

Anticipated national address gazetteer joint venture between Ordnance Survey and Local Government Improvement and Development

ME/4802/10

The OFT's decision on reference under section 33(2)(a) given on 15 February 2011. Full text of decision published 23 February 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.

PARTIES

1. **Ordnance Survey** (OS) is an independent non-ministerial government department with Executive Agency status operating as a Trading Fund. It produces a wide range of mapping products. The turnover of OS was £114.3 million for the year ending 31 March 2010.
2. **Local Government Improvement and Development** (LGID) is the business name of the Improvement and Development Agency for Local Government. It is part of the Local Government Group, which also includes the Local Government Association (LGA), and is a company limited by guarantee whose role is to support improvement and innovation in local government. Its income was £49.3 million for the year 2009/2010.

TRANSACTION

3. The proposed transaction (the Transaction) concerns the proposed establishment of a joint venture (JV), to be known as GeoPlace, between OS and LGID. Through the JV the parties will create a national address gazetteer (NAG) for Great Britain by merging their following existing geo-referenced addressing datasets:

- OS:
 - (a) Address-Point (AP)
 - (b) OS MasterMap Address Layer (AL)
 - (c) OS MasterMap Address Layer 2 (AL2) and
- LGID, through its subsidiary Local Government Information House Limited (LGIH): the National Land and Property Gazetteer (NLPG).

LGID will in addition contribute data from the National Street Gazetteer (NSG) to the JV, but the NSG will continue to be created and be available to local authorities as a separate product. The NSG is not sold commercially.

4. Prior to the Transaction, LGIH will acquire (possibly with a loan provided by OS and LGID) Intelligent Addressing Holdings Limited (IA). This is a private company that manages the central hub of the NLPG and the NSG on LGIH's behalf and provides the associated data, consultancy, sales, licensing and support services. IA is LGIH's sole agent for commercialising the NLPG and as such offers LGIH licences to the NLPG to customers. IA's turnover in the financial year to 31 December 2009 was £2.7 million. Around 90 per cent of IA's revenue is earned from the payments that it receives under its mapping agreement with local government.
5. []. OS and LGIH will grant [] licences to the JV of the data and IP rights in relation to, respectively, AP and AL2 and the NLPG and NSG. The JV will use these licensed data and IP rights to create the NAG and will own the IP rights in relation to the NAG.
6. The JV will be a limited liability partnership with OS and LGID as members. Each member will be entitled to appoint two board members. Hence, each party will have a veto over decisions at board level. One of LGID's representatives will be appointed as Chairman of the board but will not have a casting vote. OS will nominate the JV's Managing Director, who will attend board meetings but will not have voting rights. OS will be responsible for the sales and marketing of NAG products and for product management. It will be the sole distributor of the NAG and will licence NAG products to customers on the JV's behalf.

7. From around 1 April 2011 revenues from the existing AP, AL, AL2 and NLPG products and the future NAG products will accrue to the JV. OS and LGID will share entitlement to the JV's profits on a ratio of [].

JURISDICTION

8. OS and LGID are currently legally distinct. OS is ultimately under the control of the Secretary of State for Communities and Local Government, which is a central government entity and therefore part of the Crown. LGID is ultimately controlled by local authorities through their membership of the LGA. Local authorities are entities under the control of their elected members, although around 60 per cent of local government's income was provided by central government in 2008/2009.¹ As a result of the Transaction, OS and LGID will cease to be distinct enterprises to the extent that they will each gain material influence² over the other party's addressing products business. More specifically, OS will gain material influence over the addressing products business and hub activities of LGID, LGIH and IA that are transferred to the JV, including the relevant IP rights and the existing customer relationships and employees of IA. LGID will gain material influence over the addressing products business of OS and hub activities of IA that are transferred to the JV, including the relevant IP rights and existing customer relationships. The JV is taking place amidst wider potential changes in the organisation of Government data collecting bodies.³
9. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met because as a result of the Transaction more than 25 per cent of geo-referenced addressing products will be supplied in the UK by the same entity, the JV. Therefore, the OFT believes that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
10. The OFT's administrative deadline for the Transaction is 15 February.

¹ <http://www.communities.gov.uk/publications/corporate/statistics/financialstatistics202010>.

² Neither OS nor LGID will gain control because of the deadlocked nature of the JV's board.

³ See, for example: <http://www.cabinetoffice.gov.uk/news/public-data-corporation-free-public-data-and-drive-innovation>.

RATIONALE

11. The parties submitted that the rationale for the Transaction is to remove a historical anomaly under which there are two separate public sector organisations that are tasked with creating address gazetteers on a national level. They stated that this duplication has resulted in inefficiencies both within and outside government. They referred to several policy statements made in the past few years by Government, Parliament and other public bodies that support the creation of a single gazetteer. This rationale is reflected in the announcement of the Transaction by the Secretary of State for Communities and Local Government on 3 December 2010.⁴

MARKET DEFINITION

12. The parties' products that will be merged into the JV are all addressing datasets with geo-references at individual address level (accurate geo-referenced address data). These geo-references allow for the address to be accurately identified on a map by reference to the (x,y) coordinates of the address. The OFT has considered whether the market could be defined more widely to include other types of addressing products. The OFT has also considered whether separate markets could be distinguished for public sector customers and private sector customers.

Product scope

13. The parties submitted that demand for addressing products exists on a spectrum depending on the level of detail required by the individual customer, ranging from (i) addressing data without geo-references, via (ii) addressing data with geo-references at postcode level, to (iii) addressing data with geo-references at individual address level.
14. The parties submitted that the Postcode Address File (PAF), produced by Royal Mail, is the primary source of authoritative postal address information in the UK. This was confirmed by third parties. The PAF is constantly updated with information from Royal Mail's postal delivery staff and other sources and is used in various value-added products such as address lookup tools within call centres. The parties' addressing products that will be merged into the JV also both use the PAF as an essential input.

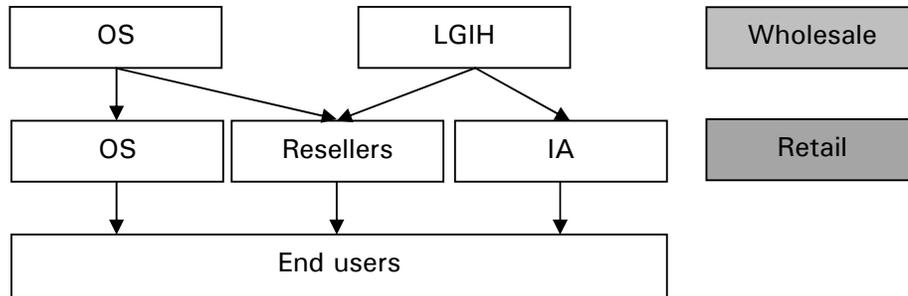
⁴ Press release entitled 'New national 'address book' to be free to emergency services', dated 3 December 2010.

