



Hampden Agencies Limited and CBS Private Capital Limited

A report on the acquisition by Hampden Agencies Limited of the members' agency business of CBS Private Capital Limited

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The Competition Commission has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by ✂.

Completed acquisition by Hampden Agencies Limited of the members' agency business of CBS Private Capital Limited

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Summary

1. On 14 July 2006, the Competition Commission (CC) was asked (see Appendix A) to investigate the completed acquisition by Hampden Agencies Limited (HAL) of the members' agency business of CBS Private Capital Limited (CBSPC).
2. Members' agents provide advice and administrative services to members of Lloyd's in relation to their underwriting activity. They also represent their members' interests in negotiations, particularly with managing agents of underwriting syndicates. In order to ensure that Lloyd's members are properly advised and their affairs properly administered in connection with their underwriting business at Lloyd's, the byelaws require every member to be represented by a members' agent unless he or she has a dispensation from the Council of Lloyd's (the Council).
3. The merger has reduced the number of members' agents from three to two. Before the merger, HAL was the largest (by number of members) and CBSPC the third largest members' agent, with a combined share of about two-thirds of the number of members to whom members' agency services were provided. Both companies were profitable, but the parent company of CBSPC, CBS Insurance Holdings (CBSIH), was in financial difficulties, and under pressure to liquidate assets, of which CBSPC was the one most readily available for sale.
4. During the course of the inquiry, we received a wide range of views from a number of individual members of Lloyd's and their representative bodies, from members' agents and other advisers to members, from managing agents, and from the Financial Services Authority (FSA) and Lloyd's itself. The main concern of some individual members was that the reduction in the number of members' agents from three to two could result in higher fees and/or poorer service. On the other hand, other individual members were unconcerned by this, but believed the merger would benefit them, since it would result in there being two stronger members' agents who would be better able to negotiate on their behalf with managing agents of syndicates. This change in negotiating strength was also the main concern of eight managing agents who argued against the merger. We commissioned Harris Interactive to survey about 1,700 members, of which some 800 responded. The results of that survey have been placed on our website and we refer to its findings in various places in the report.
5. We found the supply of members' agency services to active individual Lloyd's members to be a relevant economic market, given in particular the requirement that individual members use members' agency services; the view of most parties that there are unique benefits of being a Lloyd's member; and that members' agents charges are only a part of the total cost of underwriting at Lloyd's.
6. In our initial assessment of the competitive effects of the merger, we have assumed that, had the merger not occurred, CBSPC would have been run as an independent company competing with HAL and the other members' agent, Argenta Private Capital Ltd (Argenta): we therefore compared competition before and after the merger. We found competition between members' agents before the merger to be weak, particularly on price. The characteristics of the market are themselves unlikely to be conducive to strong competition, in particular: the uncertainty as to the relative level of fees, which for HAL and Argenta depends on underwriting profitability; the importance of members' relationships with their names' executives, who are the main point of contact between members and their agent, and of the service and advice given by members' agents; the low propensity of members to switch, and negligible number of new members; and the regulatory framework of Lloyd's, appropriate though that may be, including the specification of the services to be provided.

7. There was some evidence, including the perception of some members responding to our survey, that competition would become somewhat weaker following the merger, including a possible loss of choice between the different fee structures of CBSPC, which did not charge profit commission, and HAL. We do not believe that the buyer power of members, or the prospects for entry, particularly given the declining number of members, would be sufficient to prevent any reduction in competition following the merger. The regulatory framework would also not be expected to provide a sufficient constraint to compensate for any loss of competition due to the merger. But, in our view, and consistent with the findings of our survey of Lloyd's members, the weak competition previously prevailing has become only slightly weaker following the merger, given, among other things, the continued presence of the second members' agent, Argenta, in the market. We have seen no reason to expect that there is any substantial lessening of competition (SLC) following the merger. Nor does it appear that the competitive conditions of the market are sufficiently different following the acquisition to make coordinated effects more likely in the future.
8. On the concerns raised with us by managing agents of syndicates, we regard it as wholly legitimate for members' agents to act in the interests of their members. Most of the concerns raised would have applied on a number of syndicates even before the merger. Even though the combination of HAL and CBSPC represents a greater proportion of capacity on some unaligned syndicates, members can exercise autonomy and may not follow their members' agents' recommendations—particularly if HAL sought to block a syndicate transaction for reasons other than poor syndicate performance or failure to achieve fair value for its members. Moreover, even if, as a result of the merger, the balance of power in the relations between managing agents and members' agents may have changed to the detriment of managing agents, this would not have any adverse effect on competition in any relevant market. We have also noted the market regulation measures taken by Lloyd's following the merger; and the further review Lloyd's intends to carry out in January 2007.
9. Hence, even on the assumption that CBSPC would have remained in operation without the merger, or that the previous market structure could otherwise have been sustained, the merger is unlikely to have resulted in an SLC. But we have also considered the counterfactual, ie what would have happened without the merger. Given the financial pressures on the CBS group (CBS), it had no alternative in our view but to sell CBSPC. The most likely purchaser was HAL, given the urgency of the requirement to dispose of CBSPC; but an alternative of a sale to Argenta would not have materially changed any effect on competition. Sale by CBS to a company other than HAL or Argenta or to a group of individuals was highly unlikely, given also the previous significant decline in the number of members' agents and the risks that decline would continue. Had CBS failed to sell CBSPC, it could well have gone into administration. Sale to HAL would still have been the most likely outcome; given the uncertainty and disruption of this process, a more competitive market structure is less likely to have resulted. Hence, we do not expect that CBSPC would have continued to operate, or the previous market structure with three members' agents would have been maintained beyond the short term. This is also a reason the merger cannot be expected to result in an SLC.
10. We therefore conclude that the merger has not resulted and may not be expected to result in an SLC.

Findings

1. The reference

- 1.1 By a reference made on 14 July 2006, the CC was asked to investigate the completed acquisition by HAL of the members' agency business of CBSPC.¹ The reference was made under section 22(1) of the Enterprise Act 2002 (the Act). Our terms of reference are set out in Appendix A. These require the CC to consider whether a relevant merger situation has been created; and if so, whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK. We are required to publish our final report by 28 December 2006.
- 1.2 In order to decide whether a relevant merger situation has been created, we are required to consider, first, whether two or more enterprises have ceased to be distinct within the meaning of the Act; and second, whether the turnover test in the Act (namely whether the value of the turnover in the UK of the enterprise being taken over exceeds £70 million) or the share of supply test (namely whether the merger creates or enhances a share of supply of 25 per cent or more of goods and services of any description in the UK or any substantial part of the UK) is satisfied.
- 1.3 HAL acquired CBSPC's business on 23 March 2006. Under the terms of the acquisition most of the staff previously employed by CBSPC transferred to HAL. Subsequently, the bulk of CBSPC's customers followed the CBSPC business to HAL, the former CBSPC business now being operated from the same premises as that of HAL, and to a large extent integrated with it. In our view, the acquisition constitutes enterprises ceasing to be distinct.
- 1.4 The reference to us, on 14 July 2006, was made before the statutory deadline for the making of the reference.
- 1.5 Table 1 below shows that, as a result of the merger, the share of agency services to members of Lloyd's² (referred to as members) supplied by HAL has increased from almost 40 per cent to about two-thirds. As a result of the merger HAL's share of members' agency services in the UK has therefore increased from a level already in excess of 25 per cent and the share of supply test is satisfied.
- 1.6 Hence we conclude that a relevant merger situation qualifying for investigation has been created.

2. Members' agency services at Lloyd's

- 2.1 We give a general description of the Lloyd's market in Appendix B. Although we saw estimates of Lloyd's share of world non-life premiums being only between 1 and 2 per cent, it has a significantly higher share of some sectors such as aviation and marine. It is constituted as a society of members, both corporate and individual, who underwrite in syndicates on whose behalf professional underwriters accept risk. Supporting capital is provided by investment institutions, specialist investors, international insurance companies, and individuals. The constitution of a syndicate may

¹We use the term CBSPC to refer to the former company, or the business acquired, as appropriate.

²We refer to members of Lloyd's as members throughout. In this report, we use the term 'individual member' to refer to either a natural person admitted to membership of Lloyd's, or a NameCo, Scottish Limited Partnership (SLP) or other group vehicle that is owned by a natural person or persons. This differs from Lloyd's use of the term 'individual member', which refers only to natural persons underwriting with unlimited liability.

vary from year to year, as members buy and sell capacity on it. The terms on which members participate in syndicates are set out in the standard form managing agents' agreement. Members have a certain level of security of tenure as a managing agent may not terminate an agency agreement with a member from one year of account to another, without the consent of the Council.

