

Completed acquisition by Sports Universal Process S.A.S. of Prozone Group Limited

ME/5072/11

The OFT's decision on reference under section 22(1) given on 4 October 2011. Full text of decision published 26 October 2011.

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.

THE PARTIES

1. **Sports Universal Process S.A.S (SUP)**, under the brand name Amisco, supplies sports performance data and analysis software products to sports clubs, leagues, and federations, as well as media and commercial customers.
2. **Prozone Group Ltd (Prozone)** also supplies sports performance data and analysis software products to sports clubs, leagues, and federations, as well as media and commercial customers. Prozone's turnover in the financial year 2010/2011 was around £4 million, of which £2.64 million was generated in the UK.¹

JURISDICTION

3. As a result of the transaction, SUP and Prozone have ceased to be distinct. The parties overlap in the supply of performance data capture and analysis for UK football leagues. In the supply of match analysis services in the UK the parties have a combined share of some [50–60] per cent, increment [10–20] per cent; therefore the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

¹ These figures are based on management accounts. Turnover from 2009/2010 financial year statutory accounts was £3.26 million, £2.6 million in the UK.

TRANSACTION

4. The OFT examined this merger as a result of an unsolicited complaint. The deal completed on 9 June 2011. The administrative deadline for a decision was 2 September 2011, while the statutory deadline expires on 8 October 2011.

FRAME OF REFERENCE

5. The parties overlap in the supply of performance data capture and analysis for UK football leagues, principally to professional football clubs in the English Premier League and Championship.
6. The parties also indicate they supply performance analysis and data services to media and commercial companies (for example, gaming and for advertising purposes). However, neither has any current UK media or commercial customers. Further, the exclusive rights to sell data to media and gaming customers (as licensed by Football Dataco, the data management division of the FA Premier League) are held by PA Sports and SIS (although the latter does not include tracking data (see below)). As a result, the OFT does not consider these overlaps further.

Product frame

7. The purpose of data capture and analysis is to offer an objective assessment of player performance. Developing initially from manual notation by coaching staff, performance data is captured through increasingly sophisticated means. The data is used by football teams for match and training performance analysis of a team's own players, scouting (pre-match analysis of opposition teams) and for recruitment purposes.
8. The principle product overlaps between the parties are:
 - **Tracking analysis and capture of movement (or physical) data:** by capturing the physical movements (speed, distance covered, etc.) of a

player, which can be generated manually, or through image-processing software.²

- **Video analysis and capture of event or technical data:** through an analyst inputting coded information on specific match actions or events (for example, shots, tackles, passes, etc.), the player involved and the pitch position. Using specialised coding software and requiring only a single camera feed (the video footage itself can be sourced by the football club), this can be undertaken in real-time or post-match and can be provided by a third party service provider, such as the parties, or self supplied by the customer purchasing the necessary software to undertake the coding.³
 - **Recruitment products:** products used by clubs to objectively assess potential candidate players; this can include video acquisition, informational databases, raw data, and deep data and analytical tools, the latter of which is provided by the parties.
9. The above products have distinct pricing characteristics. Tracking analysis requires certain specialist equipment in order to capture movement data and is therefore typically more expensive than video analysis. Video analysis is cheaper as a standalone product but it is also a common feature or component of a tracking analysis offering in order to provide context to the tracking analysis.
10. In addition to the capture of tracking and event data customers also have the option to select additional analytical tools and software options with which to interpret and use the data. The parties argued that the data capture (the wholesale level) is commoditised and it is the analytical tools and software (the retail level) that is the key factor in competition among suppliers. Some third parties also indicated this additional analytical

² The parties submitted that this can also be achieved through a tracking device fitted to the player in real-time or post-match; however, the application of invasive tracking is limited to pre-season matches and training, as current FIFA regulations do not permit the use of electronic devices during competitive matches. In the absence of any support from third parties as to the current substitutability of invasive tracking the OFT considers there to be no basis to widen the product scope beyond non invasive tracking to include invasive tracking.