15. The PAF does not contain any geo-references and is therefore not a substitute for the parties' products for customers who want to know the location of an address. The parties have submitted that most of the demand from such customers can be satisfied by addressing datasets with geo-references at postcode level. These datasets identify the central point of the postcode that an address is located in, which is relatively accurate since each postcode contains an average of only 15 adjoining addresses.
16. However, information provided by the parties and confirmed by third parties shows that, although these datasets result in a level of accuracy that is suitable for many customers, they cannot meet the requirements of customers that want to know the exact location of the address itself. Such customers include various public sector bodies (such as the emergency services and local authorities), utility companies and insurance companies. For these customers there is no substitute for addressing datasets that have geo-references at individual address level (henceforth: accurate geo-referenced addressing datasets), which enable users to ascertain the precise location of an individual address or building to a resolution of 0.1 metres. The difference between accurate geo-referenced addressing datasets and addressing datasets with geo-references at postcode level is also reflected by the significant difference in price: the price of the cheapest accurate geo-referenced addressing dataset, AP, is £132,500 for a full GB licence for use at 101 + terminals, while a UK-wide corporate licence for Postzon, a dataset with geo-references at postcode level, is only £27,500.
17. The parties also referred to NAVTEQ as a potential competitor, as it produces geo-referenced postcode data for use in its navigation products and it can start offering these data to customers. However, there is no evidence that NAVTEQ currently offers these data to customers. In any case, there is no indication that NAVTEQ produces or can produce an accurate geo-referenced addressing datasets.
18. Further, the parties stated that PointX offers a competing product, as it supplies geo-referenced 'Points of Interest information'. However, PointX's product does not include residential address information. This demonstrates that, whilst particular kinds of less accurate or incomplete addressing databases can be created by competitors, these competitors do not produce accurate geo-referenced addressing datasets. Also, as OS is, along

with Landmark Information Group, a 50/50 interest holder in PointX, the OFT does not consider it to be an independent competitor of OS.

19. Demand-side factors therefore suggest that the market should be defined narrowly, consisting only of accurate geo-referenced addressing datasets. The OFT has also considered whether supply-side factors could give rise to a different market definition. The parties suggested that suppliers with the pre-existing means of undertaking a physical survey could use OS's CodePoint Open, which is available free of charge, combine it with the PAF and undertake their own physical survey to produce an accurate geo-referenced addressing dataset. They stated that, although this dataset may not be quite as accurate as the parties' datasets, the level of accuracy may be sufficient for at least some current customers of accurate geo-referenced addressing datasets. The parties suggested that, for example, Google may consider creating a geo-coded addressing product using a postcode dataset and other sources such as user generated content Google's Street View web service. However, the parties accepted that the creation of such datasets would take time. Significant investment is also likely to be required. The OFT therefore considers that supply-side substitution is not likely to take place in a sufficiently timely manner and at sufficiently low cost to suggest that the market for accurate geo-referenced addressing datasets should also include any firms currently not supplying accurate geo-referenced addressing datasets. The OFT did not receive any third-party comments to the contrary.
20. Both of the parties sell their products directly to end-users and also through resellers. Resellers can be segmented according to whether they are value-added resellers (VARs) who create separate 'value-added' products, or direct resellers/distributors who do not alter the parties' datasets. The parties have submitted that the parties' products do not compete with VARs' products because end-users require the additional features added by the VARs and so would be unlikely to switch products following a small but significant non-transitory increase in price. Third parties tended to agree with the parties' submission that VARs produce products distinct from the parties' products and that VARs' products are not substitutes for the kinds of products supplied by the parties. The parties further submit that OS sells licences to resellers at a discount price to the end-user price which allows the reseller a distribution margin. This arrangement implies a degree of control which limits the constraint by resellers downstream.

21. The following diagram illustrates the supply chain.⁵ Although the diagram indicates that there are resellers of the NLPG, NLPG resellers have made no sales of the NLPG to date.



22. The OFT believes that it is not appropriate to make the distinction between the wholesale level and the retail level in this case. The lack of distinction between these levels in the supply chain is implied by OS control of wholesale prices charged to resellers and that no NLPG resellers have made any sales. Moreover, the competitive effects assessment is not altered by focussing on the retail supply of accurate geo-referenced addressing datasets. The OFT therefore concludes that the appropriate product scope of the relevant market is accurate geo-referenced addressing datasets at the retail level and that reseller sales of OS products should not be treated as distinct from OS sales.

Geographic scope

23. Although customers often require addressing data for only specific areas and the parties' products are available for such areas, the parties have submitted that the geographic market is Great Britain because their current products are national (LGID's products covering England and Wales and OS's products covering Great Britain) and their prices do not vary by region. UK Map sells an accurate geo-referenced addressing database of London, but this product can be sold Great Britain wide. No third parties suggested a different geographic scope. The OFT received no evidence that the scope of the geographic market was wider than Great Britain. Although the OFT notes that, given that the parties' products are informational, the market could be wider.
24. The OFT has therefore considered the Transaction with Great Britain as the geographic scope.

⁵ IA acts as an agent and receives a share of the royalties from the sale of NLPG licences.

Customer base

25. The parties submitted that the Transaction will affect their public sector customers differently from their private sector customers. The OFT has therefore considered whether it is appropriate to identify separate relevant markets for public sector customers and private sector customers of accurate geo-referenced addressing datasets. The OFT may define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.⁶
26. Government is the largest customer of both parties at the retail level. The parties submitted that OS derives around 42 per cent of sales of AP, AL and AL2 from public sector sales, while the users of LGID's products are virtually all local authorities, in addition to four other public sector customers. LGID has only seven private sector customers, with total sales of around £33,000. When the sales of the parties' merging products are combined, the public sector represents around 61 per cent of these sales. The parties therefore conclude that the public sector has countervailing buyer power, which it leverages in negotiations for collective purchasing agreements.
27. Currently OS supplies its addressing products to central government under the Pan Government Agreement (PGA) and to local authorities under the Mapping Services Agreement (MSA), which are collective agreements for the supply of a range of mapping and addressing products to public bodies. LGID currently grants access to its NLPG and NSG datasets to local authorities in return for contributions made by these local authorities to the operational expenses of managing these datasets.
28. From 1 April 2011 the PGA and the MSA will be replaced by the Public Sector Mapping Agreement (PSMA). Like the PGA and the MSA, the PSMA is a collective agreement for the supply of mapping and addressing products to public bodies with a duration of 10 years. The PSMA has been agreed between OS and the Department for Communities and Local Government (DCLG) and will cover all public sector organisations in England and Wales, including local government. The PSMA will also cover the NAG. Under the PSMA, DCLG will purchase OS's mapping and

⁶ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.2.28.

addressing products on behalf of these organisations and pay a global fee to OS. These products are then provided to these organisations free at the point of use.⁷ The real and perhaps nominal price that DCLG pays to OS will decrease over the duration of the PSMA, reflecting an efficiency formula that is based on OS's operating profit relevant to efficiency targets and the Consumer Price Index.