- 2.2 As shown in Figure 1 in Appendix B on the Lloyd's market, at the beginning of 2006 there were 62 syndicates and 44 managing agents of those syndicates. As shown in Appendix C, their combined capacity (ie capital) for underwriting was £14.8 billion. That capacity was provided by 2,211 members of Lloyd's.
- 2.3 Historically, all members were individuals underwriting with unlimited liability. After a period of substantial losses, which led to a significant reduction in the number of members of Lloyd's, in 1994 Lloyd's introduced corporate members with limited liability. Lloyd's has encouraged voluntary conversion to limited liability underwriting (in the form of NameCos,³ SLPs and, from 2007, Limited Liability Partnerships (LLPs)), and since 2003 no new unlimited liability individual members can be admitted. As a result of these factors, as shown in Appendix C, the number of active unlimited liability individual members declined from almost 15,000 in 1995 to 1,497 at the beginning of 2006. There were also 603 limited liability individual members in 2006, that is a total of 2,100 individual members, and 111 corporate members. As also shown in Appendix C, in 2006 these 2,100 individual members provided some £2.4 billion of capacity, some 16 per cent of the total, the remaining 84 per cent of capacity being provided by the 111 corporate members.
- 2.4 As noted in Appendix B, members are often referred to as being aligned or unaligned. An aligned member is a corporate member of a syndicate that is directly or indirectly owned by the same firm that owns the managing agent of the syndicate. 52 per cent of current capacity is provided by syndicates that are 100 per cent aligned. Individual members and some corporate members which have no ownership links with managing agents and participate on a number of syndicates are described as 'unaligned' members. As of 2006 only 29 syndicates were open to unaligned members (compared with 78 six years previously) and HAL told us that it believed this number would reduce further to 25 for the 2007 year of account. Lloyd's has, however, recently reported on proposals that could allow wider scope for investment by individual members.⁴
- 2.5 As we also discuss in Appendix B, Lloyd's, itself regulated by the FSA, has extensive byelaws, supplemented by codes of conduct, which regulate the interrelationship between the different participants of the market and the market structure. In order to ensure that members are properly advised and their affairs properly administered in connection with their underwriting business at Lloyd's, the byelaws require every member to be represented by a members' agent unless he or she has a dispensation from the Council. Ninety-six corporate members (representing most of the large corporate members) have applied for and been granted such dispensation. No member which has applied for dispensation has been refused, but no unaligned members have, to date, applied for consent. Some parties from whom we heard argued that the requirement to be represented by a members' agent should be discontinued. Lloyd's referred to a statement in a 2004 consultation paper issued by the FSA that the risks to individual members through their participation at Lloyd's were significant and that it was appropriate that such members should always be

³A company that is a corporate member of Lloyd's but whose members consist of a single individual or group of connected individuals or their nominees.

⁴The proposals would enable individual members to put money into Special Purpose Syndicates that could reinsure on a quota share basis fully aligned syndicates: see also paragraph 4.70.

represented by a members' agent. Lloyd's told us that, accordingly, consent not to use a members' agent would not be given to individual members who continue actively to underwrite with unlimited liability. Appendix B also details other aspects of the regulation of the Lloyd's insurance market, by Lloyd's itself and, ultimately, by the FSA.

- 2.6 The services to be provided by members' agents are to a great extent set out in the Members' Agent Agreement. Members' agents provide advice to members in relation to their underwriting activity, which includes analysis of syndicate participation and monitoring of syndicate performance. They represent their members' interests in negotiations, particularly with managing agents, including issues such as the terms on which syndicates convert from unaligned to aligned. They also provide administrative services including the provision of estimates of profits and losses and analyses from historical databases; handling transactions with Lloyd's and dealing with accountants and banks; and maintaining IT systems. The main contact between members' agents and members is through specified names' executives and many of the parties from whom we heard referred to the importance of the relationship between members and their names' executives.
- 2.7 As a result of the decline in the number of individual members, the number of members' agents has also decreased significantly, from 37 in 1995 to three in 2005. In December 2004, the OFT decided not to refer to the CC the proposed acquisition by Argenta of Anton Private Capital Limited (Anton), which reduced the number of members' agents from four to three, since it believed the weight of evidence indicated that on balance it was not expected to raise competition concerns. The OFT noted that, after the merger, the parties would continue to be constrained by Lloyd's regulation which tightly controlled the Lloyd's market, and that the majority of customers were unconcerned, with many commenting that the merger would enhance competition. Argenta subsequently acquired Anton.
- 2.8 As shown in Table 1, the current merger has brought together the first and third largest members' agents (by number of members), with a combined share of about two-thirds of the numbers of members to whom members' agency services are provided, and has reduced the number of members' agents from three to two.

TABLE 1 **Market shares in supply of members' agency services, 2006**

<i>Company</i>	<i>Market share by number of individual members %</i>	<i>Market share by capacity %</i>
HAL	38.1	35.1
CBSPC	<u>28.4</u>	<u>26.1</u>
HAL + CBSPC	66.5	61.2
Argenta	<u>33.5</u>	<u>38.8</u>
Total	100.0	100.0

Source: Hampden and Argenta.

3. The companies and reasons for the merger

- 3.1 HAL's ultimate holding company is Hampden Holdings Limited (HHL). The HHL group (Hampden) is an amalgam of several different businesses. Its principal divisions operate in three areas:
- (a) the provision of administrative services to insurance/reinsurance entities no longer accepting new business;

- (b) the provision of company secretarial and other back-office support to companies (provided by Hampden Legal Plc); and
 - (c) Lloyd's related businesses (including HAL).
- 3.2 Summary financial information on HAL is set out in Appendix D. HAL has shown increasing revenue despite falling numbers of members, and has been profitable in each of the last five years other than 2002. In 2005, its profit before taxation was some £6.9 million on turnover of £15.8 million. Its performance in both 2004 and 2005, however, reflected a high profit commission from profits earned by members on underwriting three years earlier.
- 3.3 CBS has its origins as a conversion vehicle—a corporate entity formed to allow individual members to convert from unlimited liability individual membership of Lloyd's to shareholders in a limited liability corporate member of Lloyd's. Conversion offers were made to individual members in 1999 and 2000, with the 1999 offer representing the bulk of conversions. At the same time, CBS established a managing agency, Abacus, managing Syndicate 2525. It also acquired a members' agency business from Amlin plc (which became CBSPC).
- 3.4 Following the sale of CBSPC, no CBS group companies are now engaged in the supply of members' agency services. CBS has also recently exchanged contracts to sell the companies involved in the management of Insurance Capital Partners LP, so that its remaining activities consist of the run-off of certain underwriting vehicles.
- 3.5 Financial information on CBSPC is set out in Appendix I. As noted in Appendix I:
 - (a) The number of CBSPC members has been in decline throughout the period considered in Appendix I.
 - (b) Revenues held steady from 2001 to 2003, peaked in 2004 and have been in decline since then.
 - (c) Revenue per member has increased, although the profit per member has not increased in proportion.
 - (d) CBSPC has been profitable throughout the period and has been paying out these profits as dividends, except for 2005 in which they were retained. The retention of the dividends almost doubled CBSPC's net assets.
- 3.6 CBSPC's profit before taxation in 2005 was some £2.4 million on turnover of £7.1 million, but CBS told us that the adjusted profits for 2005 were closer to £1 million after allowing for charges to its underwriting vehicle, and after allowing for non-recurring income in respect of winding-up fees. We have been told by CBS and Hampden that the trading position deteriorated in 2006. CBSPC's projections, used internally for the sale decision but described by CBSPC as a 'best guess', were for a further deterioration in profitability in 2007 and a loss in the year ending 31 December 2008, as shown in Appendix I.

CBSIH

- 3.7 We have been told that CBSIH, CBSPC's parent, was in financial difficulties. In its 2005 accounts, its Chairman stated that it had 'insufficient capital to justify a continuing involvement in underwriting' and that CBSIH was planning a disposal process and a run-off of the group's underwriting activities. Its results are also set out in Appendix I.

- 3.8 CBSIH made losses in each of the years 2001 to 2004, and a profit in 2005. Its losses were primarily driven by its insurance operations: it made insurance losses in 2001 to 2003, and profits in 2004 and 2005. These results reflect underwriting profits and losses in the periods three years earlier.
- 3.9 CBSIH told us that the impact on it of the hurricanes in the 2005 year of account loss was still uncertain but the year was expected to be loss-making. In addition to the uncertainty of the 2005 underwriting year, the group is exposed to any improvement or deterioration in respect of 11 syndicate years of account in run-off relating to the 2000 and 2001 years of account. These have been kept open by their managing agents because of uncertainty over the quantum of losses in respect of 11 September 2001 and US casualty business.

