

## Completed acquisition by MacDonald Dettwiler and Associates Ltd of Richards Gray Holdings Limited

ME/3568/08

The OFT's decision on reference under Section 22(1) given on 30 April 2008.  
Full text of decision published 14 May 2008.

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

### **PARTIES**

1. **MacDonald, Dettwiler and Associates Ltd (MDA)** is active in the supply of property search services and Home Information Packs (HIPs) in England and Wales. Through its subsidiary, MDA Hub Ltd, it is the licence-holder of the National Land Information Service (NLIS) Hub, which is responsible for transmitting requests from three NLIS channel licence holders to Local Authorities (LAs). It is also the operator and licence-holder, through MDA Searchflow, of one of the three NLIS channels. For the financial year ended 31 December 2006, MDA achieved a turnover of £536 million, of which approximately £183.5 million was attributable to MDA's property information business in the UK and Ireland. These figures do not yet include HIP activities.
2. **Richards Gray Holdings Ltd (Richards Gray)** is mainly active in the supply of personal property searches, ancillary searches and HIPs. Richards Gray also has a joint venture, Total Search Ltd, with the STL Group, a search competitor. Its UK turnover for the financial year ended 31 December 2007 was £15.3 million.

## TRANSACTION

3. MDA was selected as the preferred bidder for Richards Gray following an auction. The transaction became unconditional on 1 March 2008 and the statutory deadline is therefore 30 June 2008. A satisfactory submission was received on 3 March 2008 and the 40-working-day administrative timetable expires on 30 April 2008.

## JURISDICTION

4. As a result of this transaction MDA and Richards Gray have ceased to be distinct. The parties overlap in the supply of personal property search services with a joint share of more than 25 per cent in certain types of these services such that 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.

## BACKGROUND

5. The OFT examined the property searches industry, and in particular the NLIS segment, in some detail in 2004 as part of a Competition Act 1998 (CA98) investigation into the alleged abuse of a dominant position by MDA. The OFT reached a decision of non infringement (the CA98 Decision<sup>1</sup>). In 2006, the OFT cleared the acquisition by MDA of PropertyFlow.<sup>2</sup>
6. The sector was also assessed by the OFT as part of a Market Study which was completed in September 2005 (the Market Study),<sup>3</sup> which resulted in a number of recommendations aimed at making the industry more competitive. The Government Response to the Market Study accepted all of the OFT's recommendations in principle. The then Office of the Deputy Prime Minister, now the Department for Communities and Local Government (DCLG), issued guidelines encouraging Local Authorities (LAs)

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<sup>1</sup> OFT, Decision No. CA 98/07/2004, *TM Property Services Limited's complaint against MacDonalD Dettwiler (Hub) Limited and MacDonalD Dettwiler (Channel) Ltd (trading as Transaction Online)*, 18 August 2004.

<sup>2</sup> Anticipated acquisition by MacDonalD, Dettwiler and Associates Limited of the PropertyFlow Group, March 2006.

<sup>3</sup> OFT 810, *Property Searches: A Market Study*, September 2005.

to ensure personal search companies (PSCs) have better access to relevant property information.<sup>4</sup>

7. However, the market investigation in this case has revealed that these developments may not have been effective in ensuring sufficient access to property search information held by LAs. DCLG is issuing further guidelines, which aim to address the remaining issues of access to information held by LAs.