29. The parties stated that, with the only exception of collective purchasing agreements with the government, they do not negotiate prices with customers and that the price to be paid by all customers is their standard list price. The parties conclude on this basis that the structure and pricing of the supply of their addressing products to public sector customers can be clearly differentiated from the pricing to private sector customers and that, in the light of the 10-year duration of the PSMA, this will not change after the merger.
30. The parties further submitted that the position of public sector customers is also different from private sector customers, because the Transaction is the result of a Government initiative (see paragraph 11 above) and because Government will be the ultimate controller of the joint venture through the parties (see paragraph 8 above).
31. Third party information supports the difference between public sector and private sector customers. DCLG confirmed the parties' submission that it has buyer power, although it noted that this was the result of the size of Government as a customer (DCLG negotiated the PSMA and previously the PGA on behalf of Government) rather than the result of its relationship with OS, which according to DCLG must provide fair and equitable pricing to all due to its obligations under the Information Fair Trader Scheme and competition law. DCLG stated that the PSMA will enable the public sector to meet its addressing needs over the medium to long term and deliver value for money. None of the other public sector customers of the parties' products that provided information to the OFT raised a concern that the Transaction could have a negative impact on them. In contrast, a significant number of private sector customers of the parties' addressing products did raise concerns about the potentially high price levels of the NAG for the private sector (see paragraph 68 below).

⁷ Several private sector customers interpreted this to mean that the public sector would obtain the databases for free. This is not the case. This concern may have been due, at least in part, to a misunderstanding about the pricing arrangements under the PSMA. This is discussed further at paragraph 68 below.

32. The evidence shows that public sector customers have been able to obtain the parties' addressing products at better terms than private sector customers.⁸ Public sector customers that acquire the parties' databases on better terms cannot resell the licences to private sector customers because of the terms of the end-user licensing agreement, and so arbitrage is not possible. This difference will continue to exist after the Transaction, since the NAG will fall within the terms of the PSMA. Consequently, the OFT considers based on the evidence available in this case that there are separate accurate geo-referenced addressing dataset markets for public sector customers and for private sector customers.

Conclusion

33. For the reasons set out above, the OFT has considered the competitive impact of the Transaction by reference to separate markets for accurate geo-referenced addressing datasets in Great Britain for public sector customers and for private sector customers.

HORIZONTAL ISSUES

Market shares

34. Table 1 below shows the parties' combined shares in the supply of accurate geo-referenced addressing datasets to customers and the retail and wholesale levels. The contributions that local authorities pay to cover the operational costs of LGIH's hub to manage the NLPG and NSG are included in the table as a proxy for sales to these local authorities.

⁸ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.2.29.

Table 1: Shares of supply of accurate geo-referenced addressing datasets

| Supplier | 2008 | | 2009 | | 2010 | |
|----------------------|------------|----------------|------------|----------------|------------|------------------|
| | value (£m) | share | value (£m) | share | value (£m) | share |
| OS (AP, AL and AL2)* | [] | [65-70]% | [] | [65-70]% | [] | [60-65]% |
| LGIH (NLPG) | [] | [less than 1]% | [] | [less than 1]% | [] | [0-5]% |
| LGIH (hub operation) | [] | [30-35]% | [] | [30-35]% | [] | [30-35]% |
| Merged entity | [] | 100% | [] | 100% | [] | [95-100]% |
| UK Map | 0 | 0% | 0 | 0% | [] | [0-5]% |
| Total | [] | 100% | [] | 100% | [] | 100% |

Source: parties' estimates.

* To avoid double-counting, this figure excludes royalties OS received from LGIH in respect of the NLPG, which contains OS's AP. These royalties are included in the LGIH figures.

35. The parties stated that OS sells some of its products through distributors (direct resellers). OS's figures in Table 1 for its AP, AL and AL2 sales include the value of its sales to these distributors but not the value of sales by these distributors to end-users. It does not make a significant difference to the size of the market or the parties' shares if the value of these sales is added to obtain the size of the market at the retail level. OS's accurate geo-referenced addressing product licences in 2009/2010 provided distributors with a margin of 10 per cent compared to its own prices to end-users, the parties estimated that the additional sales revenue in the market that could be attributed to sales by distributors to end-users is around 10 per cent of the value of these sales, amounting to only around £[].
36. The parties submitted that these distributors compete with them in the supply to end-users as they are allowed to determine their own selling price of OS's products. However, given the small margin that the distributors are allowed by OS, it is unlikely that distributors can offer significant competition with OS on price, albeit there may be some scope for service differentiation.

37. The only independent competitor in the supply of accurate geo-referenced addressing datasets is UK Map with an estimated share in 2010 of around [0-5] per cent. UK Map is currently only available for London. In 2009 GeoInformation Group, the producer of UK Map, announced it was planning to map over 500 towns in the next five years and that in 2010 UK Map would be made available for four other conurbations, including the West Midlands, Merseyside and Manchester, but this does not appear to have happened. Very few third parties were familiar with UK Map and none saw it as a credible competitor. Therefore, although UK Map may become a more important competitor in the future, the OFT does not consider that currently UK Map is a strong enough supplier to counterbalance the strong position of the parties.
38. Compared to the supply of accurate geo-referenced addressing datasets, the only additional competitor in the supply of addressing datasets with geo-references at postcode level is Postzon. Postzon is created by Royal Mail using data from the Gridlink consortium. This consortium also includes OS, but according to the parties OS only provides (via Gridlink) a data input for Postzon and OS has no direct influence over the Postzon product, which is sold, marketed and distributed by Royal Mail.
39. Therefore, after the Transaction the parties will effectively have a monopoly in the supply of accurate geo-referenced addressing datasets covering England and Wales. This applies to both the supply to public sector customers and private sector customers. The OFT notes that the parties' position is acknowledged by an internal LGID document that was prepared with regard to the Transaction, which refers to 'the effective monopoly arrangements for public sector addressing information' and states that 'there are no alternative sources of supply for [private sector] customers'.⁹

Extent of current competition between OS and LGID

40. A merger to monopoly typically gives the OFT strong prima facie cause for concern. However, the parties submitted that in practice competition between OS and LGID is in fact extremely limited for both public sector and private sector customers. The OFT notes that competition concerns may be significant in respect of mergers which lead to high levels of concentration.

⁹ *Investment in Joint Venture with Ordnance Survey*, 17 November 2010, paragraphs 9 and 13 (Annex 15(vi) to the parties' submission to the OFT of 9 December 2010).

Concerns about high levels of concentration may be strengthened when customer switching costs are high, even if there is limited pre-merger competition.¹⁰

Differences in the parties' products

41. The parties stated that there are significant differences between OS's products and LGID's product, because their products were developed for different users. LGID's product, the NLPG, was developed for local authorities, as is clear the fact that it includes the Unique Property Reference Numbers (UPRNs). UPRNs are unique identifiers that are given to each individual address and are embedded in different local authority databases, for example allowing linking with council tax records. OS's products do not contain UPRNs. OS's AL and AL2 products do, however, in contrast to the NLPG, contain topographical identifiers (TOIDs) that allow them to be linked to other OS products including its mapping products. The parties submitted that TOIDs make OS's products especially suitable for, for example, insurance companies that want to assess whether a property is in a location that puts it at risk of flooding. However, the two insurance companies that the OFT received information from did not in fact currently buy OS's TOID products.
42. Further information from the parties and internal documents¹¹ shows the following differences between the parties' products:
 - OS's products cover England, Wales and Scotland, while the NLPG covers only England and Wales, which makes OS's products more suitable for central government and private sector companies that require national coverage, such as utility companies and insurance companies;
 - the NLPG is more current, as it is updated with information from local authorities that are generally the first to be aware of address changes;
 - OS's products are generally slightly more accurate than the NLPG in respect of the precise location of an address.

