

Anticipated acquisition by Motorola Solutions Inc of Psion plc

ME/5598/12

The OFT's decision on reference under section 33(1) given on 27 September 2012. Full text of decision published 8 October 2012.

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. Motorola Solutions, Inc. (**MSI**) is a global supplier of government, public safety and enterprise communications products and services. MSI is based in Illinois, USA and is listed on the New York and Chicago stock exchanges with a global turnover of £5.12 billion for the year ended 31 December 2011, of which £[] million was attributable to sales to customers in the UK.¹
2. Psion plc (**Psion**) is active in the supply of 'rugged' mobile computer devices to enterprise customers. Psion is listed on the London Stock exchange with its headquarters in the UK. Psion's global turnover in the year ended 31 December 2011 was £176 million, of which £8.3 million was attributable to customers in the UK (excluding intra-group sales).

TRANSACTION

3. On 15 June 2012 MSI and Psion (the **Parties**) agreed the terms of a recommended cash offer to be made by MSI for the entire issued and to be issued share capital of Psion for a consideration of approximately £129.3

¹ Global turnover of US\$8.2 billion and sales to UK customers (excluding intra-group sales) of US\$[] million, converted to sterling at US\$1.603/£. **Source:** Annual average spot exchange rate, 2011, Bank of England.

million (the **Transaction**). The Transaction is conditional on clearance from the OFT.

4. The Parties notified the merger on 25 July and following receipt of a satisfactory submission the administrative deadline for a decision is 27 September 2012.
5. The transaction was also notified in Germany, Portugal and Canada and has received clearance from these authorities.

JURISDICTION

6. As a result of this transaction MSI and Psion will cease to be distinct. The Parties overlap in the supply of rugged mobile computers to customers in the UK with an estimated combined share of supply of around [30-40] per cent by value, [30-40] per cent by volume. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

FRAME OF REFERENCE

Product scope

Rugged Mobile Computers

7. The Parties overlap in the supply of rugged mobile computers and associated accessories and after-sale services. Rugged mobile computers are portable computers used by businesses that are specifically designed to withstand use in harsh or demanding working environments. The computers have a wide range of functions² but have historically been distinct from consumer-grade computers due to the enhanced robustness or functionality. For example, products may have enhanced sealing to protect them from rain or dust, a thicker casing or enhanced shock

² Including, for example, allowing employees to communicate with one another, transmit information, track and route goods through a supply chain or in a retail environment, track baggage at airports, or checking vital signs and dosage instructions of patients at hospitals.

absorption to protect against damage from being dropped, or additional applications such as barcode scanners.

8. There are a variety of rugged mobile computers available, ranging from large devices such as rugged notebook computers to small devices such as computers that can be worn on the body to free up the user's hands allowing for easy handling of stock. The Parties only overlap in the supply of rugged vehicle mounted computers and rugged handheld computers.³
9. In the first instance, the OFT's approach is to consider, whether the narrow candidate product markets in which the Parties overlap may be widened through demand-side substitution.⁴
10. In this regard, the Parties submitted that customers choose between the various models of rugged mobile computers based on their specific requirements. While these requirements will differ, the various products will generally have similar functionalities. The Parties submitted that it is increasingly difficult to distinguish between larger and smaller rugged computers owing to the significant degree of demand-side substitutability between them.⁵ The Parties submitted that customers will not only consider one size of product as being capable of meeting its mobile computing needs, pointing to the range of sizes and shapes which tend to be suited to the particular needs of customers.
11. The Parties further submitted that distinctions between rugged mobile computers and consumer-grade mobile computers are not as relevant as in the past,⁶ as consumer-grade devices have developed to feature greater

³ Handhelds include PDA-style computers that are not necessarily held by hand (for example, they may be wearable). Both sets of products are designed variously for warehouse, manufacturing, transportation, automotive, port and airport customers.

⁴ See *Merger Assessment Guidelines*, Joint Publication of the Competition Commission and the Office of Fair Trading, OFT1254, September 2010, paras.5.2.6 to 5.2.19.

⁵ In Case No COMP/M.4415 *Motorola/Symbol*, European Commission, 8 January 2007, (*Motorola/Symbol*), the European Commission's market investigation found two distinct markets within rugged mobile computers, for larger rugged mobile computers and smaller rugged mobile computers. No clear view was expressed in relation to narrower sub-segments within these markets.