³ Customers were generally supportive of the feasibility of self-coding options. Many indicated that they undertake this in some form already.

software can be a key factor determining the effectiveness of any competitor in the supply of the underlying data capture.⁴

11. The number of football games the parties are contracted to provide for both tracking and/or video analysis will vary greatly by customer. For example, contract specifications can include all home and away games and/or games played by upcoming opposition teams, to a more limited selection of games.⁵ Contracts can relate to first team matches and to academy and reserve team games as well. Prozone also allows customers to download additional analysis and data through an online portal on an ad-hoc basis as needed.
12. The parties submitted that the relevant market for assessment of the merger was the supply of all performance data services (across all sports), including tracking analysis, event coding, and recruitment products. Although there are numerous different types of data and analysis, the parties submit that they all serve the same purpose as tools for assessing and analysing performance, with the products produced using the same data sets, which are gathered using the same, or similar, methods.
13. However, the OFT's market investigation did not fully support the parties' position. First, recruitment products were not considered to be substitutes, or even functionally interchangeable, for match analysis (be it event coding or tracking). Third parties commented that, although they may use the same underlying data, they serve different purposes and, for those third parties that source them, are considered complementary products.
14. A number of customers that do not source a dedicated recruitment product indicated that they are able to obtain the necessary information on a candidate player through sourcing event or tracking data or basic video coverage of them,⁶ suggesting that match analysis may be a substitute for recruitment products. However, on the basis of the available evidence, the degree of substitution is unclear. In particular, for customers that currently

⁴ We consider the additional analytical tools and software to be a range of secondary products, purchased only as a result of the customer having purchased a primary product, the data capture. The OFT's approach to secondary products is outlined in detail in the *Merger Assessment Guidelines*, paragraph 5.2.20.

⁵ There can be difficulty obtaining compatible tracking data for away games, and for scouting purposes, from teams with a different supplier. This does not apply to event data as a single video can more easily be obtained by clubs and then sent to the club's own supplier for coding and analysis, or used for self-coding.

⁶ Either through their supplier of match analysis (for example, Prozone's online portal was highlighted) or through obtaining a video from a team the player has recently played against.

source a dedicated recruitment product, other forms of player scouting were generally not considered substitutable. The OFT therefore takes a cautious approach and has considered recruitment products separately for the purposes of the competitive assessment.

15. Second, customers made a clear distinction between tracking analysis and event analysis. The two, while performing broadly similar functions in providing objective assessment of a player's performance, produce different outputs used for different purposes that customers did not consider comparable. Tracking was highlighted as being more sophisticated and expensive and, for those clubs that invest in such analysis, was generally seen as complementary to basic technical data.
16. The two products were therefore not considered substitutes: customers of tracking analysis commented that, in the event of a price rise of five per cent for all tracking-related products, they would accept the price rise, rather than switch to solely video analysis. Similarly, third parties indicated they would not switch from video analysis to tracking analysis following a five per cent price rise in the former due to the remaining differential in price between the two.
17. This evidence indicates that the products are complementary in nature. Given this, the OFT also considered whether the three products could be aggregated into a single product frame on the demand side. This would be the case if customers predominantly purchase the products as a bundle and from the same supplier, driven by pricing, quality, or compatibility advantages from doing so.⁷
18. The OFT does not consider that recruitment products form part of the same product frame as tracking and video analysis products since these are often sourced by customers from a different supplier to tracking and video analysis.
19. The OFT does note that those customers that purchase tracking analysis also purchase video analysis from the same supplier and indicated they generally would obtain a discount for doing so.⁸ However, many of the

⁷ This approach is outlined in detail in the *Merger Assessment Guidelines*, paragraph 5.2.20 in relation to secondary products. Possible aggregation on the supply-side is considered separately below.

⁸ Further, some customers indicated that, in addition to the bundling discount available, they consider the price of tracking analysis when making their purchase decision for event analysis, effectively 'whole-life costing' the two products.

same customers also purchase additional stand-alone event analysis from alternative suppliers (for additional benefits or for verification purposes). Moreover, a number of third parties do not source tracking analysis at all and have not considered doing so; instead sourcing a stand-alone event analysis product only.

20. As a result, the OFT has taken a cautious approach and considered video analysis (of event data) – for customers that purchase this as a stand-alone product – separately from tracking analysis, which includes event data analytical tools as a complement, as opposed to a stand-alone product.