¹⁰ The *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010) at paragraph 5.3.2 notes that the OFT will have regard to turbulence in concentration when interpreting concentration measures.

¹¹ In particular an internal IA document, *Analysis of Address Layer 2*, August 2009 (Annex 18 to the parties' response to OFT questions of 4 January 2011).

43. Third parties largely agreed that, although the parties' products are similar, they each have their own strengths and weaknesses. Third parties though confirmed that the parties' accurate addressing databases contain comparable information.

Competition for the parties' public sector customer base

44. The parties submitted that the differences in their products are reflected in differences in their customer base. NLPG is generally preferred by local authorities over OS's products due to its inclusion of UPRNs, while central government generally prefers using OS's addressing products due to their national coverage and their links to OS's other mapping products. The parties stated that in 2008/09 only 16 local government bodies (out of a total of around 375 in England and Wales) had purchased AL2, and several of these bodies did not renew their contracts once expired. Similarly, the NLPG has only four public sector customers besides local authorities. The parties stated that there is limited to no switching between the parties' products.
45. The parties further stated that public sector bodies that purchase a product that they might not normally be expected to purchase (that is, local government bodies purchasing OS products and non-local authority customers purchasing the NLPG) generally purchase both parties' products at the same time rather than choosing one party's product over the other's. For example, the Office for National Statistics (ONS) and some emergency services use both parties' products to obtain the best possible addressing information. This is confirmed by third-party comments.
46. In addition, as noted above (see paragraphs 27-28), public sector bodies obtain the parties' products under arrangements that mean that it is relatively extra costly for them to purchase a product outside these arrangements. For example, most local authorities that require an accurate geo-referenced addressing dataset already have access to the NLPG in return for their contribution to the NLPG's operational expenses, so if they also wish to purchase OS's product they are effectively paying twice for addressing datasets.
47. Several third parties from the public sector informed the OFT that they had not seen any benefits from the existence of two suppliers of accurate geo-referenced addressing datasets. Virtually none of the third parties from the

public sector that commented on the Transaction was concerned about the removal of competition as a result of the Transaction.

48. Set against this, the OFT notes that some degree of competition between OS and LGID for public sector customers appears to have existed in two of the three tenders that they both submitted bids for. In 2007 they both bid for a contract for addressing and mapping products for the NHS and in 2008 they both bid for the PGA (replacing a previous version of the PGA for which OS was the supplier). The NHS tender was won by Dotted Eyes, a reseller of OS's AL2 product. The PGA tender was won by OS. When OS considered its PGA bid, an internal document appears to show that when it determined its price bid, it took into account what it expected competitors to bid based on the royalty it would charge.¹² This is likely to refer to LGIH (in addition possibly to value-added resellers). This supports the existence of at least some competition between the parties for public sector customers.

Competition for the parties' private sector customer base

49. The parties submitted that the differences in their products are reflected in differences not only in their public sector but also their private sector customer base. OS has many private sector customers, including utilities and insurance companies, representing around 58 per cent of its sales. The majority of these customers purchase OS's addressing products as part of a broader suite of geographic products and their expenditure on the addressing product is often only a small part of their total spend with OS. In contrast, the NLPG has been sold to only seven end-user customers in the private sector since it became available for commercial purchase, for a total fee of only around £33,000. All of these customers are local housing associations that activities that require access to the UPRN in the NLPG database so that they can communicate with local government.
50. The parties further stated that LGIH provided around 64 development and demonstration licences for the NLPG to public and private sector customers, 17 of which were to potential end-users. These licences are offered to potential customers who wish to access the NLPG and review its data to see if it is suitable for their use. The parties submitted that, given that there are only 11 current end-user licensees (public and private), this

¹² OS Operating Board Paper, 21 August 2007, page 2 (Annex 16C to the parties' response to the OFT's Issues Paper and questions of 1 February 2011).

shows that some potential customers have considered purchasing the NLPG but have found it to be unsuitable for their purposes.

51. The OFT has considered whether the lack of private sector NLPG customers may be caused by the NLPG only being available to private sector customers for a short time combined with high switching costs. The parties submitted that the NLPG has been available for commercial purchase since 2006, and therefore has had time to establish private sector sales if the NLPG were suitable for private sector customers' needs. However, there is conflicting evidence about the date the NLPG became commercially available. OS's internal documents refer to April 2008 as the relevant date.¹³ Third-party information also suggests that the NLPG became available in 2008.
52. The parties' response was that on 30 April 2008 the NLPG's 'commercial launch' took place, which was an event where LGIH and IA 'formally announce[d] the availability of commercial licensing for the NLPG'.¹⁴ They noted however that LGIH and IA envisaged commercialisation of the NLPG as early as 1999, that the NLPG was first licensed in 2002, that a formal agreement with OS was put in place that allowed licensing of the NLPG to end-users in 2005, and that in 2006 IA employed a Head of Marketing and increased its direct spend on marketing activities to around £[] per year.
53. However, the OFT notes that the 2002 licence referred to by the parties was granted to the National Land Information Service, which appears to be a body that is related to LGID (it grew from a partnership that LGID was a party to in 1998). The parties did not suggest that any other commercial licences were granted until 2006 at the earliest or indeed that LGIH and IA were allowed to grant commercial licences until they entered into an agreement with OS in 2005. The first development and demonstration licences were granted in late 2005, but the first such licences to potential private sector end-users do not appear to have been granted until early 2009.¹⁵ In view of these factors, the information in OS's internal documents and third-party information, the OFT considers that LGIH and IA

¹³ For example, a report of August 2008 prepared by Fresh Minds Limited for OS, entitled *The geographic information market*, chapter 4.1.5 (Annex 13 to the parties' response to OFT questions of 4 January 2011).

¹⁴ *An invitation to the commercial launch of the NLPG* on 30 April 2008 (Annex 3E to the parties' response to the OFT's Issues Paper of 1 February 2011).

¹⁵ List of development and demonstration licences provided by the parties (Annex 2 to the parties' response to the OFT's Issues Paper of 1 February 2011).

do not appear to have actively made the NLPG commercially available until April 2008.