CBS's rationale for the deal

- 3.10 CBS told us that CBSPC was a wasting asset and would have been sold or closed soon. But the timing of the sale was driven by the financial position of CBS: CBSIH had just been approached by its banks when Hampden made the offer. CBSIH was under severe pressure from its banks to liquidate assets, of which CBSPC was the one most readily available for sale.
- 3.11 CBSPC's revenues, profits and thus value had been predicted to fall steadily from 2005, and, as apparent from Appendix I, it has lost over 25 per cent of its external clients since 2003. CBS told us that costs taken out of CBSPC in 2004/05 had preserved its profitability but CBS did not believe that further cost savings could be achieved without compromising service levels to the extent that a spiral of declining service and client losses would be initiated. HAL had also renewed efforts to solicit CBSPC staff with significant personal followings among individual Lloyd's members. This was likely to continue to damage CBSPC's business and could ultimately have led to the collapse of CBSPC.
- 3.12 CBS told us that, [REDACTED], it had been in breach of its financial covenants under the letter of credit facility with its banks. As a result, the banks looked to the remainder of CBS's assets as security for their commitment. [REDACTED] The only readily saleable asset at that point was CBSPC.
- 3.13 CBS told us that it believed the individual members would be better off at the enlarged HAL as the combined entity would be better placed to survive longer and provide services given that the business depended on scale. It also believed that the sale would be in the best interests of its staff; one of the reasons it was structured as a business disposal as opposed to a share sale was the interests of its employees, to whom the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and continuity of employment would apply as a result.

Hampden's rationale for the deal

- 3.14 Hampden told us that it invested in sunset businesses, often insurance companies in run-off, and tried to turn them round. Hampden believed that the market still had growth potential, and the attraction to it of this deal was that it:
- gave the Hampden members' agents business more capacity and revenue at 'a relatively cheap price';
 - added scale for marketing activities;

- would provide research scale for the combined entity; and
 - would provide the benefit of scale in providing capital to managing agents, who often want a minimum amount of capital before they are willing to add unaligned capital to their syndicate.
- 3.15 CBS said that HAL could have taken business off CBSPC piecemeal by poaching the names' executives one at a time, but it believed that this may have resulted in greater leakage compared with a one-off transaction, ie that many of the individual members and their names' executives might well have left the market entirely or moved to Argenta.

4. Issues

- 4.1 During the course of the inquiry, we received a wide range of views from a number of individual members and their representative bodies, from members' agents and other advisers to members, from managing agents, and from the FSA and Lloyd's. Of the 29 letters received from individuals or small groups of individual members, eight raised objections to the merger (including one representing six members in the USA and one a number of other Lloyd's members); 17 had no objections; four did not specifically support or oppose the merger. The two main representative bodies—the Association of Lloyd's Members (ALM) and the High Premium Group (HPG)—also raised some concerns.
- 4.2 The main concerns of some individual members were that the reduction in the number of members' agents from three to two could result in higher fees and/or poorer service. However, it was clear that some other individual members were unconcerned by this, but believed that the merger would benefit them, in particular since it would result in there being two stronger members' agents who would be better able to negotiate on their behalf with managing agents of syndicates: benefits also put to us by the ALM and the HPG.
- 4.3 The converse was, however, the main concern of eight managing agents from whom we received representations against the merger, although two of these objected mainly to Lloyd's agency byelaws and lack of appeal procedures against members' agents. The concerns about the effects of the merger expressed by the other managing agents extended to its effects on the efficiency of the Lloyd's market and the capacity auctions: issues we discuss in paragraphs 4.78 to 4.84 and Appendix H.
- 4.4 We commissioned Harris Interactive to survey about 1,700 members,⁵ of which some 800 responded. The results of that survey have been placed on our website, and are referred to below. As we note in paragraph 4.51, the responses we received from most of the members suggested that there would not be any reduction in competition following the merger.

⁵About 500 individual members were not sent a questionnaire, in particular:

- individuals who were not named, ie members who underwrite through vehicles such as NameCos and SLPs and for whom we did not have their name or personal contact details. Individuals involved in NameCos etc for whom we had personal contact details were sent the questionnaire;
- those members who are managers or other staff members of one of the members' agents were explicitly omitted; and
- individuals for whom the members' agents had no contact details (a small proportion).

There are no particular reasons to expect that the group of members that have not been sent the questionnaire is in any way untypical of members' agents customers.

Theories of harm

- 4.5 We considered a number of issues relating to possible means by which the merger could result in an SLC with consequent adverse effects on members—the theories of harm—namely that:
- (a) The merger may lead to increased prices or reduced service quality for members as a result of an SLC.
 - (b) This could come about as a result of the reduction in the number of competitors from three to two. In such a case, if the merged company (HAL) were able to exploit its increased market power independently of its remaining competitor (Argenta), without the need to second-guess that competitor's strategies, the merger may give rise to a non-coordinated (unilateral) effect.
 - (c) In order to reach a finding of an SLC on the basis of non-coordinated effects, a number of factors would need to hold. Specifically, we would need to find the following:
 - (i) *No close substitutes for members' agency services.* The existence of close substitutes would potentially provide a competitive constraint to HAL following the merger. An SLC finding would therefore require a finding of no close substitutes.
 - (ii) *Competition before the merger.* We would need to establish that there was sufficient competition between HAL and CBSPC (or in the market more generally) before the merger for a loss of such competition to be regarded as an SLC.
 - (iii) *Lack of post-merger competition.* We would need to expect that competition from Argenta would be insufficient to compensate for any loss of competition that would otherwise be provided by CBSPC under the counterfactual.
 - (iv) *Lack of other constraints.* We would also need to expect that other constraints (eg threat of entry, countervailing buyer power of members, impact of regulation) would be insufficient to compensate for any loss of competition that would otherwise be provided by CBSPC under the counterfactual.
 - (v) *Competition under the counterfactual.* In the absence of the merger (that is, under the counterfactual where there is an independent CBSPC operating in the market) we would need to form an expectation that CBSPC would have continued to provide a competitive constraint to HAL (and vice versa) or that the previous degree of competition in the market would otherwise have been sustained.
- 4.6 It is also necessary to consider whether or not the merger may give rise to concerns in relation to coordinated effects, following a reduction in the number of competitors from three to two. Coordinated effects may arise in concentrated markets where the firms within the market recognize their interdependence and take account of competitors' strategies when making their own business decisions. Specifically, coordinated effects may arise where a merger increases firms' interdependence, or makes coordination within the market either more likely, or easier and more sustainable.
- 4.7 We therefore now consider:

- (a) the definition of the relevant market affected by the merger;
- (b) the structure of that market before and after the merger;
- (c) the extent of competition within that market before the merger;
- (d) the extent of competition within the market following the merger, including possible unilateral or coordinated effects;
- (e) the other constraints on HAL following the merger, including buyer power, the scope for entry and the effects of regulation by Lloyd's and the FSA; and
- (f) the effect of the change in the structure of the market on relations between members' agents and managing agents of syndicates.

4.8 In our initial assessment of the competitive effects of the merger as set out in paragraph 4.7(b) to (f), we have assumed that, without the merger, CBSPC would have been run as an independent company competing with HAL and Argenta: we have therefore compared competition before and after the merger. But we subsequently discuss whether this is an appropriate counterfactual: ie whether there is sufficient ground to expect that the market structure before the merger could have been sustained if the merger had not taken place (see paragraphs 5.1 to 5.8).

Definition of the relevant market

- 4.9 As discussed in the CC's merger guidelines,⁶ one method of identifying the relevant market is to consider whether a hypothetical supplier of the reference product/service could profitably implement a small but significant non-transitory increase in price (SSNIP). If any such small price increase were profitable and could be sustained, the product/service could be considered to be capable of being monopolized and would therefore be considered a distinct market.
- 4.10 Hampden argued for a wider market than that in the terms of reference, to include the provision of advice and support to individual and corporate entities which supply capital to the Lloyd's market.
- 4.11 In Appendix E we consider whether members' agency services can be regarded as a relevant economic market; or whether the relevant economic market is wider than members' agency services.
- 4.12 We considered first whether the possibility of members using other providers of financial advice or other services relating to Lloyd's business might constrain the price and service quality of members' agents. HAL acknowledged that 90 per cent of its business was looking after individual members, with whom we are primarily concerned. Lloyd's itself, through Lloyd's Members' Agency Services Limited (LMAS), offers services, but only to inactive members; ie members who have ceased underwriting but who must remain members of Lloyd's until all their liabilities have been calculated and reinsured to close. The FSA told us that there was only one other company (The Newton Follis Partnership Limited (Newton Follis)) registered with it as a 'members' adviser' although there are some other sources of financial analysis, including the trade associations, available for members. But, as we noted in paragraph 2.5, members are required to use members' agency services, unless they have a dispensation from the Council, and Lloyd's told us that no dispensation would

⁶CC2, *Merger References: Competition Commission Guidelines*, June 2003, paragraph 2.4.

be granted for individual unlimited liability members. Even in the case of NameCos and other limited liability vehicles, there has been little or no application for such dispensation to date. Other sources of advice can only, therefore, be complementary to, rather than a substitute for, the services provided to active individual Lloyd's members by members' agents.