Supply-side Substitution

21. As third party evidence on demand-side substitution did not support the parties' view that the product scope should be for all performance analysis tools and data, the OFT has considered the scope for supply-side substitution. While the OFT will generally consider that markets are defined primarily on the basis of demand-side substitution, it may in some case be appropriate to aggregate several narrow relevant markets into one broader one on the basis of supply-side substitution.⁹
22. The parties submitted that the same skill set is required for both tracking and video analysis and there are a number of companies partnering with each other in order to offer a wider range of services. However, the OFT's market investigation provided little support for the parties position on the ease in which capacity can be shifted from one area of performance analysis to another. Furthermore, the same suppliers, with the exception of the parties, are generally not active in the supply of all segments, that is, video analysis, tracking analysis and recruitment.
23. The OFT therefore does not consider there to be any justification, on the evidence available to it, to widen the product scope on the basis of supply-side substitution.

Geographic frame

24. The parties consider the relevant geographic scope for all performance data and analysis services to be global since the services are provided to customers located around the world by a range of providers also located

⁹ The analytical framework through which this may occur is outlined in detail in the *Merger Assessment Guidelines*, paragraph 5.2.17.

worldwide. According to the parties, neither the location of the customer nor that of the service provider affects the type or nature of the services offered, further there are no technical, legal, regulatory or other barriers that prevent the services from being provided in any territory or by cross-border providers. As such, the conditions of competition are sufficiently homogeneous across different territories for the relevant geographic market to encompass them all. For example, SUP supplies its services to 20 different countries from only five regional offices and Prozone supplies to 18 countries from only thirteen countries. A local presence can be established simply by having a single agent or sales representative in a country, according to the parties.

25. Third party responses, however, did not support the parties' position on geographic scope. Customers, in particular, indicated that suppliers required a local sales and support team that they could easily and regularly liaise with, and considered that one of the reasons Prozone had a greater penetration amongst clubs in the UK was its more extensive local support network. Competitors also indicated that in order to compete effectively a local presence was required.

Conclusion on frame of reference

26. The OFT has therefore assessed the competitive effects of the merger at a national level in relation to the supply of tracking analysis and movement data capture, video analysis and event data capture, and recruitment products separately.

UNILATERAL EFFECTS

27. The OFT has examined the possibility that the merged entity could unilaterally impose prices above the pre-merger level or deteriorate their competitive offering beyond the level it would be able to absent the merger in the supply of tracking analysis, video analysis, and recruitment products, including by reducing investment in product development and reduced levels of innovation. The OFT has also considered the extent to which the merger may increase barriers to entry.

Closeness of competition between the parties

Tracking Analysis

28. The parties pointed to a wide range of competitors that provide either real-time or post-match non-invasive tracking analysis. Internal business documents provided by the parties broadly supports a wide array of competing suppliers, including, for example, Tracab, STATS, Sony, Vistrack, Venatrack and datatrax, all of whom provide real-time tracking.
29. However, responses to the OFT's third party enquiries indicated that, while some of the suggested competitors are active in tracking analysis, none were currently active (that is, had any current sales) in the UK. Therefore a number are considered as potential entrants in the section on entry below.
30. The majority of customers contacted indicated the parties would have a post-merger monopoly in the UK. In the Premier League, Prozone supply sixteen clubs with tracking analysis and Amisco six.¹⁰ In the Championship, Prozone supply tracking analysis to 12 clubs. While the OFT does not have detailed information on the number of Championship customers sourcing tracking analysis from Amisco, Prozone customers were only able to identify one alternative supplier, Amisco. These customers also considered that the merger would remove the only competitive constraint each of the parties currently faces. A number of customers expected prices to consequently rise.
31. This was a view confirmed by suppliers active in other segments. These third party suppliers commented that before Amisco entered the UK, Prozone had been more expensive; the presence of Amisco had lowered prices. Further, all clubs either had one or the other product and they were not aware of any other suppliers of tracking in the UK. As a result of the merger they said there would be a marked reduction in competition and the parties would be able to increase prices significantly as there would be no alternatives for customers to switch to. The parties indicated that Prozone's prices did not decline solely because of the entry of SUP, but also reflected the cycle of an innovation market and the price has fallen as costs have gradually fallen.

¹⁰ A small number of clubs source products from both Prozone and Amisco.

32. Only two customers were able to suggest alternative suppliers, Opta, Sportstec and Venatrack. Both these customers were unconcerned by the merger. However, the majority of customers did not consider these suppliers to be feasible alternatives currently since Sportstec and Opta offer different products and Venatrack are not at a stage of product development where a customer could reliably source from them.