54. As the first public announcement regarding the proposed Transaction was, according to the parties, made in March 2010, LGIH and IA have only had less than 2 years for active commercial marketing of the NLPG. The parties stated that anticipation of the Transaction before March 2010 can only have been speculative, but nevertheless one third party suggested that this created reluctance with potential customers to switch from OS's products to the NLPG, given the cost involved in adapting a customer's internal systems to a different addressing product.
55. A further cause of the NLPG's limited sales to private sector customers may lie in friction between IA and OS in the past in relation to OS's licensing terms of AP, which is incorporated into the NLPG. This is indicated by an internal LGID document, which suggests that the 'considerable friction' which existed with OS has contributed to the poor sales of the NLPG in the private sector.¹⁶ Some third parties have also stated that this friction has prevented IA from competing effectively with OS. That OS is able to limit competition by controlling the margins of firms that use OS products, including the NLPG, has also been suggested by IA in the past.¹⁷
56. Third party responses about the extent of competition between the parties were mixed. While some third parties stated that there is limited competition between OS's products and the NLPG, others stated that their products do compete against one another and that they are the closest substitutes for one another. In particular, one [private sector customer] was concerned that the Transaction will remove choice for the private sector.
57. Therefore, while the OFT accepts that, as the parties submit, the practical reality is that NLPG sales to private sector customers have been very limited, it cannot exclude the possibility that LGIH and IA may have become more successful as a competitor of OS absent the Transaction. IA's Business Development Plan of February 2009¹⁸ shows that it intended

¹⁶ *Strategic direction for Local Government Information House (LGIH) Programme*, 21 July 2010, paragraph 9 (Annex 15(iii) to the parties' submission to the OFT of 9 December 2010).

¹⁷ See, for example, the complaint made by IA about OS's conduct around 2006 (see OFT's market study *The commercial use of public information*, December 2006 (OFT861), page 91) and IA's response to DCLG's consultation *Policy options for geographic information from Ordnance Survey* (December 2009) at www.iahub.net/docs/1269337743868.pdf.

¹⁸ Annex 20 to the parties' response to OFT questions of 4 January 2011.

to target new customers, including utilities, and significant interest in the NLPG is demonstrated by the fact that over 130 private firms expressed an interest in the NLPG at its commercial launch in April 2008.¹⁹ Housing associations may have formed another pool of potential customers for the NLPG, since a significant number of housing associations currently purchase OS's products.

Pricing constraints

58. The parties submitted that, besides the limited extent of competition between them, another reason that the Transaction does not raise competition concerns is that they face constraints in their ability to price their addressing products, and will continue to face such constraints after the Transaction.
59. The parties submitted firstly that, as government-related entities, they do not have the incentive to maximise profits in the same way as a private sector undertaking. However, the OFT considers that this does not mean that the parties will necessarily refrain from charging high fees.
60. OS's status as a Trading Fund means that it is to some extent run on a commercial basis. While, as the parties pointed out, its aim as a Trading Fund is to break even across the organisation and to reduce prices if it is more profitable than forecast, it may first use such profits to invest in its own organisation. OS's management team are incentivised to meet profit targets, as [] per cent of their performance pay (which makes up between [] and [] per cent of salary depending on role) is determined by operating profits. Even if addressing products account for only a small part of such profits, as the parties have submitted, this significant profit-related element to senior management pay means that profit will generally be one of their goals. An internal LGID document relating to the JV also refers to OS's 'marketing expertise, including its ability to exploit addressing information commercially with the private sector'.²⁰ Some third parties also referred to profit-seeking conduct by OS in the past.

¹⁹ *The geographic information market*, a report of August 2008 prepared by Fresh Minds Limited for OS, section 4.1.5.3 (Annex 13 to the parties' response to OFT questions of 4 January 2011).

²⁰ *Local Government's Relationship with Ordnance Survey*, 16 September 2010, paragraph 7 (Annex 15(iv) to the parties' submission to the OFT of 9 December 2010).

61. The parties further submitted that OS's prices are demand-based and are not set in relation to the NLPG pricing. They stated that OS determines its prices in relation to the value of its products to end-users, as is the norm in markets for the provision of information in digital form where fixed costs are high and marginal costs are very low. However, the OFT notes that this does not mean that there was no pricing constraint on OS from LGID which would be lost post-Transaction. This is supported by an internal OS document which suggests that its pricing may in fact be constrained by LGID's pricing (see paragraph 70 below).
62. In relation to LGID, the parties submitted that LGID currently already has limited pricing freedom for the NLPG, because the licence fee that it pays to OS for the use of AP as an input into the NLPG makes up around 73 per cent of the NLPG price.²¹ However, the OFT considers that this does not entirely eliminate LGID's pricing freedom. As noted above, the parties made competing bids against one another in three tenders. It is also possible for LGID to vary the quality-adjusted price of its database by, for example, encouraging local authorities to improve the frequency or accuracy of their data submissions.
63. In addition, the parties submitted that their public sector customers will after the Transaction be protected by Government's buyer power under the PSMA (see paragraph 28 above). This has a duration of 10 years and prices have already been determined for this period. The parties also referred to the Government's unique position in relation to the parties more generally (see paragraphs 25 to 32 above). The OFT accepts that this forms a constraint on the parties' pricing freedom after the Transaction.
64. For the small number of current private sector customers of the NLPG, the parties submitted that the JV will have an incentive to reduce rather than increase prices, because the marginal cost of the NAG will be significantly lower than the marginal cost of the NLPG due to the removal of the need for a paid-for licence of OS's data. The parties pointed to the parties' pricing record in the past five years, when both OS's and LGID's products have not increased in price (and hence have fallen in price in real terms) while at the same time their quality has improved.
65. The draft business plan for the JV shows that after the Transaction the parties expect the initial NAG prices to be []. However, the OFT considers

²¹ OS receives around £108,000 in royalties out of the cost of a full NLPG licence of £148,000.

that, while the parties' incentive to increase prices after the Transaction may be limited or at present even absent, it is not clear that this will remain the case in the future.

66. An example of potential harm for consumers as a result of the Transaction may be that the parties intend for the JV to offer a 'NAG Postal (+ UPRN)' that will be cheaper than the NLPG but has substantially less functionality. The only other option for current NLPG customers will be to choose the 'NAG Full (England and Wales)', which it is indicated will be more than [] expensive than the NLPG. This evidence indicates that the parties intend to raise the price of the NLPG-equivalent product – the 'NAG Full (England and Wales)' – to a price that is [] than the NLPG. It can be argued that the removal of competition between the parties is enabling this price increase.
67. The parties submitted in response that this in fact increases choice for customers, as the 'NAG Postal (+ UPRN)' may be sufficient for some of NLPG's current customers and hence they can obtain a new product for a lower price than the NLPG. They further submitted that private sector NLPG customers that do require the additional functionality of the 'NAG Full', would not pay the full price differential of [] as none of the current private sector customers purchases a full national NLPG licence (they are all local housing associations). Accordingly, the parties estimated that the total price difference, and hence the total potential harm to the current private sector customers of the NLPG, is only £9,315 per year. However, the OFT considers that this ignores any harm for all potential future private sector customers of the NLPG. As noted above, the OFT cannot exclude the possibility that the NLPG may be sold to such customers absent the Transaction (see paragraph 57 above).
68. A significant number of third parties, in particular in the private sector, expressed concern that the monopoly that will result from the Transaction will allow OS to charge high licence fees to private sector customers. Many of these third parties suggested that the public sector arrangements under the PSMA will mean that private sector customers will effectively pay all costs associated with the supply of the NAG, although at least some of these comments appeared to have been based on a misunderstanding of the nature of the PSMA arrangements (since the NAG will be available free at the point of use for individual public sector bodies but will be paid for by a central licence fee paid by DCLG).