⁶ In *Motorola/Symbol*, the European Commission found, as part of its market investigation, that the market for rugged mobile computers is a distinct market from the supply of general computers, although the precise product market definition was left open (see paragraph 10).

degrees of ruggedness and functionality. []. The Parties also submitted some data that pointed to competition from consumer-grade device manufacturers.

12. The OFT notes the Parties' arguments on the extent to which the narrow candidate markets identified above may be widened to include other rugged mobile computers (including those of different sizes) and consumer-grade devices. However, the OFT's market investigation highlighted mixed views among third parties in relation to the Parties' propositions. In the absence of competition concerns on any basis, the OFT has not found it necessary to conclude on the precise product market in this case. For the purposes of the competitive assessment, the OFT has taken a cautious approach and considered the narrowest candidate markets while noting where relevant evidence of any material difference on a wider basis.

Associated Products and Services

13. The Parties also overlap in associated accessories (for example, batteries, chargers, keyboards, cables and head-sets) and services (for example, installation, integration, maintenance and repair), which both MSI and Psion offer for their respective rugged mobile computer products. In relation to accessories, the Parties submitted that the accessories sold by MSI and Psion are only compatible with each of their own rugged mobile computers and represent around [] per cent of total sales of rugged mobile computers in the UK. There are, however, other suppliers, according to the Parties, that focus on the accessories market and sell generic accessories that can be used with various rugged mobile computers brands, including those of MSI and Psion. Similarly, in relation to after sale services,⁷ MSI and Psion will each provide services almost exclusively for their own rugged mobile computers and the same generally applies to the other branded suppliers. However, there are also a number of third parties that will provide after sales services for MSI, Psion and other suppliers, according to the Parties. [].⁸

⁷ Internal business documents submitted by the Parties indicate that services represent [] per cent of Psion's total revenues and [] per cent of MSI's total revenues. See Executive Committee Meeting, Motorola Solutions, Inc., February 23 2012.

⁸ In *Motorola/Symbol*, the European Commission's market investigation also highlighted that after-sales service and support form an integral part of the respective products (see paragraph 12).

14. The Parties submitted that any assessment of the impact of the merger in accessories and services is unlikely to be materially different from a competitive assessment of the supply of the devices themselves and, if anything, the impact may be less, given additional third party suppliers that customers can source from.

15. The OFT considers that the accessories and services supplied by the Parties appear to be complementary to their respective devices, purchased only as a result of the customer having purchased the device itself, and therefore, may represent secondary products. The OFT may consider combining primary and secondary products in the same relevant product market.⁹ However, in this case, whether the secondary products are considered as part of the same market as devices or separately – the OFT considers the competitive assessment for the supply of devices to implicitly consider the supply of potential secondary products; that is, if no competition concerns arise in the supply of the devices, the OFT does not consider any competition concerns will arise in the supply of associated products or services. In the absence of competition concerns on any basis, the precise product scope in this regard may be left open, and the OFT has not considered it necessary to consider this overlap further.

WLAN Infrastructure

16. MSI also manufactures and sells a range of WLAN infrastructure products,¹⁰ such as wireless access points, ports and switches. Psion also has minor activities in WLAN infrastructure products, selling two products under its own brand and reselling some products of third party suppliers, such as Cisco and Aruba. The OFT has not found it necessary to consider this overlap further, however, given the limited nature of the Parties'

⁹ In this case two scenarios may be relevant. First, where customers predominantly purchase the primary and secondary product from the same supplier, the OFT may define a single 'system' market for the bundle of both device and secondary product. Second, where devices can be associated with a range of secondary products which are compatible with that device but not with other devices, the OFT may define one market for the devices and multiple secondary markets, each one containing the secondary products compatible with one primary product.

¹⁰ A Wireless Local Area Network (WLAN) is a computer network that allows a computer to connect without the need for a network cable.

combined activities.¹¹

Geographic scope

17. In *Motorola/Symbol*, the European Commission considered that the relevant geographic market for rugged mobile computers was likely to be at least EEA-wide and potentially worldwide.¹²
18. In this case, the Parties submitted that the relevant geographic market for rugged mobile computers is worldwide, highlighting that most rugged mobile computers are manufactured in East Asia from where they are distributed throughout the world. The Parties also submitted that many distributors and resellers are also international, operating across a number of countries and thus enabling manufacturers to enter a particular country without the need to set up a dedicated local sales and marketing team.
19. The OFT recognises the Parties' arguments regarding a wide geographic scope. However, the OFT has taken a cautious approach and assessed the transaction at the narrowest candidate geographic market of the UK. Where relevant, evidence of any material difference in the assessment on a worldwide and EEA-wide basis has been noted. However, in the absence of competition concerns on any basis, the precise geographic scope can be left open.