- 4.13 We also considered whether the possibility of members ceasing to participate in Lloyd's (to take up other forms of investment) will constrain the price and service quality of members' agents. Most parties from whom we heard, however, argued that there were unique benefits of being a Lloyd's member. First, members have the ability personally to participate in the insurance industry and make decisions about syndicate selection. Secondly, there are certain tax benefits from underwriting at Lloyd's, the profits and losses from which are treated as trading profits and losses for tax purposes; hence trading losses can be offset against other sources of income. There are also inheritance tax advantages from trading at Lloyd's. Thirdly, underwriting at Lloyd's allows members to make double use of their assets: underwriting at Lloyd's can be capitalized with a bank guarantee secured on part of a member's existing assets, which generates an income stream while the member also benefits from insurance returns, assuming underwriting is profitable.
- 4.14 Members' agent fees are only a minority (according to illustrative figures provided by Hampden, as little as 10 to 15 per cent)⁷ of the (recurring) costs of being a Lloyd's member, the other charges being those of Lloyd's and (the largest element) of managing agents. This further reduces the sensitivity of members' participation in Lloyd's, and hence of their use of members' agents, to the fees charged by members' agents.
- 4.15 Our survey suggested that a 10 per cent price rise would lead to 6 per cent of members stopping underwriting at Lloyd's and (with less effect on members' agents revenues) 4 per cent reducing their capacity (though a further 8 per cent would consider doing so.) Such figures suggest that a 10 per cent price rise of a hypothetical monopoly supplier of all members' agency services would result in a reduction in demand of less than 10 per cent, ie revenue would increase. Hence, it would be profitable (even before taking account of any reductions in cost following any such reductions in the volume of business) for a hypothetical monopoly supplier to increase prices, thus satisfying the SSNIP test. However, we acknowledge that actual responses to price rises sometimes differ from customers' views as to how they would respond to hypothetical price rises.
- 4.16 We do not therefore regard such survey evidence as conclusive, but have considered it along with the other evidence we have seen, in particular:
- (a) the requirement that members use members' agency services (see paragraph 4.12);
 - (b) the specific features of underwriting at Lloyd's that make individual members perceive it as more attractive than other investment options (see paragraph 4.13);
 - (c) the fact that members' agency charges are only part of the total cost of underwriting at Lloyd's (see paragraph 4.14); and

⁷This proportion does, however, depend on the amount of profit commission in any particular year—see paragraphs 4.30 and 4.31.

(d) the lengthy process required to stop underwriting (see paragraphs 26 to 28 of Appendix E).

In our view, the above factors confirm the evidence from the survey that the use of members' agency services is likely to be insensitive to modest price increases.

- 4.17 We also considered whether members' agency services should be seen in the wider context of all sources of funds used for underwriting at Lloyd's—ie those provided by corporate members for which members' agency services are generally not used, as well as those provided by individual members; or of wider insurance markets. The ALM, for example, raised the issue of whether any potential effects of the merger on supply of underwriting capacity to syndicates/managing agents should be considered in the much wider context of supply of all underwriting capacity to Lloyd's, or even of wider insurance markets. But, as noted in Appendix E, it is the members, not the members' agents, who supply capital to the Lloyd's market; the members' agents are intermediaries acting on behalf of members and providing services to those members. They cannot be considered as suppliers of capital to the Lloyd's market, and we do not need to consider the supply of capital in the context of market definition further. Nonetheless, it would still be open to us to consider the consequences, if any, of a merger in a narrow market on competition in any other such wider market, particularly given the various Lloyd's regulations we discuss below (see paragraph 4.78) that give influence to individual members on unaligned syndicates, and the effect of a merger of members' agencies on how that influence is exerted.
- 4.18 In our view, the factors set out in paragraph 4.16 and in Appendix E suggest that the relevant economic market should be the market for members' agency services to active individual members of Lloyd's.
- 4.19 We also discuss in Appendix E the geographic scope of the market. This could be considered to be the UK, since this is the area in which HAL and Argenta are located. It could also be considered to be wider since HAL and Argenta provide services to individual members in other countries. Given the narrow market definition set out in paragraph 4.18, ie the supply of members' agency services to active individual members of Lloyd's, the only provider that customers of the merged company could switch to is Argenta, irrespective of the geographic area in which members' agents operate. We would, however, expect the assessment of the competitive effects of the merger to be the same, whether the market is defined as the UK or more widely.

The structure of the market before and after the merger

- 4.20 The analysis of market shares can provide important indicators of the nature of competition within the relevant market, and the impact of a merger on that market. We have noted in paragraph 4.8 that, in this case, we will initially take the market situation immediately prior to the acquisition as representing what would have happened without the merger: ie that CBSPC would have continued as a third supplier of members' agency services, possibly under a different owner. The market for the provision of members' agency services to active individual Lloyd's members was therefore characterized by the market shares shown in Table 1.⁸

⁸It should be noted that the market shares shown in Table 1 do not include the provision of agency services to corporate members. However, this accounts for a relatively small proportion of HAL's business; and most corporate members do not use members' agents.

4.21 Market shares can be calculated either on the basis of the number of individuals represented, or the underwriting capacity that is provided by those individuals. The combined market share of HAL and CBSPC post-merger is higher by number of individuals than it is, on the figures in Table 1, by share of capacity; however, share of capacity is still estimated at 60 per cent of the market.

Market concentration

4.22 A possible way to measure the degree of concentration in a market is to calculate the Herfindahl-Hirschman Index (HHI).⁹ The level of HHI ranges from zero (ultra-fragmented) to 10,000 (pure monopoly). The OFT's guidelines categorize as 'highly concentrated' a market in which the HHI exceeds 1,800, and in such cases the OFT considers that a merger which increases the HHI by more than 50 may give rise to potential competition concerns. The CC's *Merger Guidelines* state that 'the Commission will have regard to the threshold levels set out above, but only as one factor in its wider assessment of competition'.¹⁰

4.23 On the basis of the market shares presented in Table 1, the relevant HHIs under the two different measures of market share would be as follows.

TABLE 2 **Market concentration: HHI indices**

	<i>HHI</i>
<i>By number of individual members</i>	
Pre-merger	3,380
Post-merger	5,546
Increment	2,166
<i>By underwriting capacity</i>	
Pre-merger	3,419
Post-merger	5,251
Increment	1,832

Source: CC analysis.

4.24 Under either measure, the market would be classified as highly concentrated even if the merger had not taken place. But the merger generates very significant increments to HHI under either measure of market share, denoting a substantial increase in market concentration in what would otherwise have still been a highly concentrated market.

Implications of market shares and concentration

4.25 Larger market shares can result in an enhanced ability and incentive for merging firms to exert market power, increasing prices through non-coordinated (or 'unilateral') effects. As shown in Table 1, following the merger, the combined HAL/CBSPC would have a market share of 60 or 67 per cent, compared with their market shares before the merger of 34 or 38 per cent and 26 or 28 per cent respectively. Larger market shares create an incentive for a merged firm to increase prices and accept a resulting loss of business, in circumstances where the merging firms would not have had a similar incentive had they continued as separate independent firms, and the loss of business following a price increase would be greater. The effect of the merger may be particularly important for customers of CBSPC, who had previously

⁹The HHI is calculated as the sum of the squared market shares (expressed as an index on a scale from 0 to 10,000) of all players in the market.

¹⁰CC2, paragraph 3.10.

chosen CBSPC as their members' agent, but must now choose between HAL and Argenta, thereby ending up with what was their 'second-best' option before the merger.¹¹

- 4.26 But market shares and market concentration represent only one aspect of the evidence that the CC draws upon when assessing the potential for a merger to give rise to non-coordinated effects within a market. Other evidence relating to the extent of competition has been received by the CC, and is summarized in the following paragraphs.