69. However, the OFT does not consider that these caveats mean that concerns from third parties, especially in the private sector, about the parties' post-Transaction pricing can be discounted in the context of its consideration of the Transaction.

Evidence from internal documents

70. The existence of competition between the parties is also indicated by their own internal documents. These documents state that the parties see each other as important competitors and that they constrain one another. For example:

- A report of August 2008 prepared by Fresh Minds Limited for OS, entitled *The geographic information market*, states that IA 'is able to offer a product that is valuable not only to the government sector but also commercial sectors'. It further states that the availability of the NLPG to commercial customers 'may pose a challenge for Ordnance Survey in the commercial sector, who may struggle to provide data at the same low price.' Also, the report notes the NLPG's impact on prices: 'As well as driving prices for addressing information downwards, the success of the NLPG has disrupted the dominant position of Ordnance Survey in Local Government addressing.' This document also notes that OS's then launch of AL2 would be a threat to IA.²²
- IA's *Business Development Plan* of February 2009 states: 'The NLPG is however considered to be a strong competitor against OS products as the [*sic*] are priced in a similar bracket and aimed at the same customers.'²³

71. The parties submitted that these documents must be seen in the context of the overall market structure, where OS and LGID are the only organisations that create accurate geo-referenced datasets on a national basis and hence it is unsurprising that they each refer to the other's products. The parties further submitted that these documents overstate the practical reality of competition between the parties. They also noted that there are no references in OS internal documents to the NLPG constraining the price of OS's products.

²² Annex 13 to the parties' response to OFT questions of 4 January 2011, sections 4.1.5.3, 4.1.5.8-9 and 4.1.5.11.

²³ Annex 20 to the parties' response to OFT questions of 4 January 2011, paragraph 1.1.2.

72. However, the OFT considers that these documents cannot be entirely dismissed on this basis. They were prepared as documents for internal use only and not in contemplation of the Transaction. The fact that the OS internal document referred to was prepared by an external consultancy does not change this analysis. The OFT therefore considers that, by reference to the threats and challenges to one another (examples of which are shown in the excerpts from internal documents above), the parties' internal documents do suggest the existence of at least a degree of competition between the parties.
73. Based on the evidence presented above, the OFT believes there is a realistic prospect that the merger parties may increase prices to their private sector customers post-Transaction. This applies to a much lesser extent to the parties' public sector customers, as they are protected by the PSMA and the unique relationship between the parties and government.

BARRIERS TO ENTRY OR EXPANSION

74. An internal document from the parties states that 'this is a business with high barriers to entry'.²⁴ The OFT has not received any evidence that suggests that entry or expansion by third-party suppliers of accurate geo-referenced addressing datasets will sufficiently timely or likely to act as an effective competitive constraint on the parties after the Transaction. NLPG marketing literature though estimates that local government has spent over £100m developing the NLPG.²⁵ The entry of UK Map may demonstrate that the barriers to entry are ultimately not insurmountable. However, UK Map's database covers a narrower geographic area when compared with the parties' databases. UK Map therefore is unlikely to form an effective competitive constraint in the short term. The OFT also notes in this respect that the market for public sector customers will for 10 years be served by the JV to the exclusion of any other suppliers in the light of the PSMA, which means that the potential sales for any entrant or expanding competitor will be likely to be limited to private sector customers only. Finally, the OFT did not receive any evidence that entry on a scale sufficient to constrain the parties was timely or likely.

²⁴ *Investment in Joint Venture with Ordnance Survey*, 17 November 2010, paragraph 13 (Annex 15(vi) to the parties' submission to the OFT of 9 December 2010).

²⁵ See, for example: <http://www.iahub.net/docs/1263828815205.pdf>.

EFFICIENCIES

75. The parties submitted that the Transaction will give rise to significant efficiencies and customer benefits that could not be achieved without it.
76. Efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to a substantial lessening of competition. The OFT may also take efficiencies that are unlikely to accrue absent the merger into account, irrespective of whether they enhance rivalry, as relevant customer benefits when it considers whether to apply the discretionary exception to the duty to refer under section 33(2)(c) of the Act.²⁶
77. In this case, the Transaction will effectively create a monopoly in the supply of accurate geo-referenced addressing datasets in Great Britain for public sector and private sector customers and as a result no rivalry will remain in these markets. Therefore, the OFT does not consider that any efficiencies arising from the Transaction will enhance rivalry.
78. The OFT has further considered possible efficiencies arising from the Transaction in its consideration whether to apply the discretionary exceptions to the duty to refer under sections 33(2)(a) and (c) of the Act ('de minimis' and relevant customer benefits), as set out from paragraph 93 below.

THIRD-PARTY VIEWS

79. The OFT received many responses from third parties on its Invitation to Comment, in addition to third-party responses to OFT requests for information. Third-party views have been discussed above where relevant. Generally, while virtually all third parties were in favour of the creation of a single national addressing dataset like the NAG as such, a significant number of third parties, in particular from the private sector, expressed concern about the parties' ability to charge high fees after the Transaction.
80. Some third parties also expressed concerns about any impact of the Transaction on the availability or pricing of the PAF. However, the parties submitted that the Transaction has no such impact. The supplier of the

²⁶ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), section 5.7. See also the OFT's decision of 23 September 2010 regarding the anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited, paragraphs 69-71.

PAF, Royal Mail, will not be a party to the JV, which will operate as a Royal Mail value-added reseller of PAF and will pass on to customers Royal Mail licensing requirements and then collect and return the relevant royalty to Royal Mail for each sale of NAG products.

81. DCLG confirmed that it has buyer power in its role as the central purchasing negotiator for the public sector. DCLG also told the OFT that the benefits of the NAG will significantly outweigh the loss of competition between the JV parties.

ASSESSMENT

82. The Transaction will effectively create a monopoly in the supply of accurate geo-referenced addressing datasets in Great Britain for public sector and private sector customers. This gives rise to a serious concern. However, the OFT has carefully considered whether, in particular, the degree of pre-Transaction competition between the parties and the existence of pricing constraints mean that the Transaction may not result in a substantial lessening of competition in these markets. The OFT has also taken into consideration that the parties are publicly owned and the unique relationship between the parties and government.