HORIZONTAL ISSUES

20. The Parties overlap in the supply of rugged mobile computers, specifically in the supply of rugged vehicle mounted computers and rugged handheld computers in the UK. While the OFT has not found it necessary to conclude on the precise product market in this case, it has examined the possibility that the merged entity could unilaterally impose prices above the pre-merger level or otherwise deteriorate their competitive offering in these two narrow candidate markets.

¹¹ There are a number of strong competitors in this segment, including Cisco, who the Parties estimate has a share of supply of around [60-70] per cent. No third party raised concerns with regard to WLAN infrastructure products. This is also consistent with *Motorola/Symbol* (see paragraphs 30 to 31)

¹² See *Motorola/Symbol*, paragraph 12.

Rugged vehicle-mounted computers

Market shares

21. The Parties provided estimates of the merged entity's market share for the supply of rugged vehicle-mounted computers in the UK. These estimates were based on internal MSI market intelligence, third party industry reports,¹³ and the Parties' actual sales figures. These market share estimates excluded consumer-grade devices.
22. As shown in table 1 below, in the UK, the merged entity would have a combined market share of [10-20] per cent, increment around [0-10] per cent (by revenue) and [20-30] per cent, increment [0-10] per cent (by volume), relative to estimated total sales across the segment of £ [] million in 2011. Pre-merger Psion is estimated to be the fifth largest supplier in the UK. The Parties submitted that both Honeywell and DLoG¹⁴ would remain larger suppliers than the merged entity post-merger, and a further two suppliers, Intermec and JLT Mobile, were as large as or larger than Psion and thus larger than the merger increment.

Table 1: Vehicle-mounted rugged computers - UK market shares 2011

Supplier	Value Share %	Volume Share %
MSI	[10-20]	[10-20]
PSION	[0-10]	[0-10]
COMBINED	[10-20]	[10-20]
HONEYWELL	[20-30]	[20-30]
DLOG	[20-30]	[20-30]
INTERMEC	[0-10]	[0-10]
JLT MOBILE	[0-10]	[0-10]
CITADEL	[0-10]	[0-10]
DATALOGIC	[0-10]	[0-10]
OTHERS	[10-20]	[10-20]

Source: Parties' estimates

¹³ Including VDC Research

¹⁴ See footnote 17 below.

23. The Parties also provided estimates of market shares since 2009, which show that MSI's relative position has remained constant, while Psion has grown (from around [0-10] per cent in 2009).
24. The OFT notes that when considering the transaction at an EEA or worldwide basis, the combined market shares are larger than that for the UK, estimated to be around [20-30] per cent or [30-40] per cent, respectively. The increment similarly increases pointing to Psion's relatively limited presence in the UK.^{15,16}
25. While the OFT has been unable to confirm the market share estimates above with each of the suppliers listed, it notes that those suppliers that did confirm their own sales generally confirmed the Parties estimates. In addition, a number of third parties pointed to Psion's limited presence in the UK.

Closeness of competition

Bidding data

26. The Parties submitted bidding data for vehicle mounted computers, for the period 2010 to 2012. This data showed bids where, according to the Parties, MSI had competed against other suppliers for the right to supply a particular customer. For each bidding opportunity, MSI account managers are required to indicate the competitor that they perceived as imposing the strongest competitive constraint on MSI for that opportunity. This assessment, is based on feedback received from resellers, which ultimately enter into the contracts with the end customer, or from the end-customer itself.

¹⁵ MSI's EEA-wide share of supply is estimated as [10-20] per cent by volume and [10-20] per cent by value, while Psion's is estimated at between [10-20] per cent by volume and [10-20] per cent by value. At a worldwide level, MSI's share of supply is estimated to be between [20-30] per cent (volume) and [20-30] per cent (value), while Psion's is estimated to be [0-10] per cent (volume) and [10-20] per cent (value).