The extent of competition before the merger

- 4.27 In our survey we asked members for their views on the strength of competition before the merger, on a scale of 1 (non-existent) to 5 (intense). The results showed an average rating of 2.9 for price, 3.3 for service standards and 3.1 for negotiating performance. 22 per cent of respondents gave ratings of 4 or 5 for price competition, 31 per cent for service competition, and 23 per cent for negotiating performance.
- 4.28 The survey also suggested some variation in the perceived performance of the agents (including Argenta), in particular suggesting that members rated CBSPC as giving somewhat better value for money than HAL. We have also been told by some members that, in their view, CBSPC research was better than that of HAL. Although our survey provided some indication that the accuracy of information was perceived as somewhat higher for CBSPC members than HAL members, the perception for both companies was high.
- 4.29 One possible example of competition from the other evidence we saw is the significant variation in fee structure between HAL and CBSPC:
- (a) HAL has both a basic fee (plus a variable fee based on a member's overall premium limit of over £1 million), and a profit commission up to a maximum limit based on the profit received by a member. Fees may be negotiable under special circumstances and where a member's premium limit exceeds £1.5 million.
 - (b) In the mid-1990s, CBSPC abandoned profit commission to attract business. At the time of the merger, it therefore had only an annual fee calculated as a percentage of a member's overall premium limit (the percentage declining, the larger the overall premium limit), but subject to a minimum amount. Fees were negotiable for members with premium limits above £4 million and CBSPC retained the right to negotiate fees for other members. However, although CBS told us that the abandonment of profit commission was successful at the time in attracting some new members, many parties from whom we heard regarded this as a factor reducing CBSPC's ability to compete: it failed to benefit in the more profitable years, and was unable to sustain the necessary levels of research.
- 4.30 But such a difference in pricing structures is not necessarily conducive to competition. Whether the annual fee charged by CBSPC for any year, based only on a member's premium limit, will be greater or less than that charged by HAL, which depends in part on the expected value of the commission-based element, will only be apparent up to three years later when the final profits for an underwriting year are known. Members' choice between the two fee structures would therefore depend on

¹¹We noted, for example, from our survey that satisfaction with HAL's value for money was significantly lower for former CBS members than for established HAL members. Satisfaction was also somewhat lower with some other aspects of HAL's service for former CBS members than for established HAL members.

their expectation of the profitability of their underwriting, and whether they prefer to pay a more certain level of fees or are prepared to risk having to pay higher charges in more profitable years. Such a difference in pricing structure is therefore likely to have made it more difficult to choose between CBSPC and HAL on the basis of any differences in price levels, thereby reducing the extent to which the prices of CBSPC constrained those of HAL or vice versa.

- 4.31 The extent to which the different fee structures have resulted in differences in the level of fees is also therefore uncertain, depending on the eventual profitability of the underwriting year. HAL estimated that the current charging structure would result in only a negligible difference between the total fees charged by HAL and CBSPC if applied to an average of underwriting returns, positive and negative, since 1996 (see Appendix F). But even those comparisons depend on the period taken: if the underwriting returns from 1993 to 1996 were also included, HAL's fees would be higher than those of CBSPC; but over an even longer period (39 years) they would be similar.
- 4.32 HAL told us that in setting its charges it did not take into account those of other agents. It said that its fixed fee was set so as to cover its costs; the profit commission to generate its own profit. Such an approach to pricing also suggests to us that there has been negligible competitive constraint on its pricing structure. Hampden also told us that the level of HAL's fees had been unchanged for several years, whereas CBSPC had increased its fees six times over the last ten years, also suggesting little apparent competitive constraint.
- 4.33 Fees also appear to vary by customer, with some members able to negotiate lower agency fees for themselves. This evidence suggests that members' agents are able to practise price differentiation in this market, charging different prices to some members without putting downward pressure on prices to all members.¹² But only a minority of members negotiate prices; CBSPC negotiated with less than 5 per cent of its members; HAL with 30 per cent. Only 18 per cent of respondents to our survey said that fees were negotiable, 12 per cent that they actively negotiated, and 10 per cent that they were in a strong negotiating position. But a significantly higher proportion of members with capacity of over £1 million said that they negotiated fees, and were in a strong negotiating position.
- 4.34 We also noted in paragraph 4.14 that members' agent fees are only a minority of the (recurring) cost of being a Lloyd's member. Partly as a result, there is (on balance) little evidence of members being particularly price sensitive. Many from whom we heard said that they gave greater weight to the quality of advice given and relationships with their names' executives. The ALM, for example, told us that the value of the advice given by members' agents was shown by the 3 per cent greater return on capacity (7.5 per cent of capital) earned by the average individual member than by the average corporate member.
- 4.35 As noted in paragraph 2.6, much of the evidence we received, including that from the ALM and the HPG, suggested that the relationship between a member and his or her names' executive is extremely important. We saw evidence that if a names' executive moves to a different agency, the majority of that executive's members will either follow, or else cease underwriting altogether. A recent example of such competition between members' agents is the recruitment by HAL of [redacted] names' executives from CBS, which led to the recruitment of [redacted] members. Further evidence of this may be the fact that almost all CBSPC members novated to HAL, following their names'

¹²Some members from whom we heard expressed concern about the charging of unpublished prices; but to charge only on the basis of published prices would not necessarily be more competitive.

executives, the main exceptions being where members had decided to cease underwriting at Lloyd's.¹³

- 4.36 It was also, however, suggested to us that, typically, there had been relatively limited competition to attract names' executives. The evidence we saw suggested that few names' executives had transferred between members' agents, the recent moves from CBSPC to HAL being unusual (except following the acquisition of one members' agent by another). One reason put forward for this was their remuneration structure: to transfer to another members' agent could result in loss of profit commission on previous years' underwriting performance, for which compensation would be necessary. Competition to attract names' executives is, moreover, a form of competition less directly beneficial to members, who may have to switch to another members' agent to retain their current relationship with their names' executive, rather than, for example, necessarily to benefit from lower fees or better service.
- 4.37 Most of the evidence we have seen also suggests that there has generally been very little switching by members between members' agents. Other than as a result of acquisition, less than 30 members switched agent between 2004 and 2005 (which seems to have been typical of previous years), although about 120 (still only about 5 per cent of individual members) switched between 2005 and 2006, including, as already noted, [redacted] from CBSPC to HAL following the move of the [redacted] names' executives from CBSPC to HAL. The survey also suggests that only 16 per cent of members sought information about other agents' fees in the last year, and that a 10 per cent increase in fees would lead to only 6 per cent of members switching to another agent. Nevertheless, 43 per cent of respondents to the survey said that they had switched members' agents at some time in the past, only one-third of whom switched as a result of takeovers, an agent closing, or an agent ceasing to offer a service. The main reason given for switching between agents was poor service, with no mention of price.
- 4.38 As well as the limited degree of switching by existing members, there are also very few new members for agents to compete for. There is, therefore, very little incentive on members' agents to compete; a price reduction, for example, would reduce revenue, while attracting very few new members.
- 4.39 As well as the limited extent of switching, the pattern of switching also suggests little competition not only on price but also on service before the merger. We noted in paragraph 4.28 the somewhat higher perception of CBSPC than of HAL by their respective members, particularly on value for money (although the perception of most aspects of service was high). But, before the merger, significantly more members switched from CBSPC to HAL than vice versa, contrary to what might be expected were there effective competition on price or service.
- 4.40 Competition on the services offered by members' agents is also likely to be constrained by the regulatory framework of the industry, the services being fully specified by the agency agreement byelaw. Lloyd's told us that it would be open to a members' agent to seek to vary those terms: but none had yet done so.
- 4.41 On balance, therefore, we have found competition between members' agents, including that between HAL and CBSPC, before the merger to be weak, particularly on price; what competition existed appears to have focused more on service quality,

¹³Responses to our survey suggested that, if their primary contact moved between agents, 28 per cent of members would move with them, 39 per cent were unsure, and 31 per cent stated they would not move (3 per cent did not answer). But most of the other evidence we saw suggested that, in practice, a greater proportion of members would change between agents if their names' executives did so.

but even that appears to have been limited. The characteristics of the market are themselves unlikely to be conducive to strong competition, in particular:

- (a) the uncertainty as to the relative level of fees, given their dependence on underwriting profitability (see paragraph 4.30);
- (b) the importance of members' relationships with their names' executives, and of the service and advice given by members' agents (see paragraphs 4.34 and 4.35);
- (c) the low propensity of members to switch, and negligible number of new members (see paragraphs 4.37 to 4.39); and
- (d) the regulatory framework of the industry, including the specification of the services to be provided (see paragraph 4.40).

4.42 Competitive constraints before the merger would therefore seem likely to reflect, not competition between members' agents, but broader factors relating to longer-term strategic objectives not necessarily relevant to our consideration of market definition above. For example, members' agents may prefer to take no steps that could cause members to reconsider their participation at Lloyd's as this could damage the position of individual members and, in turn, of their members' agents in the Lloyd's market in the longer term, by putting at risk the amount of capital invested by individual members at Lloyd's, the attraction of such capital to managing agents, and the number of syndicates available to such capital.