Public sector customers

83. As set out above, competition between the parties for public sector customers in relation to accurate geo-referenced addressing datasets is very limited, with local authorities generally using LGID's products and central government bodies generally using OS's products. Where this pattern is not followed and, for example, a local authority purchases an OS product, this generally happens because a public sector customer requires both parties' products to create the best possible addressing database. However, the parties have competed for two public sector contracts (one of which was for the predecessor of the PSMA).
84. Both local government and central government are currently largely covered by special arrangements under which the parties' products are available for reduced rates. This situation will continue and indeed be extended after the Transaction, when the parties' merged product, the NAG, will be provided free of charge at the point of use to all public sector organisations in England and Wales under the PSMA. The PSMA's duration of 10 years

ensures that public sector customers will be protected from any loss of competition for a considerable period.

85. Therefore, the OFT considers that competition between OS's products and the NLPG has been very limited. While it cannot be ruled out that there will be a lessening of competition for public sector customers as a result of the Transaction, the OFT does not consider that there is a realistic prospect that the Transaction will result in a substantial lessening of competition in the market for accurate geo-referenced addressing datasets in Great Britain for public sector customers.

Private sector customers

86. As set out above, NLPG sales to private sector customers have been very limited and development and demonstration licence data for the NLPG suggest that some private sector customers may have found the NLPG unsuitable for their purposes. However, the NLPG has been commercially available for only a limited period of time and evidence suggests that the lack of private sector customers of the NLPG may, at least partly, be explained by other factors besides the potential unsuitability of the product (the OFT noted that the NLPG has some advantages and disadvantages over OS's products). IA's internal documents show that it intended to target new private sector customers and that at the 'commercial launch' of the NLPG in April 2008 over 130 private firms expressed an interest. The OFT cannot therefore exclude the possibility that LGIH and IA may have become more successful as a competitor of OS absent the Transaction.
87. The OFT considers that LGID may have limited pricing freedom for the NLPG due to the licence fee it pays to OS (see paragraph 62 above). This is confirmed in IA's internal documents. LGID nevertheless retains some ability to determine its own pricing and product innovation. Further, although the OFT accepts that, given their governmental nature, the parties have faced and will continue to face some constraints on their pricing after the Transaction that are not faced by private firms, the OFT considers that there is a risk that they may increase prices to their private sector customers.
88. The OFT also considers that the parties' internal documents suggest the existence of at least a degree of competition between the parties.

89. Third-party responses about the extent of competition between the parties were mixed. Some third parties stated that the parties' products compete against one another and that they are the closest substitutes for one another. In particular, one [private sector customer] was concerned that the Transaction will remove choice for the private sector. Also, third parties, in particular from the private sector, expressed concerns about the risk of high prices after the Transaction.
90. Therefore, the OFT considers that there is a realistic prospect that the Transaction will result in a substantial lessening of competition in the market for accurate geo-referenced addressing datasets in Great Britain for private sector customers.

Conclusion

91. 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 market for accurate geo-referenced addressing datasets in Great Britain for private sector customers.
92. On this basis, the OFT is under a duty to make a reference to the Competition Commission. However, the OFT has considered whether it would be appropriate to exercise its discretion to apply one of the exceptions to the duty to refer pursuant to section 33(2) of the Act to the facts of this case.

EXCEPTIONS TO THE DUTY TO REFER

93. The OFT's duty to refer under section 33(1) of the Act is subject to the application of certain discretionary exceptions, including the markets of insufficient importance or 'de minimis' exception under section 33(2)(a) and the relevant customer benefits exception under section 33(2)(c) of the Act.²⁷

Relevant customer benefits exception

94. The parties submitted that the Transaction will give rise to significant efficiencies and customer benefits that could not be achieved without it.

²⁷ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010.

This was supported by a significant number of representations the OFT received from the parties' customers and other third parties.

95. Generally, for the OFT to consider applying the discretionary exception to the duty to refer in relation to relevant customer benefits (RCBs), the RCBs must be clear and the evidence in support of them must be compelling. The merging parties must be able to produce detailed and verifiable evidence of the RCBs that allows the OFT to assess both the magnitude of the RCBs and the probability of them occurring. The OFT sets the magnitude and probability of the RCBs against the scale and probability of the identified anti-competitive effects.²⁸ In the event that the evidence supporting the RCBs is clear and compelling, the RCBs in one market can offset the effects of an SLC in another.
96. In this case, the parties submitted that the Transaction will result in the following RCBs:
- one-off and recurring cost savings for their customers resulting from reduced licensing costs and data matching costs;
 - improved quality of the accurate geo-referenced addressing dataset that will be created following the Transaction;
 - improved ability of, in particular, central and local government bodies to communicate addressing information;
 - recurring cost savings for both parties, which the parties will pass on to their customers or which, if they are retained by the parties, will in any case ultimately be passed on to taxpayers as the parties are public bodies;
 - increased incentives to innovate.
97. The parties provided the OFT with quantifications of the resulting cost savings that they received from a number of public sector customers. The OFT also received calculations of cost savings from these and other third parties independently from the parties. These savings were significant, even when calculated on a cautious basis taking only those cost savings that the OFT had a sufficient degree of confidence would occur.

²⁸ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 4.9-10.

98. Third parties also supported the parties' submission that further benefits would arise from the Transaction that were difficult to quantify but were nevertheless significant.
99. However, although the OFT received significant evidence to support the parties' submission on RCBs, some of the quantified information on cost savings consisted of extrapolations of savings made by one organisation (for example, a local authority or a police force) that were then applied across the entire category of organisations. Also, although the fact that cost savings information was provided directly to the OFT by third parties gave the OFT some confidence in the accuracy of the information, it was not clear how a number of the cost savings had been calculated or that they are accurate. For example, the estimates of the cost of data matching were not consistent across third parties. That the data may be inaccurate, and the OFT has been unable to verify directly the cost savings, means that it does not meet the clear and compelling threshold.
100. The parties submitted that, since any harm from the Transaction would be extremely limited, it was sufficient if only a small part of the RCBs identified by the parties would meet the OFT's evidentiary threshold. However, as noted above (paragraph 67), the OFT considers that the potential harm for private sector customers in particular is greater than the assessment of harm submitted by the parties.
101. Overall, to the extent that RCBs have been identified, they are not quantified to the necessary clear and compelling threshold in order that the RCBs could be used to assess if they outweigh the SLC. Therefore, the OFT does not consider that in this case that the evidentiary threshold for applying the RCB exception, particularly as a first phase authority, was satisfied. Nevertheless, the OFT has had regard to the likely existence of RCBs, even when it has not been possible to estimate their exact magnitude, when considering whether to exercise its de minimis discretion.