¹⁶ Similarly, the OFT notes that if a wider candidate market was considered for the supply of large rugged mobile computers, the Parties' combined share of supply is estimated to be less than [0-10] per cent on a UK, EEA-wide or worldwide basis. If all rugged mobile computers were considered, estimated combined shares of supply would be between [30-40] per cent (value) and [30-40] per cent (volume), with an increment of [0-10] per cent (value and volume).

27. This data showed that, in the UK, Psion was not frequently cited as the primary competitor to MSI. For opportunities involving a rugged vehicle mounted computer, the primary competitor to MSI was considered to be [] ([30-40] per cent of the opportunities) followed by [] ([20-30] per cent of the opportunities). There are also a number of other suppliers – including [], [] and [] – which have each been identified as the primary competitor to MSI in [0-10] per cent of ‘bids’, and in a further [0-10] per cent of bids, there are a range of other smaller suppliers, none of which were identified as a primary competitor in more than [0-10] per cent of bids.¹⁷
28. The Parties also provided results for a sub-set of bids which excluded some of the opportunities included in the first analysis.¹⁸ The Parties submitted that this revised set reflected a more conservative approach. In this revised set [] remains the most commonly identified primary competitor, in [40-50] per cent of bids (when weighted by the value of that bid), followed by [], identified in [30-40] per cent of bids, and [], identified in [0-10] per cent of the bids. Psion is fourth, identified as the primary competitor in less than [0-10] per cent of bid value. The Parties submitted that the results from this narrower sub-set of bids confirm those included in the first analysis.
29. Based on this MSI bidding data, the Parties also examined the extent to which the presence of Psion as MSI’s primary competitor has an effect on MSI’s average offer prices. If Psion were a particularly close competitor to MSI, the Parties submitted that it would be expected that MSI would have to discount more aggressively when competing against Psion than when competing against other suppliers. The Parties submitted that the results of this analysis demonstrates that MSI does not, on average, appear to offer a significantly lower price when Psion, or indeed any other competitor, is identified as the primary competitor, suggesting that Psion exerts a weak competitive constraint on MSI.
30. The OFT notes the ‘bidding’ data focuses on a primary competitor identified by MSI and is thus MSI’s perception of its closest competitor,

¹⁷ [].

¹⁸ This sub-set excludes bids: where the primary competitor is a non-device manufacturer, such as an infrastructure supplier or systems integrator, as these suppliers may have been selling a Psion device; bids that involve accessories, software or integration services; lost bids, as in some cases account managers may record a bid as lost to close an incorrect entry in the system and then open a new corrected entry; where MSI is designated as having ‘No competitor’; and where the end-customer was located outside the UK.

rather than its actual closest competitor. In addition, the data neither looks at switching from an incumbent supplier to a new supplier, nor does it consider who MSI actually lost the tender to. While these caveats to the data may, in some circumstances, reduce its probative value for assessing relative competitive constraints between suppliers, the OFT considers that the data points to a strong competitive constraint from other suppliers on MSI and only a limited competitive constraint from Psion, and, to that extent, supports other available information.

31. The Parties also provided examples where Psion lost bids for rugged vehicle-mounted computers in the UK, including to [], [] and [].

Pricing

32. The Parties submitted that MSI and Psion were not especially close competitors as they target different customers: MSI offering lower price, higher volume products, while Psion has traditionally offered higher-priced, lower volume products. The Parties provided estimates, based on an independent VDC Report from 2011,¹⁹ of competing suppliers' average price points showing that MSI prices for vehicle mounted computers in the EMEA²⁰ were almost [] those of Psion, with other competitors with price points closer to both Parties. Indeed this was confirmed by some third parties, who stated that MSI's vehicle-mounted product was particularly inexpensive.

Table 2: Estimated Average Selling Prices in EMEA, 2011

Supplier	EMEA ASP (US\$)	Index
Psion	[]	[]
Honeywell	[]	[]
Citadel	[]	[]
DLoG	[]	[]
Intermec	[]	[]
JLT Mobile	[]	[]
MSI	[]	[]

Source: 2011 VDC report

¹⁹ VDC - 2011 Enterprise & Government Mobility Solutions Report (Q4 update)