Video analysis (of event data)

33. The OFT's investigation has indicated that there may remain a range of suppliers active in this area and able to constrain the merging parties post merger. Evidence from the parties' internal business documents indicated around seventeen competitors active in this area, which the parties consider to be an underestimate. In particular, the parties point to Opta as a strong competitor that has won contracts to provide event services to six Premier League clubs.
34. Customers' views were mixed. Some indicated the parties would have a post-merger monopoly in the UK and that there were no alternative suppliers that provided similar products. Many of the competing providers highlighted by the parties were dismissed as providing a lesser or different product, or the customer had not heard of them at all. These customers expected prices to rise as a result of the merger.
35. However, a number of other customers stated they were unconcerned since there were a range of alternative suppliers. Further, many customers, including some of those that raised concerns over the absence of alternative suppliers, pointed to the feasibility of self-supply and highlighted a range of self-coding software providers.

Recruitment

36. The parties submitted that there are numerous competitors that provide some form of recruitment product, including video acquisition, informational databases, and raw data, all differentiated from the parties own product which incorporates each of these along with analytical tools.
37. A number of customers confirmed they currently source from these identified alternative suppliers or would consider doing so. Customers also pointed to other additional suppliers they use. Customers were generally

unconcerned by the merger in the area of recruitment due to the range of alternative suppliers available.

38. This view was not, however, shared by all third parties with some stating that some of the alternative suppliers offer very different recruitment products: no tracking coverage; no additional analytical software tools; less total games coverage. The alternative products were described by these third parties as more like career databases rather than performance data and alternative suppliers were therefore not effective competitors. In addition, a number of competitors indicated that the merger was a direct attempt to control the emerging player recruitment market.

Conclusion on Closeness of Competition between the Parties

39. The OFT considers that the evidence available points to a closeness of substitution between the parties products in the supply of tracking analysis, which, for the majority of customers, there are no alternative suppliers and customers have an expectation of price rises (in some cases by a significant amount). For video analysis and recruitment products the parties also appear to be close substitutes, however, the OFT considers that there are a range of competing products that will constrain the parties post merger in these segments.

Incentives to increase prices

40. The OFT may, when available, examine the value of diverted sales that the merging parties lose to each other (in proportional terms) following a price rise,¹¹ in order to assess the extent of lost competitive rivalry likely to occur as a result of the merger.
41. This analysis considers the evidence on the closeness of substitution between the parties, as discussed above, alongside the parties' variable profit margin on sales. If the variable profit margins of the parties' products are high, and the parties are close substitutes, unilateral effects are more likely because the value of sales recaptured by the parties post-merger will be greater, making any price rise less costly. The closeness of substitution for tracking can be measured by the diversion ratio between the parties,

¹¹ See *Merger Assessment Guidelines*, paragraph 5.4.9 and 5.4.10.

which on the basis of information provided by the parties is around 15 to 20 per cent.

42. The parties submitted that for tracking and video analysis the average gross variable profit margin is around [] per cent.
43. For recruitment products, the business model is very different as it is necessary to build up a sufficiently large database of games and player information and a league must be covered in its entirety. As a result, during the period of generating the database, there is no revenue, and the parties submit that neither Amisco nor Prozone are realising any profit on these products at the current stage of development.
44. The greater the indicative change in incentives brought about by the merger – as indicated by the combination of these two pieces of evidence – the greater the level of the OFT's concern is likely to be. On this basis, the OFT considers there to be, on the evidence available to it, significant unilateral effects concerns and thus a realistic prospect of a substantial lessening of competition in the supply of tracking analysis, where a strong closeness of substitution between the parties is combined with high variable profit margins. Although there are also high variable profit margins in video analysis there is a wider range of competitors, such that the OFT considers there to be no realistic prospect of a substantial lessening of competition. Similarly given the wide range of alternative products and different business model, the OFT considers there to be no realistic prospect of a substantial lessening of competition in the supply of recruitment products.

Supply-Side Responses

45. In assessing whether entry or expansion might prevent competition concerns arising from the merger, the OFT has considered whether such entry or expansion would be: timely; likely; and sufficient. These are considered below in the context of barriers to entry, potential entry, timeliness of entry, and evidence of past entry.

Barriers to Entry

46. The parties submit that entry barriers are low and the potential for a new entrant to obtain business through customers switching away from the

parties high.