'De minimis' exception

102. The OFT has found a realistic prospect of a substantial lessening of competition in the market for accurate geo-referenced addressing datasets in Great Britain for private sector customers. The OFT believes that the annual value of this market 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

103. The OFT generally will not apply the 'de minimis' exception where clear-cut undertakings in lieu of reference could be offered by the parties to resolve the competition concerns identified. The OFT's judgment in this respect is an 'in principle' one that does not depend on any actual offer of undertakings in lieu.²⁹ In any event, the existence of any such offer is unknown to the decision maker at the time of his or her decision as to whether undertakings in lieu are in principle available.
104. The OFT considered whether there was a clear-cut undertaking in lieu available in this case. In particular, it considered whether the parties' database could be licensed to third parties. However, the OFT doubted whether such a licence would be clearly and effectively separable from OS, as OS has a responsibility to protect the use of Crown copyright in its material. Such an arrangement may require on-going monitoring to ensure that third party sellers could procure the database(s) on competitive terms and would therefore not be clear cut. These concerns might ultimately be surmountable, but the OFT will take a conservative approach in 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, as is the case here, it will not be included in the 'in principle' assessment.³⁰
105. In this case, the only structural remedy open to the parties to address the competition concerns raised would be not to proceed with the Transaction. The OFT does not include prohibition of the transaction when considering whether an 'in principle' undertaking in lieu is available.³¹ On the basis that the OFT believes there is no clear-cut undertaking in lieu available, the OFT has proceeded to examine whether to exercise its 'de minimis' exception in this case.

Application of the 'de minimis' exception

106. The market concerned is the retail market for accurate geo-referenced addressing datasets in Great Britain for private sector customers. The size

²⁹ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraphs 2.18-2.27.

³⁰ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.27.

³¹ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.25.

of this market, as estimated by the parties, is around 39 per cent of the overall market for accurate geo-referenced addressing datasets in Great Britain. This amounts to £[3-3.5] million for 2009/2010. Hence, the annual value of the market is close to, but not less than, the £3 million benchmark for which a reference to the Competition Commission would generally not be justified.³²

107. When determining whether it should apply its 'de minimis' discretion, the OFT assesses the expected customer harm from the merger, in particular whether the expected merger impact is expected materially to outweigh the public costs of a reference to the Competition Commission. The main factors that the OFT considers in determining the expected customer harm are the following:³³

- the size of the market;
- the strength of the OFT's concern (that is, its view on the likelihood that the substantial lessening of competition will occur);
- the magnitude of competition lost by the merger;
- the durability of the merger's impact; and
- any wider implications, including the merger's potential replicability and rationale.

108. The OFT has considered each of the above factors in determining whether to exercise its discretion to apply the 'de minimis' exception in this case.

Market size

109. The annual value of the market is around £[3-3.5] million. This is only just above the threshold of £3 million, below which the OFT has stated in its guidance that a reference to the Competition Commission would generally not be justified.

Strength of the OFT's concerns

110. The OFT's belief is that there is a realistic prospect that the Transaction may result in a substantial lessening of competition. However, the OFT

³² *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.15.

³³ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, section 2.

notes that there has been limited scope for private sector customers, of whom LGID has very few, to trade the parties off against each other given the different characteristics of the parties' datasets, albeit switching or the threat of switching could drive greater innovation. The OFT therefore believes that it is more than fanciful but less than certain that the merger will result in a substantial lessening of competition. As a result, the strength of the OFT's belief that harm will result from the merger tends to point towards the exercise of the 'de minimis' exception in this case.

Magnitude of competition lost

111. The Transaction will effectively result in a monopoly. A merger to monopoly would typically be expected to lead to large price increases and/or quality or innovation cutbacks. However, as set out above, there are a number of factors that may suggest that competition between the parties is currently already limited. There has been limited or no switching between the parties. In view that the NLPG currently has only seven private sector customers, it is not obvious that the size of any harm would be in any way as great as in a typical merger to monopoly.
112. In addition, the OFT has taken into account the available evidence that the Transaction will result in significant benefits for both public sector and private sector customers. Although the OFT did not have sufficiently compelling evidence that the existence of RCBs arising from the Transaction was such as to outweigh the substantial lessening of competition and any adverse effect resulting from it (such as to apply the RCB exception), the OFT nevertheless considers it appropriate to have regard to such benefits – to the extent that they have been substantiated – in assessing the net adverse effect on customers that will be expected to arise as a result of any substantial lessening of competition when considering the potential application of the 'de minimis' exception.
113. Although the quantified cost savings evidence that the OFT received related mostly to public sector customers, private sector customers also identified significant benefits from the Transaction.
114. Therefore, overall, the magnitude of potential harm from the Transaction is significantly smaller than might normally be expected from a merger to

monopoly.³⁴ While a significant number of third parties in the private sector were concerned about future prices, this is qualified by the fact that virtually all third parties supported the creation of a single national addressing database as such in view of the resulting benefits. It also appears that third-party concerns may have partly resulted from a misunderstanding about the JV's funding – the public sector will pay a fixed fee and obtain the database free at the point of use – and were partly related to the parties' current prices on which the Transaction has no impact (see paragraphs 68 to 69 above). Hence, this factor favours the exercise of the 'de minimis' discretion.

Durability

115. The evidence available to the OFT indicates that barriers to entry are high in this market, as set out above. The parties have referred to UK Map as a competitor that has already entered the market and to suppliers such as NAVTEQ, Google and Microsoft that are self-supplying geo-referenced addressing data and/or may be considering doing so. Given the level of uncertainty, on balance the OFT considers the duration of harm arising from the Transaction weighs against the exercise of the 'de minimis' discretion.

Replicability and rationale

116. Generally, the potentially 'replicable' quality of particular 'de minimis' decisions means that the exercise of the OFT's discretion in one case could cumulatively lead to aggregate customer harm, because consistency of treatment may require that this discretion is also applied in future cases in the same sector.³⁵ In this case, given the strength of the parties' position in geo-referenced addressing datasets, there is little scope for similar future cases as the Transaction. The OFT considers therefore that this factor is neutral as regards the exercise of its 'de minimis' discretion.

117. The OFT may also have regard to the economic rationale behind a merger. In this case, as noted at paragraph 11 above, the rationale is to reduce inefficiencies both within and outside government that resulted from the presence of two competing public sector addressing datasets. The OFT

³⁴ See also the OFT's decision of 14 November 2008 regarding the anticipated acquisition by Orbital Marketing Services Group Limited of Ocean Park Limited.

³⁵ *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT1122, December 2010, paragraph 2.42.

considers therefore that this factor favours the exercise of its 'de minimis' discretion.

Conclusion on the 'de minimis' exception

118. The OFT considers that the balance of factors set out above is in favour of the exercise of its 'de minimis' discretion. The OFT therefore considers it appropriate to exercise its 'de minimis' discretion in this case.

DECISION

119. This merger will therefore **not be referred** to the Competition Commission pursuant to section 33(2)(a) of the Act.

END NOTES

1. With regard to paragraphs 20, 28 and 35, the parties clarified that they license rather than sell their addressing products to end-users (whether or not through distributors).
2. With regard to paragraph 28, the parties clarified that DCLG's payment of a global fee to OS under the PSMA will be annual.
3. With regard to paragraph 60, the parties clarified that OS, as a Trading Fund, must also meet dividend payments to its shareholder (DCLG).
4. With regard to paragraph 114, the parties clarified that under the PSMA the public sector will pay for licensing the combined addressing database from the JV not with a fixed fee but centrally with an annual fee that will decrease in real terms and perhaps in nominal terms over the duration of the PSMA, as set out at paragraph 28 of this decision (and as clarified in end note 2 above).