²⁰ Europe, Middle East and Asia

Third party comments

33. The majority of third parties indicated that there are a range of alternative suppliers of rugged vehicle mounted computers with credible product offerings that they can source from, highlighting, in particular Honeywell, Intermec, Datalogic, DLoG and JLT. Customers also provided some examples of switching from the Parties to other suppliers and multi-sourcing from a number of these suppliers simultaneously. A number of third parties also pointed to Psion's minimal presence in the UK, stating, for example, that they had never seriously considered awarding business to it or that the company was a niche or smaller player.
34. Third parties' views on the competitive strength of suppliers were more mixed, with some highlighting MSI as market leader due to, for example, quality, range, capacity, global coverage, innovation and market awareness, while others highlighted Honeywell and Intermec as having a competitive advantage. Others indicated that no suppliers have any particular competitive advantage, stating that the products, overall, were very similar, offering the same basic set of required specifications. One customer stated that Psion was one of a number of smaller suppliers that were less competitive as they are not as commercially or technically good as the competition.
35. The majority of third parties and, in particular, nearly all customers that responded to the OFT's market investigation, indicated that the Parties are either not close competitors, considering the closest competitors to MSI as Honeywell and Intermec, or indicated that the Parties were close competitors but that there will be no impact on price as a result of the merger as there are many other competitors available to source from. More widely, with only one exception, no customer indicated that the merger would impact on price for the supply of rugged vehicle-mounted mobile computers. Some even indicate that the merger may have positive effects in the product range offered or in lower prices.
36. One third party competitor complained that in this segment of the market MSI was by far the strongest player with a [40-50] per cent share of supply and a competitive advantage in all parameters of competition. Alleging that on almost all bidding occasions, Psion or MSI had succeeded and that Psion was in a strong position in particular applications, which will add more pressure on prices. However, the claims made were not

substantiated with evidence on bids submitted that have been invariably won by MSI or Psion or on the specific applications in which the Parties were considered especially strong competitors. This competitor also noted that there were alternative suppliers, including Honeywell, Intermec and DLoG.

Conclusion on unilateral effects in rugged vehicle-mounted computers

37. On the evidence available; the small increment estimated by the Parties and generally confirmed by third parties, the presence of larger suppliers that will remain post merger, along with a range of credible smaller suppliers, and the absence of concerns from customers; the OFT does not consider that, in relation to the supply of rugged vehicle-mounted mobile computers, the transaction would raise competition concerns.

Rugged handheld mobile computers

Market shares

38. The Parties provided estimates of the combined market share for the supply of rugged handheld mobile computers in the UK. These estimates were based on internal MSI market intelligence, third party industry reports,²¹ and the Parties' actual sales figures. These market share estimates excluded consumer-grade devices.
39. Based on UK sales of £[] million in 2011, the Parties estimate that post-merger the combined firm will have a share of supply of around [40-50] per cent (based on revenue and volume, respectively), as shown in the table below. MSI is the largest supplier with a share of supply of [40-50] (value) to [40-50] (volume) per cent, with an estimated increment of around [0-10] per cent. Pre-merger Psion is estimated to be the ninth largest supplier in this segment. As with rugged vehicle mounted mobile computer, the Parties argue that Psion has a very limited presence in the UK and does not exert a significant competitive constraint on MSI.

²¹ Including VDC Research

Table 3: Handheld rugged mobile computers – UK market shares 2011

Supplier	Value Share %	Volume Share %
MSI	[40-50]	[40-50]
PSION	[0-10]	[0-10]
COMBINED	[40-50]	[40-50]
HONEYWELL	[10-20]	[0-10]
INTERMEC	[0-10]	[0-10]
DATALOGIC	[0-10]	[0-10]
M3 MOBILE	[0-10]	[0-10]
DENSO	[0-10]	[0-10]
CASIO	[0-10]	[0-10]
BLUEBIRD SOFT	[0-10]	[0-10]
CIPHERLAB	[0-10]	[0-10]
TALLA-TECH	[0-10]	[0-10]
HOEFT & WESSEL	[0-10]	[0-10]
AT WORK/TDS	[0-10]	[0-10]
OTHERS	[10-20]	[10-20]

Source: Parties' estimates

40. The Parties also provided estimates of market shares since 2009, which show MSI's relative position has increased from a share of supply of just less than [40-50] per cent in 2009, while Psion's relative presence has declined (from [0-10] per cent, volume, and [0-10] per cent, value).
41. Some third party customers pointed to the relative decline of Psion as a competitor in recent years, []. [].
42. The Parties submitted that the market is characterised by relatively large 'lumpy' contracts that cause market shares to change from year to year, implying that even the high market shares of MSI on this narrowly defined candidate market does not hinder other competitors from winning tenders.²²
43. Looking at the transaction on an EEA-wide or worldwide basis, the combined market shares are less than that for the UK, estimated to be around [40-50] per cent and [40-50] per cent, respectively. The increment is slightly greater at [0-10] per cent on an EEA-wide basis and [0-10] per