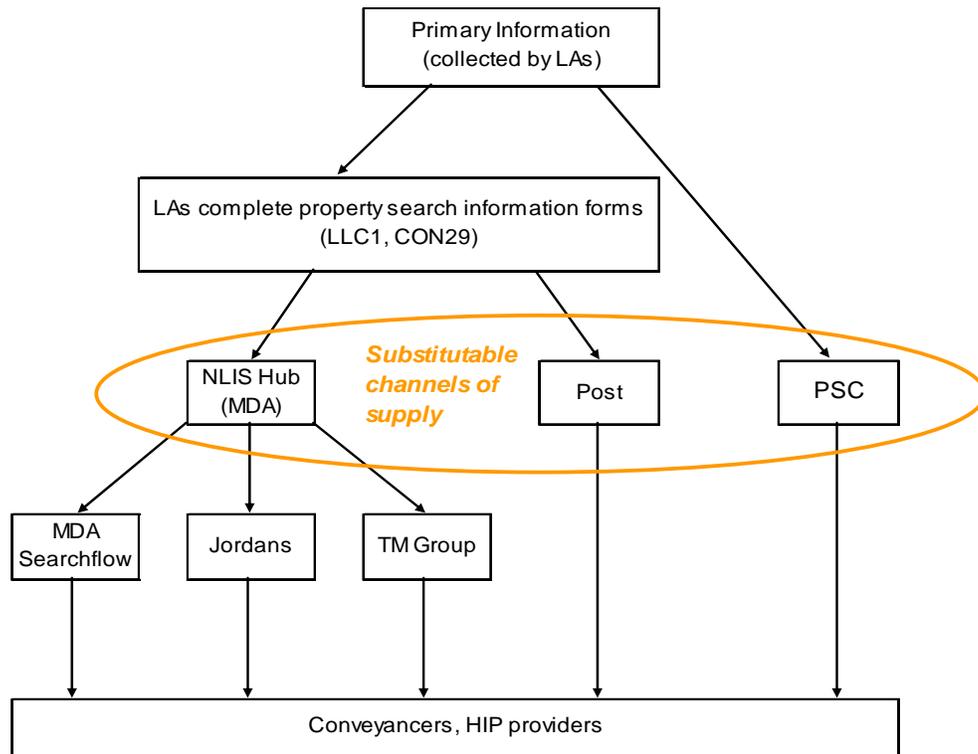
## **MARKET DEFINITION**

8. The parties overlap in the supply of personal property searches which, the parties submit, are effectively equivalent to so-called official searches supplied through NLIS channels. Property searches are carried out to obtain certain information about land or property when the property is sold or marketed for sale. The information is primarily held by LAs.
9. There are three main ways of sourcing the information for property searches from LAs (see Diagram 1 below). The first is the traditional method of sending an application by post to the relevant LA (known as a postal search). The LA charges a discretionary fee for the supply of this information. The second method is through the NLIS, an online system for obtaining LA searches. The customer requests the information from one of three licensed NLIS channel operators (currently MDA Searchflow, Jordans or TM Group), which in turn request the information from the NLIS Hub, operated under a recently renewed 10 year licence by MDA. The Hub then sends the search request to the LA. NLIS and postal searches are together referred to as official searches.
10. Finally, searches can also be obtained via a personal search company (PSC). LAs have a statutory obligation to allow individuals access, in return for a statutory fee, to the information that makes up a property search. PSCs obtain searches by attending the LA in person and inspecting the public record. They then compile their own search results; as opposed to postal searches and NLIS which rely on results compiled by the relevant LA. A PSC search can often be faster and is usually cheaper than obtaining a search via either of the other two routes.

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<sup>4</sup> Good practice guidance for local authorities and personal searches, ODPM, March 2005.

Diagram 1



## Product market

### Commercial property searches

11. The parties overlap in the provision of commercial property searches. Commercial property transactions typically use official searches (i.e. postal or NLIS) rather than personal searches. One third party competitor complained that the parties post-merger would dominate the commercial sector. However, the parties have supplied share of supply estimates which indicate that Richards Gray had only a negligible activity in this sector ( $< 5$ ] per cent on the basis of value,  $< 5$ ] per cent based on volume). While MDA has a share of supply in this sector of between  $[15-25]$  per cent (volume) and  $[35-45]$  per cent (value), all national PSCs contacted indicated they provided commercial searches if requested. In light of the small increment in this segment and in the absence of competition concerns from the vast majority of respondents, this overlap is not considered any further.

