

## **Note of dissent**

1. Two members of the group disagreed with the findings, putting a different weight on the balance of factors involved in the judgement.

### ***Competition before the merger***

2. We believed there was significant competition between GXS and IBM prior to the merger. There were several examples of large customers credibly threatening to switch to IBM. GXS and IBM resellers told us they competed with each other. GXS also told us there was strong price competition (see paragraph 5.45).
3. While we agreed there was little or no direct competition between GXS and IBM for small customers, both the indirect competition through resellers and the impact of direct competition between GXS and IBM for large customers would have constrained the prices charged to small customers. We believed the barriers to switching in the market (see paragraph 5.22) readily explain the lack of switching by small customers.

### ***Potential competition from point-to-point internet technology***

4. We agreed with the judgment that the long-run trend in the industry is likely to involve either point-to-point internet EDI or some other newer technology; but we doubted that any alternative to EDI VANs would spread rapidly in the next two to three years. Most of the evidence we received from third parties suggested change would not be rapid (see paragraph 5.55).
5. The only major example of AS2 adoption in the UK is Asda. Its decision was driven by its US parent. However, the specific AS2 software for which a user licence was provided by Asda to its suppliers cannot be used without purchase of additional licences to communicate with trading partners other than Asda.
6. Most businesses we spoke to in the personal lines insurance sector considered a move to point-to-point internet EDI unlikely (see paragraph 5.59).

### ***Resellers***

7. As a result of the merger, resellers who formerly used IBM's VAN services may choose to act as resellers for the merged entity. They will continue to pass on EDI VAN charges to their customers, as they do now, and these prices will be set by GXS.
8. Some resellers may choose to switch to BT's VAN instead, as BT does already make some sales through resellers. However, BT does not actively promote its EDI VAN services directly (see paragraph 5.8). Some might choose to approach EasyLink, which told us it would be willing to consider such approaches, although it has not previously operated through resellers in the UK. The resellers' remaining alternative would be to sponsor expansion by one of the other EDI VAN providers whose UK market share is currently very small, although some of these are major US businesses. However, we considered that the merger, by removing the main EDI VAN provider to resellers, has significantly reduced their capability to act as a competitive constraint on GXS. GXS has a very large market share post-merger, and we considered resellers are likely to be hesitant about approaching another provider to offer vigorous competition in EDI VAN services.

### ***Negotiating power***

9. Although some large customers will retain negotiating power, the credibility of their threat to switch has been reduced by the removal of one of the three competitors to GXS with anything other than a minimal market share. In the retail and personal lines insurance sectors in particular, where IBM was the principal competitor to GXS before the merger, customers may be hesitant about switching to a provider which has not previously had much presence or competed actively for business. We consider the potential for even large customers to switch to alternative technologies such as AS2 is not great within the next two to three years.
10. Therefore we concluded that there is a substantial lessening of competition in the market for EDI communication services in the UK as a result of the merger.

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