47. The OFT's market investigation did not support the parties' submission on the extent of barriers to entry. Both customers and competitors pointed to significant barriers to entry that they considered would make it very difficult for any potential entrant to win business from the parties including: the rigorous testing and trials that would be required of any new product before customers would be willing to switch; the benefit the parties gained from many years of development feedback that would be difficult for new suppliers to compete against; the parties' strong relationships with customers, making it difficult for competing suppliers to win business from them; and some network effects, whereby customers benefitted as more clubs in a league used the same product as themselves, exacerbated by the average contract length being up to three years for the parties.

New and Potential Entry

48. According to the parties, and confirmed by third parties, the most likely entry, would be from existing suppliers, that are in the later stages of developing the technology, active in Continental Europe, or active in the supply of other performance analysis tools or active in other sports.
49. The parties submitted that this was a dynamic market with an array of new entrants putting them under increasing competitive pressure. The parties pointed specifically to firms who had won contracts to provide a whole league with tracking analysis outside of the UK, all of which the parties submit had tested and trialed their products and were seeking to commercialise their products. The parties also pointed to these competing suppliers having more advanced products, partly benefitting from the parties own product development. These were:
- a) Tracab, who service league-wide contracts in Spain and Japan
 - b) Vistrack (Impire) who service league-wide contracts in Germany, and
 - c) Venetrack who has won a league-wide contract to supply certain products and services to the UK Premier League.
50. The OFT's market investigation did not confirm that most customers considered any of these three potential entrants as significant current or future suppliers. Taking each in turn: No customer considered Tracab to be

a potential entrant to the UK market. In relation to Vistrack, the OFT's market investigation indicated that some third parties had been approached by Vistrack, but did not consider the product sufficiently developed and tested to purchase. The OFT notes that Vistrack has won a single contract to trial their product at [] football club but cannot state with confidence, based on this evidence, that this will constrain the parties in the light of their strong existing position in the market and the fact that customers (with the exception of []) do not consider it to be a credible supplier at this stage.

51. In the case of Venatrack, the OFT recognises that it won the league-wide contract to supply tracking, video data and analysis, which the parties had tendered for, from Football DataCo., the data rights division of the FA Premier League (FAPL). The product offered by Venatrack has been highlighted by both the parties and customers as more advanced than that of the parties, with the ability to provide real time tracking and 3D visuals. The parties stated that Venatrack was in the second year of a three year contract with the FAPL. It had installed hardware at all Premier League stadia and was, the parties said, talking to the clubs as a possible supplier. The OFT's investigation showed that many customers were aware of Venatrack and identified it as a potential competitor to the parties, pointing to the league-wide deal as evidence of their intent to enter. However, many of the same customers stated that Venatrack was not currently at a stage of product development and testing that would make them a feasible alternative to the parties.
52. The OFT accepts that Venatrack has shown through its product development and winning the league-wide contract that it can be considered as a new or potential entrant. However, customers require a product to be well tested and trialed before use, including reconciling the output with a GPS system or with their current system. Third parties considered that only clubs with limitless resources would be able to trial Venatrack alongside Prozone and Amisco.
53. The OFT considers that it is possible that Venatrack may potentially represent an entrant that is sufficiently strong to compete effectively with the parties in the provision of tracking analysis (and video analysis) in the medium to long term. However, the likelihood of this occurring is unclear on the evidence available, in particular the lack of any UK football club customers or sales, despite this initial investment. In addition, the OFT is

also conscious that the Venatrack league-wide contract applies only to the Premier League in the UK. In conclusion, it is not clear the extent to which Venatrack may represent a feasible alternative for customers and therefore an effective competitor to the parties for customers outside the Premier League.

54. The parties also highlighted a range of other suppliers as potential entrants. The OFT's market investigation suggested the potential entry of these suppliers in the short term was unlikely.

Timeliness of Entry

55. The OFT generally considers entry or expansion within less than two years as timely.¹² The average length of contracts is likely to provide some protection to customers if competing suppliers are only a short time away from entering with a more advanced product. However the OFT considers the timeliness of entry to be uncertain.

Conclusion on Supply-Side Responses

56. The OFT considers the evidence available to it points to significant barriers to entry and the evidence insufficiently compelling to suggest a supply side response would constrain the parties post merger.