## Residential property searches

12. MDA is active as operator of the NLIS Hub and one of the NLIS channels in the provision of official NLIS searches. It is also active in the supply of personal searches. Richards Gray is active only in the supply of personal searches. However, in MDA/PropertyFlow the OFT found that, from the **demand side**, searches obtained through a NLIS channel, direct from LAs by post, and those conducted by PSCs form a single product market. Although all third party competitors and a number of customers who responded in this case have complained about deteriorating access to the search information required from LAs to compile a personal search, they all agreed that there remained a single market for all property searches. Customers readily substitute one channel for another and those who currently do not have confirmed that they would consider switching in the future. Furthermore any further guidance or measures introduced by DCLG will only seek to increase competition between the different methods.
13. From the **supply side** it is clear that only licensed NLIS channels are able to electronically access and supply official LA searches. The market investigation has not revealed any barriers which would prevent channel operators from supplying personal searches (as MDA already does).
14. Overall, based on the information received in the context of this case, the OFT considers that personal searches continue to constrain official searches. It has discovered no evidence suggesting that this case would merit a deviation from the product market definition established in the CA98 decision and in MDA/Propertyflow. For the purpose of this assessment, the relevant product market is therefore considered to be all types of property searches.

## Home Information Packs (HIPs)

15. The parties also overlap in the compilation and supply of HIPs to estate agents, surveyors, solicitors and other HIP resellers. Since December 2007, vendors of residential property in England and Wales are required to compile a seller's pack containing certain information required for a

property transaction. A property search is a key component of a HIP and, as well as supplying searches to third parties, both parties' property search businesses currently supply their respective in-house HIP operations with property searches. The purchase of a property search by the vendor will therefore take place at the initial stage of marketing the property. Further, purchasers may wish to continue to undertake their own property search at the conveyancing stage and the parties submit [...].

16. The parties submit that the introduction of mandatory HIPs does not affect the product market. They point out that the relevant HIP regulations state that both official and personal searches are suitable for inclusion in a HIP. However, in the absence of competition concerns even on the narrowest frame of reference, HIPs only, it has not been necessary for the OFT to conclude on this point.

#### Ancillary searches

17. The parties also overlap in the provision of other ancillary property-related searches such as water and drainage searches. Both searches involve very similar processes and on the information available, it appears that all companies active in personal searches also supply ancillary searches, such that there may be a single market for all property-related searches. The OFT considers that the competitive constraints exerted on the parties in ancillary searches are from the same suppliers and at least as strong as those in property searches and so if there are no competition concerns in the narrower segment of property searches, this would also apply to any broader market for property-related searches. No third party raised any merger-specific concerns regarding ancillary searches. In the absence of competition concerns on the narrower segment of property searches only, it has not been necessary to conclude on the inclusion of ancillary searches in a broader market for property-related searches.

#### Geographic market

18. The OFT has previously, in the CA98 decision and in MDA/Propertyflow concluded that, despite some regional variation, the relevant geographic market for property searches was England and Wales.<sup>5</sup> The parties and all

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<sup>5</sup> The specific searches in question are not available in Northern Ireland and Scotland due to the differences in property legislation applying in these jurisdictions.

third parties contacted believe that the geographic market remains national. Therefore, the OFT did not uncover any evidence during the course of this investigation that would warrant a departure from this view.

## **HORIZONTAL ISSUES**

### **Market shares**

#### **Residential property searches**

19. The parties' combined share of supply is between [25-35] per cent by volume (increment [less than 10] per cent) and [25-35] per cent by value (increment [less than 10] per cent), with two PSC competitors achieving shares of between 10-20 per cent and postal searches accounting for a share of 25-35 per cent. These shares indicate a considerable degree of choice and a number of competitors will continue to constrain the new entity post-merger. The increment is relatively low and third party respondents confirmed the fact indicated by the shares of supply that, pre-merger, the parties were not each other's closest competitors. The parties have also provided share of supply data for the previous two years which demonstrates that postal searches have declined substantially from over 40 per cent in 2005 to just over a quarter in 2007, while a number of smaller PSC providers increased their shares.
20. The majority of respondents had no concerns. One customer indicated that MDA's post-merger share may present difficulties sourcing alternative suppliers but all other customers contacted did not consider this to be a problem. Some third party competitors expected that prices for personal searches would fall as a result of the merger. Furthermore, most third party customers contacted indicated that switching costs are low and that they would switch if prices increased.
21. Therefore the OFT does not believe that the transaction raises competition concerns in relation to residential property searches.