Coordinated effects

4.43 Coordinated effects may arise in concentrated markets where the firms within the market recognize their interdependence and take account of competitors' strategies when making their own business decisions. Specifically, coordinated effects may arise where a merger increases firms' interdependence, or makes coordination within the market either more likely, or easier and more sustainable.

4.44 The CC guidelines on merger references¹⁴ identify three conditions that are generally regarded as facilitating coordinated effects. The three conditions are:

- (a) *Awareness of competitor behaviour.* The market must be sufficiently concentrated for firms to be aware of the behaviour of their competitors and for any significant deviation from the prevailing behaviour by a firm to be observed by other firms in the market.
- (b) *Incentives to conform to the prevailing behaviour.* It must be costly for firms to deviate from the prevailing behaviour, such that it is in their interests to conform.
- (c) *Weak competitive constraints.* Competitive constraints in the affected market(s) must be relatively weak, so that the actions of non-coordinating firms, potential competitors and customers do not jeopardize the expected outcome of coordination.

4.45 Prior to the merger, there were a number of characteristics of the members' agency services market which we would expect to be consistent with a market in which there were coordinated effects:

¹⁴CC2, paragraphs 3.37 to 3.39.

- (a) The market was highly concentrated.
 - (b) Prices were transparent to the extent that price lists were published by Lloyd's.
 - (c) There is limited potential for entry, which may otherwise prevent a coordinated outcome from being sustainable.
 - (d) There is limited buyer power, which may otherwise prevent a coordinated outcome from being sustainable.
 - (e) Any deviation from a coordinated outcome would be easily observed by participants in the market, since any new members that a company recruited would generally have been enticed away from one of the other two agents, as the potential for new members to enter this market is limited.
- 4.46 However, there were also a number of factors prior to the merger that would reduce our expectation that coordinated effects may arise in the market:
- (a) Some prices are individually negotiated, and the outcome of such negotiations is not transparent.
 - (b) Non-price factors, namely the standard of advice, relationship with names' executives and quality of service, are more important to members than price competition, and less transparent than price and more difficult to coordinate.
 - (c) There are limited opportunities for members to switch agents (this can only be done at one time of the year), and members do not appear to be particularly sensitive to changes in price, giving no incentive to coordinate.
 - (d) Members' agents do not appear able to capture market share from one another easily. This would limit any potential for punishing competitors following deviation from any coordinated outcome; but also impede the incentive to coordinate.
 - (e) The market has contracted in recent years, and despite some parties arguing that it has stabilized recently, there may not be sufficient incentives for companies to attempt to achieve a coordinated outcome in such a market.
- 4.47 We conclude that there is no evidence the market exhibited coordinated effects prior to the merger.

The extent of competition following the merger

- 4.48 We noted in paragraph 4.1 the submissions we received that the merger may result in higher prices or poorer quality of service. This included concern from some individual members on negotiated terms which, they suggested, could be particularly susceptible to price increases, although the responses to our survey did not suggest that members with larger underwriting capacity, who are most likely to negotiate prices, were more concerned than other members.
- 4.49 Following a merger, the potential for customers to switch to other suppliers easily and at low cost might be expected to constrain a merged company's pricing behaviour. In this case, therefore, we need in particular to consider the potential for members to switch to Argenta as an alternative to HAL, and the competitive constraint that Argenta may therefore represent.

- 4.50 Hampden argued, on the basis of the results of our market survey, that a price rise would not be profitable. But Hampden's assessment included, as likely to move their business, members who said that they would only consider doing so, or complain or seek justification for any fee increases; we do not accept that such a response is likely to constrain any fee increase unless members were then likely to move. Nonetheless, we acknowledge that our survey results imply that, for a 10 per cent price rise, as well as the 10 per cent of members who would stop underwriting or reduce capacity, a further 6 per cent would switch to another agent, suggesting such a price rise may not be profitable because of the effect of switching both within and out of the market we have defined. But we have noted above the uncertainties associated with responses to hypothetical questions: in particular, the degree of switching in response to price rises can be exaggerated. Moreover, as we have discussed in paragraph 4.41, we are doubtful whether competition was effective even before the merger. We now therefore consider whether competition has been substantially lessened following the merger taking into account the full range of evidence we received.
- 4.51 As part of our survey we asked members about their perception of the strength of competition after as well as before the merger. As evident in the results on our website, the results implied that about 60 per cent of respondents did not believe that price competition was affected by the merger; and about 70 per cent regarded competition on service standards and negotiating performance as unaffected. Nonetheless, the results as a whole suggest some perception among Lloyd's members of competition becoming somewhat weaker as a result of the merger: on the scale of 1 (non-existent) to 5 (intense), the ratings on competition on price deteriorated from 2.9 to 2.3; on service from 3.3 to 2.8; and on negotiating performance from 3.1 to 2.7. The percentage rating price competition as strong or intense (4 or 5) would fall from 22 to 8 per cent, service competition 31 to 18 per cent; and negotiating performance 23 to 16 per cent.
- 4.52 These perceptions of the effects of the merger, and the comments we received from some individual members, are likely to reflect concern about the future effects of the merger, but not necessarily any increase in price or reduction in service to date. HAL told us that no fee increase could be introduced at least until 2008, and had agreed to consult the ALM before making any changes to its fees. We received some representations that HAL had already reduced the scale of the combined research team following the merger, but HAL told us that this was not the case: a small number of CBSPC staff, however, had chosen not to join HAL. On the other hand, the ALM told us that it believed that the quality of HAL's research had improved as a result of the merger.
- 4.53 The evidence from the survey in paragraph 4.51 suggests that members regard competition as slightly reduced, but by no means eliminated, by the merger; ie that they still regard the remaining agent, Argenta, as offering competition, albeit somewhat weaker than that provided by Argenta and CBSPC together before the merger. Hampden stated that it viewed Argenta as a competitor to HAL and believed that competition between the two companies would increase in future. Although most of the evidence received suggests that Argenta, following its acquisition of Anton, would remain an effective presence in the market, we considered a number of possible concerns, which may arise from HAL's high market share following the merger, that Argenta's ability to compete may be limited.
- 4.54 HAL's ability to price-differentiate could allow it to reduce fees on a selective basis, to prevent the most profitable members from switching to Argenta or to attract members from Argenta. But switching would appear unlikely to occur on a significant scale, given the greater importance attached by members to the service offered by their

agents, particularly the quality of advice given, than to price, and, in consequence, the apparent reluctance of members to switch in response to any such lower charges. Moreover, Argenta has the same potential to charge differentiated prices, and hence could offer lower fees to such members in order to entice them away from HAL, without needing to offer a generally lower price to all of its members.

- 4.55 In theory, Argenta could decide to accept HAL's new market position, and, rather than providing a competitive constraint on HAL, could instead decide to take advantage of any price increases made by HAL by making similar price increases itself. (This type of parallel behaviour is also relevant to the discussion of coordinated effects.) But given the apparent lack of price competition or price sensitivity of members even before the merger, any such effect of the merger on price competition is likely to be limited.
- 4.56 We considered whether, to the extent HAL benefits from its greater scale, eg in its research activities or its ability to negotiate with managing agents, Argenta could find it more difficult to compete. HAL would, for example, appear to be in a stronger negotiating position with managing agents than Argenta following the merger—and could appear to offer a more advantageous prospect for members to be part of an agency with such greater negotiating strength. But Argenta itself is in a strong position in a number of syndicates, and it is difficult to regard its position as materially weaker as a result of the merger. Moreover, since managing agents have to offer similar terms to all members participating in their syndicates, Argenta members would themselves benefit from any improved terms HAL is able to achieve following the merger.
- 4.57 There was also a clear view from the ALM and most of the individual members from whom we heard that Argenta, following its acquisition of Anton, could offer effective competition in the market.
- 4.58 We referred in paragraphs 4.5(b) and 4.25 to the possible unilateral effects resulting from an increase in concentration in a market and in paragraph 4.6 to possible coordinated effects. From the evidence summarized in paragraphs 4.48 to 4.57, the weak competition prevailing before the merger has, in our view, become only slightly weaker following the merger; we have seen no reason to believe that there is any SLC following the merger that would give rise to unilateral effects. Nor, despite the reduction in number of members' agents from three to two, does it appear, given the factors set out in paragraph 4.46 which would continue to apply, that the competitive conditions of the market are sufficiently different following the acquisition to make coordinated effects more likely in the future.
- 4.59 As noted in paragraph 4.2, there was also a strong view from many of the individual members from whom we heard that the merger would on balance benefit them by enhancing HAL's position. The main benefits they saw were in negotiating with managing agents; in research; and in promoting Lloyd's to new members, in particular as LLPs. On this latter point, attraction of new members was seen as a means to maintain, or even increase the amount of unaligned capacity in the Lloyd's market and to encourage the establishment of new syndicates open to unaligned members. Such benefits were also seen as to some extent arising following Argenta's acquisition of Anton; several members said to us that two strong members' agents were preferable to three weak agents. Such benefits could be seen as constituting a significant aspect of the service offered by members' agents to their members, and of competition in the market; but would have been relevant primarily in any consideration of remedies if we had identified an SLC.