BUYER POWER

57. The parties submit that buyer power is an effective constraint on the ability of the parties, post-merger, to raise prices. Customers have the option to carry out the analysis and data capture for themselves. According to the parties, the number of alternative methods available means that buyers will usually have scope to negotiate on price, and league-wide deals, in particular, have strengthened the bargaining power of clubs.
58. The OFT's third party enquiries did not support the parties' position on buyer power. Many third parties indicated that the merger would significantly reduce the negotiating strength of customers as choice would be reduced.

¹² See *Merger Assessment Guidelines*, paragraph 5.8.11.

59. The OFT therefore considers the evidence does not support the existence of countervailing buyer power sufficient to mitigate any competition concerns arising from the merger.

EFFICIENCY GAINS

60. In this case, the parties submit a key rationale for the transaction are the efficiencies they expect to result from the transaction. In particular, the parties submit the merger will lead to:

- enhanced investment in R&D and position the parties to be more competitive vis-à-vis the new competitors
- remove duplication of games coverage, thereby reducing costs
- enhanced games coverage allowing the parties to improve their global match database,

In addition, almost all customers, whether concerned or unconcerned by the merger, pointed to further customer benefits arising from enhanced coverage within a league and the availability of compatible data for away games against, and pre-match opposition scouting of, teams with a different supplier.

61. The OFT recognises that efficiencies may arise from the merger. However, it is not clear the extent to which the parties' propositions represent efficiencies, rather than simply quality improvements that could command a price premium over the current product and could potentially be achieved absent merger.

THIRD PARTY COMMENTS

62. Third parties' comments have been considered, where appropriate, above. No unsolicited responses were received following the OFT's invitation to comment.

ASSESSMENT

63. The parties overlap in the supply of performance data capture and analysis

for UK football leagues, principally to professional football clubs in the English Premier League and Championship

64. The OFT has therefore assessed the competitive effects of this merger at a national level in relation to the supply of tracking analysis and movement data capture, video analysis and event data capture, and recruitment products separately to UK professional football clubs.
65. In the supply of non invasive tracking data and the associated supply of video analysis, the majority of customers contacted indicated that the parties would, as a result of the merger, have a monopoly position in the UK. The parties indicated that together they supply to all clubs in the UK that source tracking products. Customers considered that the merger would remove the only competitive constraint each of the parties currently faces and a number expected prices to consequently rise. The parties put forward a number of potential entrants to the supply of tracking. However, only Vistrack actually had a UK customer, and this only a trial basis. Given the level of concentration and third party concerns in the market for the supply of non invasive tracking data and associated products the OFT considers that the merger creates a realistic prospect of a substantial lessening of competition.
66. Whereas the supply of tracking data will always have an element of event or video analysis involved, some customers, particularly in the lower leagues, will opt to take only video analysis. The parties submitted that there are numerous competitors that supply event coding in some form. Responses from third parties were mixed; some considered that there were no alternative suppliers that provided similar products and dismissed many of the competing providers highlighted by the parties as providing a lesser or different product. However, there were other customers that were unconcerned since they considered that there were a range of alternative suppliers that they were able to point to. In addition, many customers, including some of those that raised concerns over the absence of alternative suppliers, pointed to the feasibility of self-supply and highlighted a range of self-coding software providers. Consequently, the OFT does not consider that there is a realistic prospect of a substantial lessening of competition in the supply of standalone event data and video analysis.
67. The OFT also considered the supply of player recruitment services as a standalone product. The parties gave their combined share of supply of

player recruitment services as [below 10] per cent with an increment of [below five] per cent. The parties submitted that there are numerous competitors that provide some form of recruitment product. A number of customers confirmed they currently source from these identified alternative suppliers or would consider doing so and also pointed to other additional suppliers they use. Consequently, the OFT does not consider that there is a realistic prospect of a substantial lessening of competition in the supply of standalone player recruitment services.

68. Consequently, the OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in the supply of non invasive tracking data and associated products to professional football clubs in the United Kingdom.

EXCEPTIONS TO THE DUTY TO REFER

69. The OFT's duty to refer under section 33(1) of the Act is subject to certain discretionary exceptions, including the markets of insufficient importance or 'de minimis' exception under section 33(2)(a), and the undertakings in lieu exception under section 73(2).
70. The OFT has found that its duty to refer this case is met with regard to the supply of non invasive tracking data and associated products to professional football clubs in the United Kingdom. The OFT believes that the annual cumulative size of the market concerned in the UK is less than £10 million. The OFT has therefore considered whether it should apply the 'de minimis' exception to the duty to refer.