²² The European Commission also noted this aspect of competition over time in *Motorola/Symbol*, paragraph 27.

cent on a worldwide basis, pointing to Psion's relatively limited presence in the UK.^{23,24}

44. While the OFT has been unable to confirm the market share estimates above with each of the suppliers listed, it notes that those suppliers that did confirm their own sales generally confirmed the Parties estimates.

Closeness of competition

Bidding data

45. The Parties submitted MSI's bidding data for rugged handhelds for the period 2010 to 2012. Similar to that provided for rugged vehicle mounted computers, this data shows bids where MSI has competed against other suppliers for the right to supply a particular customer. For each bidding opportunity, MSI account managers indicated the competitor that they perceived as imposing the strongest competitive constraint on MSI for that opportunity.
46. This bidding data shows that Psion was not MSI's most frequently cited primary competitor in the UK. For opportunities involving rugged handhelds the primary competitor to MSI was considered to be [] ([30-40] per cent of the opportunities) followed by [] ([10-20] per cent of the opportunities). Psion is ranked as the third competing supplier, identified as a primary competitor in [0-10] per cent of bids (weighted by value), closely followed by [] identified in [0-10] per cent of bids. [] and [] were also identified as primary competitors in [0-10] per cent and [0-10] per cent of bids (weighted by value), respectively. In a further [10-20] per cent of bids, there are a range of other suppliers, none of whom account for more than [0-10] per cent.

²³ MSI's EEA-wide market share is estimated as [30-40] per cent by volume and [30-40] per cent by value, while Psion's is estimated at between [0-10] per cent by volume and [0-10] per cent by value. At a worldwide level, MSI's market share is estimated to be between [30-40] per cent (volume) and [30-40] per cent (value), while Psion's is estimated to be between [0-10] per cent (volume) and [0-10] per cent (value).

²⁴ Similarly, the OFT notes that if a wider candidate market was considered for the supply of small rugged mobile computers, the Parties combined market share is estimated to be around [40-50] per cent with an increment of less than [0-10] per cent.

47. As with rugged vehicle mounted mobile computers, the Parties provided results for a sub-set of bids which excluded some of the opportunities included in the first analysis.²⁵ The Parties submitted that this reflected a more conservative approach. In this revised set [] remains the most commonly identified primary competitor, in [50-60] per cent of bids (when weighted by the value of that bid), followed by [], in [10-20] per cent of bids, and [] with [0-10] per cent. Psion is fourth, identified as the primary competitor in only [0-10] per cent of bids (when weighted by value).
48. The Parties examined the extent to which the presence of Psion as MSI's primary competitor had an effect on MSI's average offer prices. The Parties submitted that the average price offered by MSI is not lower where Psion is listed as the primary competitor compared to where it is not so listed. The same result applies when the Parties only analysed those bids that MSI has won.²⁶ The Parties submitted that this demonstrated that MSI does not, on average, appear to offer a significantly lower price when Psion, or any other competitor, is designated as the primary competitor, suggesting that Psion exerts a weak competitive constraint on MSI.
49. The 'bidding' data, as with rugged vehicle mounted mobile computers, focuses on the primary competitor identified by MSI and is thus MSI's perception of their closest competitor, rather than their actual closest competitor. Additionally, the data does not look at switching from an incumbent supplier to a new supplier, nor does it consider who MSI actually lost the tender to. However, despite these potential caveats the OFT considers that the data does point to a strong competitive constraint from other suppliers on MSI and only a limited competitive constraint from Psion and, to that extent, the data supports other available evidence.
50. The Parties have also provided examples where Psion has lost bids for rugged hand held computers in the UK, including to [], [] and [].

Pricing

51. As with rugged vehicle mounted mobile computers, the Parties submitted that MSI and Psion were not especially close competitors as they target different customers. The Parties provided estimates, based on the

²⁵ See footnote 18.