Other constraints on HAL following the merger

4.60 Although we have not seen any evidence to suggest any SLC following the merger, we have also considered other possible constraints on HAL following the merger; namely, buyer power, the threat of entry, and supervision of the market.

Buyer power

4.61 We considered whether HAL's members have sufficient buyer power to offset any reduction in competition resulting from the merger, through exploiting any ability they have to negotiate lower prices with HAL.

4.62 The CC's guidelines state that:

Factors that will affect the ability of buyers to constrain suppliers include:

- (a) the buyers' ability to find alternative suppliers in the case of a price rise;
- (b) the ease with which buyers can switch supplier;
- (c) the extent to which buyers possess a credible threat of setting up their own supply arrangements;
- (d) the extent to which buyers can credibly threaten to stop purchasing other products sourced from the supplier; and
- (e) the extent to which buyers can impose costs on suppliers (for instance by delaying purchases).¹⁵

4.63 In this case, buyer power, except for a small minority of high-capacity investors, is likely to be limited after the merger, because of the following factors:

- (a) There is a lack of alternative products that members can purchase instead of members' agency services.
- (b) Following the merger, there will be only one alternative supplier (Argenta) of members' agency services to active individual members of Lloyd's.
- (c) Members cannot credibly threaten to self-supply, because of the requirement of the Lloyd's byelaws that all members have a members' agent.
- (d) Switching between suppliers can only be performed at one point during the year (that is, when arranging underwriting activities in September before the start of the next underwriting year). Members are also unlikely to withdraw from the market in response to small increments in charges.
- (e) Only a minority of individual members currently negotiate prices with their agents; CBSPC negotiated with less than 5 per cent of its members; HAL with about 30 per cent of its members. We noted in paragraph 4.33 that only 18 per cent of respondents to the survey said that their agents' fees were negotiable. In addition, only 12 per cent said that they actively negotiated, and just 10 per cent said that they felt they were in a strong negotiating position.

¹⁵CC2, paragraph 3.59.

- 4.64 Individual members are nonetheless a particularly well-informed group of customers, well organized and with highly competent representative bodies, with influence on the Council, and in a position to object to any price increases. But with only two agents from which to choose, on balance we consider it unlikely that the buying power of individual members would be sufficient to prevent any reduction in competition following the merger.

The threat of entry

- 4.65 We discuss the potential for entry and expansion in Appendix G. Based on the analysis in Appendix G, it seems unlikely that there is significant potential for entry or expansion to prevent any potential adverse effects in the supply of members' agency services resulting from the merger. The main reason for this is the declining number of members, which increases the risk to potential entrants and makes it difficult to achieve the minimum efficient scale. We noted Lloyd's statement in its October 2006¹⁶ review of the annual venture that the general trend in capacity provided by unaligned capacity was downward, and that the share of unaligned capital would continue to decline unless there were improvements to the way in which it participates. Those potential entrants with the expertise to enter the market would be particularly aware of the decline in the market and be deterred by the risks of competing in it. The fact that there has been no entry in (at least) the last five years and that there are no indications of planned entry also suggests that entry is unlikely in the near future. Any expansion by Argenta could also prove difficult because of customer loyalty. Nor are there any close substitutes for members' agency services, particularly given the requirement that all members operate through a members' agent.
- 4.66 Some parties from whom we heard have argued that demand for members' agency services could recover if new members started underwriting at Lloyd's (through limited liability vehicles such as NameCos, SLPs, and LLPs), and which could in turn encourage entry by new members' agents. However, future demand for members' agency services is at best uncertain and thus still poses a significant risk for potential entrants or incumbents seeking to expand. But, even if demand picked up, there may, as discussed in Appendix G, still be other barriers to entry, limiting the potential for entry and expansion, including sunk investments, scarcity of individuals with the necessary skills and expertise, and, possibly, regulatory requirements (FSA authorization and Lloyd's approval), appropriate though they may be.
- 4.67 On the impact of regulatory requirements, Lloyd's asserted strongly that the requirement to obtain the Council's permission to act as a members' agent and the criteria used to determine whether permission should be granted were entirely appropriate, necessary and proportionate and did not constitute inappropriate barriers to entry; that no application for permission had been declined; and that there was no evidence to suggest that the criteria had dissuaded any entity from applying for permission to act as a members' agent. Lloyd's told us that it would welcome applications, and has stated that it would take a prudent but flexible approach to its criteria, including considering waiving fees and charges. We noted, however, in paragraph 4.40 that competition on services offered by members' agents was likely to be constrained by the specification under the Agency Agreements byelaw of the services to be offered by members' agents.
- 4.68 A number of individual members from whom we heard, the ALM and the HPG, and Lloyd's itself, also drew attention to the possibility of LMAS offering execution-only

¹⁶*The Annual Venture: A review*, October 2006.

services to active members, with members being allowed to use sources of advice other than members' agents. In particular, the ALM raised the possibility of its being able to act as a members' agent, in association with LMAS, should there be any future increases in fees following the merger. The current requirement to offer both advice and administrative services to members would prevent entry by any firms intending to offer only advisory services.

- 4.69 The members' agency agreement is a matter for Lloyd's. It would be open for Lloyd's to restructure the agreement, with the possibility of separating the functions of administration and advice, if it felt that would be in the best interests of members; similarly with the possible extension of the services offered by LMAS to active members, perhaps also requiring some restructuring of LMAS.
- 4.70 Hampden drew our attention to other changes being considered in the Lloyd's market, providing easier access for individuals to invest in syndicates, which it referred to as 'AgencyLite'. The October 2006 report by Lloyd's on the annual venture (see paragraph 4.65) concluded that ways needed to be found for unaligned capital to become more attractive to a wide group of managing agents, including more flexible agency agreements with modification of the current fiduciary duties on managing agents and security of tenure of members. However, others stressed the uncertainty as to the effects of such developments. Lloyd's itself said that such developments would not remove the need for a members' agent or change the basic agency structure at Lloyd's.
- 4.71 We would not therefore regard the prospects for entry as sufficient to prevent any reduction in competition following the merger.

Supervision by Lloyd's

- 4.72 The nature of regulation in the market is discussed in Appendix B. In analysing the competitive effects of the merger, we need to consider whether current regulations would be sufficient to constrain any potential adverse effects of the merger on price or quality or service.
- 4.73 Hampden said that Lloyd's had to approve any price changes that members' agents wish to make. But Lloyd's current role in relation to the charges of members' agents is mainly confined to the requirement on them to notify and publish list prices, from which individual members can seek to negotiate their own terms. It also has a role in approving the proposed termination of an existing members' agency agreement (for example, to be replaced by another agreement at a higher price). But Lloyd's does not carry out detailed assessment or approval of price changes and told us that it was unable within the constraints of competition law to restrain members' agents' fees and charges (as Hampden also acknowledged). Lloyd's recognized that there was a reduction in competition which could theoretically lead to reduced service levels or increased prices (although it suggested that there might be more price sensitivity following the merger, and that the merger might, at least in the short term, have made agents less likely to raise fees). The FSA told us that it was not an economic regulator, and did not seek to regulate prices for financial services (although if at any time it thought price had become a regulatory issue, for example if a firm was not treating customers fairly, it had powers to deal with it).
- 4.74 Lloyd's has a more direct role over specification of the agency services to be provided, and can act on any complaints received. This may allow it to prevent quality of service falling noticeably.

4.75 On balance, we conclude that the regulatory framework would also not be expected to provide a sufficient constraint to compensate for any reduction in competition arising as a result of the merger.

Assessment of the possible effects of the merger

4.76 In our view, on the basis of the analysis above:

- (a) The market was already highly concentrated prior to the merger, and following the merger the level of concentration has increased still further (see paragraph 4.24).
- (b) There is limited buyer power and little potential for new entry and there are no close substitutes for members' agency services, particularly given the requirement that all members operate through a members' agent (see paragraphs 4.63, 4.64 and 4.71).
- (c) The regulatory framework would not be expected to provide a constraint that would compensate for any loss of competition resulting from the merger (see paragraph 4.75).
- (d) However, notwithstanding that there was a difference in pricing structure between CBSPC and the other two members' agents, there does not appear to have been significant competition, particularly on price, prior to the merger. What competition existed appears to have focused more on service quality (see paragraph 4.41).
- (e) There has been very little customer switching (see paragraph 4.37).