Availability of undertakings in lieu

71. As set out in the OFT's Exceptions Guidance,¹³ the OFT's general policy is not to apply the 'de minimis' exception where it is 'in principle' open to the parties to offer a clear-cut undertaking in lieu of reference. This is because the recurring benefits of avoiding consumer harm by means of undertakings

¹³ OFT1122, Mergers- Exceptions to the duty to refer and undertakings in lieu of reference guidance, December 2010 (the OFT's Exceptions Guidance), see paragraph 2.21. See also OFT decision on the *Completed acquisition by Dunfermline Press Limited of the Berkshire regional newspapers business from Trinity Mirror plc* of 4 February 2008 (the OFT Dunfermline decision) and the OFT decision on the *Completed acquisition by Govia Limited of South Central Passenger Rail Franchise* of 6 August 2009 (the OFT Govia / SCP decision).

in lieu in a given case, and all future like cases, outweigh the one-off costs of a reference.

72. Cases that the OFT considers are in principle suitable for resolution by undertakings in lieu are typically those where the part of the transaction that raises concerns can be divested to an independent third party purchaser.¹⁴ The OFT's Exceptions Guidance also stresses that '[t]he OFT will take a conservative approach to assessing whether undertakings in lieu are in principle available. To the extent that there is any doubt as to whether undertakings in lieu would meet the 'clear-cut' standard, it will not be included in the 'in principle' assessment. In other words, it must be clear that the competition concerns in the case in question are obviously such as to make the case a candidate for resolution by undertakings in lieu.'¹⁵
73. In the present case, the OFT does not consider, based on its objective evaluation of the transaction, that undertakings in lieu are 'in principle' available since a clear-cut effective structural remedy is likely to amount to a prohibition of the merger.

Application of the markets of insufficient importance exception to this case

74. Where the annual value in the UK of the market(s) concerned is, in aggregate, less than £3million (and where the OFT considers there are no clear-cut undertakings in lieu in principle available), a reference to the Competition Commission (CC)¹⁶ will generally not be justified.
75. In this case the market where the substantial lessening of competition has been found is that for the supply of non invasive tracking data and associated products to professional football clubs in the United Kingdom. On a cautious basis, taking the supply of non invasive tracking data and any supply of associated event /video analysis, the market is valued at around £2.85 million. The OFT's Guidance¹⁷ states that it would only expect to refer a merger where the value of the market(s) concerned was less than £3 million in exceptional circumstances. To reach a decision it will consider whether there are any exceptional circumstances, for example

¹⁴ See the OFT's Exceptions Guidance, paragraph 2.24.

¹⁵ See the OFT's Exceptions Guidance, paragraph 2.27.

¹⁶ See the OFT's Exceptions Guidance, paragraph 2.15.

¹⁷ See foot note 37

whether the direct impact of the merger in terms of customer harm was particularly significant and/or whether the merger was highly replicable.

76. The OFT considers that an exceptional circumstance may involve a merger that is a 2:1, that is, a merger to monopoly. In such cases, it would ordinarily be highly likely that adverse effects, absent timely entry or countervailing responses from purchasers, will occur justifying a reference to the CC even where the market size is below £3million.
77. The OFT however must balance this exceptional factor of a significant reduction in competition against both its policy on mergers in low value markets and the likelihood and magnitude of any harm which may occur in a market with the costs to the public purse of a CC reference. The OFT has carefully considered the circumstances of this case and believes that there are a number of significant mitigating factors which point to the lack of any prospect of any sustained, in the short to medium term, material harm to customers (in either the Premier or other leagues) resulting from this merger which would justify a reference to the CC.
78. More specifically, the OFT considers these mitigating factors to include, amongst others, the fact that the length of contracts in this industry tend to be around three years – at the end of this period, customers will have an opportunity to seek alternative suppliers; the number of potential or actual entrants seeking to win business from customers including Vistrack and Venatrack; the fact that this is a technological industry and that advances can be expected, subject to testing of products. As a result, given the overall size of this market and the likelihood of entry and reactions by customers, the OFT does not consider it likely that any customer harm would be significant or material in the short term and, in any event, would be substantially lower than one would expect in a two to one merger. For the above reasons, the OFT considers it appropriate to exercise its 'de minimis' discretion in this case.

DECISION

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