cost of a property search bundle. The OFT also notes that the costs of switching environmental risk report may be lower than switching all purchases to another reseller. This implies that the price responsiveness of end customers to the price of a bundle for a given price rise may be muted, reducing the extra sales of property search bundles enjoyed by the merged firm (and the gain in profits on them). This would reduce the parties' incentive to partially foreclose.
83. The OFT therefore considers that the parties' incentive to engage in partial foreclosure would be even less than to engage in total foreclosure.

Conclusion on incentive

84. In light of the evidence set out above, the OFT does not consider that the parties would have the incentive to engage in either a total or partial foreclosure strategy in any of the frames of reference identified.

Conclusion on input foreclosure of resellers

85. In conclusion, the OFT considers that the parties would have limited ability to engage in either a total or partial foreclosure strategy in any of the frames of reference identified. In any event, they would not have the incentive to engage in such a strategy. Given the OFT's conclusion on ability and incentive, it has not considered it necessary to examine the effect of any foreclosure strategy.

CUSTOMER FORECLOSURE THROUGH A PANEL MANAGEMENT SYSTEM

86. The OFT considered the extent to which the Merger would result in a realistic prospect of a SLC by enabling the parties to foreclose either rival resellers or Groundsure as a result of their involvement in a panel management system.
87. This system relates to a panel of conveyancers that some lender banks have in place from whom they are willing to procure services. In order to join the panel, conveyancers must submit a substantial amount of information to the lender bank which is subject to validation checks.
88. DIIG is involved in a joint venture called Decision First.²³ This joint venture was recently awarded a contract by a group of lender banks to operate a centralised conveyancer panel management system which is intended to ease the administrative burden on the lender banks and conveyancers.²⁴ The system will facilitate the exchange of information by allowing conveyancers to submit information to multiple lender banks at the same time and for lender banks to manage their panels within the system. The system is due to launch in early 2014 and will initially offer services to three main lender banks.
89. Two third parties raised concern about DIIG's involvement in Decision First, submitting that the parties would be able to exert control over which property search reports the conveyancers on a lender's panel buy. One third party submitted that these arrangements are particularly concerning given that the volume of conveyancing work arising from the relevant panels will be significant.
90. The OFT therefore considered the parties' ability to foreclose rival resellers or Groundsure as a result of their involvement in this panel management system. One lender bank submitted that Decision First will be responsible for collecting, validating, and managing data on behalf of lenders through the panel management system, but the lender banks will decide the

²³ Decision First is a joint venture between DIIG and First Title. Both DIIG and First Title hold 50 per cent of the shares in Decision First.

²⁴ <https://www.cml.org.uk/cml/media/press/3745>

membership of their panels and Decision First will also have no influence over which property search reports the conveyancers will purchase.

91. In light of the above, the OFT does not consider that the parties' involvement in the panel management system through Decision First will give them the ability to foreclose rival resellers or Groundsure.

THIRD PARTY VIEWS

92. In this case, the OFT received responses to its market enquiries from several third parties including major resellers and conveyancers.
93. The majority of concerns raised are set out in the OFT's analysis above. However, the OFT also received some concerns regarding the general functioning of the market. The OFT was able to dismiss those concerns for the purposes of this decision on the basis that they were not specific to the Merger.

ASSESSMENT

94. On 24 October 2013, Landmark acquired the entire issued share capital of DIIG. The OFT therefore considers that, as a result of the Merger, Landmark has ceased to be distinct from DIIG. Landmark and DIIG overlap in the supply of environmental risk reports to conveyancer customers across the UK, but are primarily active at different levels of the supply chain. DIIG is active as a reseller and Landmark is primarily active in the upstream market as an environmental risk report provider to resellers. The share of supply test is met in respect of the supply of environmental risk reports relating to commercial property transactions. The OFT therefore considers that a relevant merger situation has been created.
95. The OFT considers that the relevant product frames of reference in this case were the supply of (i) environmental risk reports to conveyancers; (ii) individual environmental risk reports to conveyancers; (iii) bundled environmental risk reports to conveyancers; (iv) environmental risk reports to conveyancers relating to commercial properties; (v) environmental risk reports to conveyancers relating to residential properties; and (vi) environmental risk reports to resellers upstream. It has assessed the impact

of the Merger on those markets in Great Britain, Scotland and England & Wales, taking into account that customer preferences may vary at the regional level in the competitive assessment.

96. Given the horizontal overlap between the parties in the individual supply of environmental risk reports to conveyancers, the OFT considered whether the Merger might result in a SLC through the loss of horizontal competition. Although the parties combined shares are relatively high for some frames of reference, there is evidence that there are other significant competitors in the market and that the parties are not viewed as competitors by some major resellers. Further, the OFT received a very limited number of concerns in this regard. Accordingly, the OFT concludes that the Merger does not result in a realistic prospect of a SLC through horizontal unilateral effects.
97. The OFT also considered whether there is a realistic prospect of a SLC on the basis of input foreclosure of resellers. The OFT assessed the extent to which the parties would have the ability and incentive to engage in either a total or partial foreclosure strategy in any of the frames of reference identified. On the basis of responses from third parties about switching from Landmark to Groundsure report, alongside margin and revenue estimates submitted by the parties, the OFT considers that the parties would have limited ability and incentive to engage in a foreclosure strategy.
98. Finally, the OFT considered whether the Merger would result in a realistic prospect of a SLC by foreclosure of either rival resellers or Groundsure through DIIG's involvement in a conveyancer panel management system which is used by a group of lender banks. However, the OFT was informed that the system would not enable the parties to determine which property search reports are purchased by conveyancers.
99. The OFT contacted several third parties in this case. Although the OFT did receive concerns from some third parties, those concerns related primarily to foreclosure. As set out above, the OFT's analysis indicates that the Merger would not result in a realistic prospect of a SLC as a result of foreclosure. All other concerns were dismissed on the basis that they were not specific to the Merger.

100. Consequently, the OFT does not believe it is or may be the case that the Merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

101. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.