#### **HIPs**

22. HIPs are a nascent market which is expected to expand considerably. However, even on the basis of the parties' 2008 forecast combined share

of supply (which is much higher than actual joint shares for 2007) the parties account for no more than [...] per cent, with an increment of [...] per cent. [...] and strong competitors remain post-merger, two of which have shares of supply of between 10 and 20 per cent. Both [...] and [...] will continue to exert a stronger constraint on MDA post-merger than Richards Gray did prior to the merger. The market is highly fragmented with over half of all HIPs provided by smaller companies with market shares of 6 per cent or less. All third party customers contacted indicated that switching costs are low and that they would switch if prices increased.

23. On this basis, the OFT does not consider that the transaction raises competition concern regarding HIPs.

### **Barriers to entry and expansion**

#### Residential property searches

24. In MDA/Propertyflow the OFT found that there appeared to be few barriers to entry as a PSC and the parties support this view. While a majority of third parties say that barriers to entry for PSCs are low at a local or regional level, many PSCs have indicated that a new entrant can only compete effectively if they are able to offer a national service, for which barriers may be significantly higher. However, in the absence of competition concerns it has not been necessary to conclude.

#### HIPs

25. The parties submit that barriers to entry are low as compiling HIPs does not require specialised skills or experience. They say that the relative ease in setting up business as a HIP provider is reflected in the large number of organisations currently offering HIPs. There would be no particular value in branding and many HIPs, including MDA's, are provided on a white-label basis. While the OFT acknowledges that barriers to entry appear to be low in this case, in the absence of competition concerns it has not been necessary to conclude.

### **Buyer power**

26. The parties submit that as a result of the introduction of HIPs there has been an increase in buyer power since a significant proportion of demand

for property searches is now accounted for by HIP providers, such as large estate agent chains. This is largely confirmed by third party competitors. One third party submitted that previously customers were a disparate group but that, following the introduction of HIPs, a single customer can now account for 15 per cent of their total searches. The OFT notes that there is some evidence to suggest the existence of countervailing buyer power, however, in the absence of any horizontal concern it has not been necessary to form a definitive view on this point.

## **VERTICAL ISSUES**

27. A number of third party respondents have raised concerns regarding the fact that MDA operates both the NLIS hub and holds a NLIS Channel licence. The OFT notes that this vertical relationship existed pre-merger and has not changed as an effect of the merger. The parties submitted that both MDA and Richards Gray, as providers of property searches as well as HIPs, would not be able to foreclose competing providers from access to a key means of distributing their search products and foreclose competing HIP providers from access to a required input to their HIP products. This was confirmed by third parties.
28. In the absence of any market power upstream in personal property searches or downstream in HIPs, the OFT does not consider that this transaction raises any vertical concerns.

## **THIRD PARTY VIEWS**

29. Third party responses were received from seven search competitors, two of which were operators of the other NLIS channels and the remainder PSCs, and eleven search customers. Competitors in particular raised concerns, unrelated to the merger, regarding access to information and unfair competitive practices by the LAs. The few merger-specific concerns received in the context of this assessment have been dealt with above.

## **ASSESSMENT**

30. The parties overlap in the supply of commercial property searches, residential property searches and HIPs. In commercial property searches the parties' combined share of supply is between [35-45] per cent but the

increment on any basis is only [ $<$  five] per cent. For residential property searches the parties achieve joint shares of between [25-35] per cent with increments of [ $<$  10] per cent respectively and in HIPs the joint share is only [...] per cent, with an increment of [...] per cent.

31. Responses received in the course of the market investigation indicate that third parties, in particular competitors, are concerned about restrictions they face when accessing the necessary information from LAs. Similarly, we have received some concerns with regard to the access to the relevant information for some ancillary searches.
  
32. However, in view of the fact that these concerns are non-merger specific and in the absence of substantive horizontal or vertical concerns, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

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