²⁶ []. [].

independent VDC Report from 2011, of competing suppliers' average price points showing that MSI prices for rugged handheld devices in the EMEA are around [] those of Psion.

Table 4: Estimated Average Selling Prices in EMEA, 2011

Supplier	EMEA ASP (US\$)	Index
Panasonic	[]	[]
LXE	[]	[]
Psion	[]	[]
Intermec	[]	[]
Bluebird Soft	[]	[]
MSI	[]	[]
M3 Mobile	[]	[]
Honeywell	[]	[]
Unitech	[]	[]
Datalogic	[]	[]
Denso Wave	[]	[]
Hoeft & Wessel	[]	[]
Cipherlab	[]	[]

Source: 2011 VDC report

Third party Comments

52. The majority of third parties considered that there were a range of alternative suppliers of rugged handheld computers with credible product offerings that they could source from, in particular Honeywell, Intermec, Datalogic, Bluebird Soft, as well as smaller suppliers such as Unitech and M3 Mobile. Many currently source from these alternative suppliers and some were able to point to a number of other suppliers not highlighted by the Parties.²⁷ A number of third parties also pointed to Psion's presence being minimal, stating, for example, that they never seriously considered awarding business to them or that the company was a niche or smaller player, or that Psion's business had declined significantly in recent years.

53. As with rugged vehicle mounted mobile computers, third party views on the competitive strength of suppliers were more mixed, with some considering MSI as the market leader, others considering Intermec and

²⁷ For example, Janam, Socket Mobile, Trimble, Panasonic, Zebra, Percon, Datamax, O'Neill, Epson, Nordic ID, Apple and Samsung

Honeywell as having a competitive advantage, and others indicating that no suppliers have any particular competitive advantage. The majority of third parties that responded to the OFT's market investigation, indicated that the Parties are either not close competitors, or that the closest competitors to MSI are Honeywell and Intermec or that the Parties are close competitors but there would be no impact on price as a result of the merger as there are sufficient other competitors.

54. Three customers, and a competitor, raised concerns that competition would be reduced as a result of the merger. One of these customers suggested that prices may rise as a result of the merger, and another considered that prices would rise as Motorola and Psion had won business from each other over the last two years. However, each of these customers could point to a range of alternative suppliers, including Honeywell, Intermec, Datalogic, Casio, Skeye, Unitech, M3 Mobile, Bluebird Soft, some of whom these customers were currently sourcing from. Indeed all three customers currently multisource.

Conclusion on unilateral effects in rugged handheld computers

55. On the evidence available; the small increment estimated by the Parties and generally confirmed by third parties, the presence of a range of alternative suppliers which will remain post merger, many of whom customers were able to highlight as credible suppliers or that are currently sourced from, the OFT does not consider, in relation to rugged handheld computers, that the test for reference is met.

Barriers to entry and expansion

56. Potential entry or expansion may prevent or mitigate competition concerns arising from a transaction as the merging Parties' incentives to (for example) raise prices are diminished if such action may lead to entry or expansion by rivals.²⁸
57. In *Motorola/Symbol*, the European Commission pointed to a significant number of ODM manufacturers highly specialised and experienced in the design and manufacture of all kinds of rugged mobile computers. Along with cheap labour costs where these ODMs are mostly based, the ability of

²⁸ See *Merger Assessment Guidelines*, Section 5.8.

suppliers to outsource all or part of the productions to these third party ODMs was considered to reduce the technological and logistical barriers for existing and potential market entrants.²⁹

58. In this case, the Parties submitted that technological barriers to market entry have since diminished further, pointing to two factors, in particular, that they consider indicates low barriers to entry in both segments:
- (a) The potential to use East Asian Original Design Manufacturers (ODMs) reduces cost barriers to entry since, generally speaking, ODM engineering staff labour rates are lower than those in the US and Europe. MSI and Psion both outsource the majority of the manufacturing to ODMs with the Parties estimating that around [] per cent of all rugged mobile computers are manufactured by ODMs. The Parties also note the lead time for product development is relatively short when using an ODM, typically only 12 to 18 months depending on the complexity of the product.
 - (b) Logistical barriers to entering the market are also low. Most competitors follow a similar channel-based distribution strategy where distributors and resellers carry multiple lines of rugged computers from a variety of suppliers. Neither MSI nor Psion have any exclusive distributors or resellers so any new entrants are able to use the same established channel partners.
59. The Parties identified a number of recent entrants in the rugged handhelds segment, including Cipherlab, Bluebird, M3 Mobile, and Unitech. In addition, the Parties indicated that there had also been significant entry from manufactures of consumer-grade devices such as HTC, Apple and RIM, amongst others into this market.
60. The OFT notes the Parties submission with regard to the ease of entry or expansion in this market. However, in the absence of competition concerns, the OFT has not found it necessary to reach a conclusion on supply-side responses.

²⁹ See *Motorola/Symbol*, paragraph 28.

VERTICAL ISSUES

61. The transaction will also give rise to a vertical relationship between the Parties as MSI manufactures and sells scanning and imaging engines.³⁰ While Psion is not active in these scanning and imaging engines, such engines are commonly incorporated into certain of the Parties' rugged mobile computers and those of other manufacturers.
62. The Parties submitted that this vertical relationship would not raise any competition concerns, specifically the foreclosure of other competing scanning and imaging engine suppliers or competing suppliers of rugged mobile computers. The European Commission in *Motorola/Symbol* considered similar issues of potential foreclosure and, for similar reasons as set out below, concluded that there was no risk of foreclosure.³¹
63. In this case, the OFT has examined whether competitive harm could arise from the merger as a result of customer foreclosure.³² In doing so, the OFT has assessed the merged entity's ability and, if necessary, incentive to undertake this foreclosure strategy. The OFT notes, with regard to the potential foreclosure of competing suppliers of scanning and imaging engines, that these are supplied to a large number of markets³³ other than for the devices for which Psion buys these engines. In addition, the Parties submitted that Psion already sources the majority (some [] per cent) of its scanning engines from MSI, and therefore the transaction would not have a material effect on competition for competing suppliers post merger.
64. The OFT further notes that given Psion's limited share of the downstream market for rugged mobile computers, less than [0-10] per cent by value on a UK basis ([0-10] per cent on a EEA-wide basis and [0-10] per cent on a world-wide basis), MSI's incentives to supply competing suppliers of rugged mobile computers with scanning and imaging engines will not materially change post transaction.
65. Given the limited increment to the Parties' combined market share of rugged mobile computers represented by Psion, the OFT believes that that

³⁰ Traditionally known as barcode readers or scanners.

³¹ See *Motorola/Symbol*, paragraph 32 *et seq.*

³² See *Merger Assessment Guidelines*, paragraph 5.6.13.

³³ For example: stand alone bar code scanners, electronic voting machines, information kiosks, medical and diagnostic equipment.

there will be no material change to MSI's incentives post merger to supply these scanning and imaging engines and therefore no risk of foreclosure.

THIRD PARTY VIEWS

66. Where relevant, third party comments have been incorporated above. In relation to vehicle mounted rugged computers one competitor raised concerns that the merger would result in price increases. However, this competitor was able to point to a number of other suppliers, all of whom were confirmed as being credible competitors by customers. In relation to handheld rugged computers, the majority of third parties did not raise any competition concerns. Three customers indicated that prices would either rise or fall as a result of the transaction. These concerns have been addressed above where relevant.

ASSESSMENT

67. The Parties overlap in the supply of the supply of rugged mobile computers, specifically in the supply of rugged vehicle-mounted computers and rugged handheld computers in the UK. Although the OFT has not found it necessary to conclude on the precise product market, it has, on a cautious basis, assessed the transaction by reference to the supply of these two types of rugged computer separately.

68. The Parties' combined market share for the supply of rugged vehicle-mounted computers in the UK is estimated to be [10-20] per cent, increment [0-10] per cent (by value) or [10-20] per cent, increment [0-10] per cent (by volume). Third parties in general did not consider the Parties to be close competitors and were able to identify a number of credible suppliers that are perceived as stronger competitors to MSI than Psion and that will remain post merger. The OFT therefore does not consider the test for reference to be met in relation to the supply of rugged vehicle mounted computers.

69. In the market for rugged handheld computers in the UK, the Parties' combined market share is estimated as [40-50] per cent, increment [0-10] per cent (by value) or [40-50] per cent, increment [0-10] per cent by volume (by volume). The majority of third parties contacted considered that there was a range of alternative suppliers to the Parties that offered a

credible alternative product, and considered that the Parties were not close competitors. The OFT therefore does not consider the test for reference to be met in relation to the supply of rugged hand held computers.

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

DECISION

71. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.