4.77 The evidence we have seen suggests to us that: although CBSPC did exist as an alternative for members and a reference point for comparison with Argenta and HAL, competition before the merger was very limited; the weak competition prevailing before the merger has become only slightly weaker; and there is no reason to believe that there is any SLC, which would give rise to either unilateral or coordinated effects, following the merger (see paragraph 4.58). This initial analysis has also been undertaken on the basis of a comparison of competitive conditions before and after the merger, ie of the three former suppliers being reduced to two. We consider in paragraphs 5.1 to 5.8 whether there is sufficient reason to expect that the competitive conditions prevailing before the merger could have been expected to continue had the merger not occurred.

Relationship between members' agents and managing agents

4.78 As noted in Appendix H, of the 22 managing agents that operate the 29 syndicates that are open to unaligned capital, eight expressed concern to us that the merger could enhance HAL's negotiating position, and that of the members it advises, in dealing with syndicates. Particular concerns were that:

- (a) Members' agents would be more able effectively to influence a syndicate's behaviour, for example in changing fees or profit commission, by advising their members to discontinue on a syndicate.
- (b) Members' agents acting on behalf of members would have an increased ability to block certain syndicate transactions proposed by managing agents through various voting rights. The first concern was minority buyout applications to

Lloyd's Capacity Transfer Panel (CTP), which require the support of 90 per cent of the syndicate capacity and on which the CTP subsequently decides, taking into account the long-standing guidance that at least 50 per cent of the unaligned members must have accepted the managing agent's offer to acquire all of the capacity on the syndicate.¹⁷ The second was syndicate pre-emptions (more than 7.5 per cent syndicate growth) which require the support of 75 per cent of capacity. The third was syndicate mergers, on which the Council would take into account whether or not there was approval by at least 75 per cent of capacity. The fourth was agency circumstances procedures, which allow a managing agent to acquire business or transfer business away from an unaligned syndicate, and which require the approval of 50 per cent of unaligned capacity.

- (c) The reduction in the number of members' agents involving the loss of a source of independent advice might impact on capacity auctions and the efficiency of the Lloyd's market as a whole.

4.79 Some concern was also expressed to us about the voting power of unaligned members over positions in Lloyd's, including the Council, and the influence they have on any structural changes in the Lloyd's market. But these do not appear to give rise to any competition concerns and we do not consider them further.

4.80 As noted in Appendix H, it was in response to the concerns of managing agents set out in paragraph 4.78 that, following a review by the CTP, Lloyd's imposed additional requirements on both of the remaining members' agents following the merger and will conduct a further review at the start of 2007. Lloyd's told us that it had taken the action it considered appropriate, and that it was uniquely placed to take such action and keep such action under review balancing the interests of all constituencies in the Lloyd's market. The additional requirements on members' agents were to:

- (a) publish their conflicts of interest policy;
- (b) formulate and publish a code of practice and service standards for dealing with members and managing agents;
- (c) ensure that adequate resources are devoted to deal with syndicate transactions in accordance with service standards;
- (d) inform managing agents of the syndicate transactions where they exercise power of attorney on behalf of their members;
- (e) ensure that there is appropriate board level review and approval of all written advice to members in connection with any syndicate transaction which requires approval or acceptance of the members for whom the members' agent acts; and
- (f) ensure appropriate independent non-executive director oversight of contentious issues and any complaints from managing agents.

4.81 On the managing agents' concerns, Hampden argued that:

¹⁷A managing agent can make a minority buyout application to the CTP if it has made an offer to acquire all of the capacity on a syndicate and if it has received acceptances such that it and its connected companies have 90 per cent of the syndicate capacity. Upon receipt of the minority buyout application, the CTP then has a broad discretion as to whether to give consent, taking into account long-standing guidance that at least 50 per cent of the unaligned members must have accepted the managing agent's offer to acquire all of the capacity on the syndicate.

- (a) It would not be in its clients' interests for it to recommend withdrawal from a profitable syndicate. Moreover, while any increase in HAL's negotiating strength on behalf of its members would be a good thing, its negotiating strength would still be very limited. Increases in managing agents' fees were not settled by vote, but approved by Lloyd's, although HAL hoped that it would have the opportunity to make stronger representations where fee increases were unjustified.
- (b) HAL was able to exercise block-voting rights on syndicates only with the approval of its members. But the ability to block certain transactions was a healthy discipline on the market, particularly if the use of the capacity were poor, or if the managing agent were over-optimistic or seeking to dilute a member's share of a syndicate. There were few syndicates where HAL's share had risen to above the relevant thresholds as a result of the merger; the measures adopted by Lloyd's would also provide for the reporting of any unreasonable actions by members' agents.
- (c) There was no reason why the merger would have any effect on members' agents' ability to give independent advice, which took into account the potential risks and rewards that individual members wished to take on. But the majority of HAL's members underwrote on a bespoke basis, making their own decisions.

Assessment

- 4.82 The concerns raised reflect, as [redacted] and others have suggested to us, a natural tension between the interests of managing agents and those of private capital, as advised by their members' agents, particularly in maintaining the value of members' rights of tenure and the current range and diversity of syndicates available to them, and in ensuring adequate terms in the event of any dilution of their position. But our concern is solely with the effects of the merger on competition. It is wholly legitimate in our view for members' agents to act in the interests of their members, and they would be failing in their duty if they did otherwise. The interests of members' agents and their members coincide to a large extent, given the dependence of the members' agents on profit commission, which in turn depends on the underwriting profits of their members.
- 4.83 Based on our detailed assessment of these concerns set out in Appendix H, in our view:
- (a) Most of the concerns raised with us would also have applied to a number of syndicates even before the merger, and any effect of the merger would be relatively limited. For example, HAL accounted for more than 10 per cent of capacity, the threshold to prevent minority buyout applications, on 16 syndicates before the merger and CBSPC on 13 syndicates; after the merger, the combined business accounts for more than 10 per cent of capacity on only five additional syndicates.
 - (b) Members' agents can only advise their members; and members can only be expected to follow that advice if it is well founded and in their interests to do so.
 - (c) Members' agents are unlikely to advise, or threaten to advise or have the incentive to advise, their members to withdraw their capital from syndicates, except where it would be legitimate to advise members to withdraw from syndicates that are performing poorly. We have not received any indications that this would change following the merger.

- (d) It is possible that the merger strengthens HAL's bargaining position on behalf of those it represents in negotiations with managing agents regarding managing agents' fees, profit commission and proposed buyout prices. However, we have no evidence that this would have any adverse effect on competition in any relevant market.
- (e) HAL's ability to block certain syndicate transactions (specifically minority buyouts and syndicate pre-emptions) may potentially have increased somewhat because, after the merger, the combined entity represents a greater proportion of unaligned syndicate capacity. However, members can exercise autonomy and may not follow HAL's voting recommendations—particularly if HAL sought to block a syndicate transaction for reasons other than poor syndicate performance or failure to achieve fair value for its members.
- (f) Even were there to be any potentially increased illiquidity and volatility of the capacity auctions and a potential increase in conflicts of interest following the merger, these do not appear to pose significant concerns for competition in any relevant market; but we have also noted Lloyd's view that there may be insufficient liquidity of the auction process for reasons unrelated to the merger.
- (g) Lloyd's has itself taken a number of market regulation measures following the merger, and intends to carry out a further review in January 2007.

4.84 On the basis of our analysis summarized in paragraph 4.83, we do not therefore expect, even on our initial analysis of conditions before and after the merger, that the merger may be expected to give rise to any SLC in relationships between members' agents and managing agents of syndicates.

5. The counterfactual

5.1 We therefore conclude that the reduction in competition following the merger is not sufficient to be regarded as giving rise to an SLC. We have, however, also considered the counterfactual, ie whether it is reasonable to expect that CBSPC could have continued to operate, or the previous market structure otherwise been maintained, had the merger not occurred, and the implications of alternative counterfactuals to the merger.

5.2 As we note in Appendix I, at the time of the merger CBSPC was profitable and it cannot be regarded as a failing firm according to our guidelines.¹⁸ Hampden suggested that CBSPC did meet the failing firm test in the context of the Lloyd's market and the solvency requirements of Lloyd's, due in particular to the contingent liability on CBSPC under guarantees for associated companies. However, Lloyd's told us that it had no concern about CBSPC's ability to meet its solvency requirements at the time of the merger; CBSPC also told us that the bank guarantees were qualified to restrict the banks' ability to enforce them beyond a point that would cause CBSPC to breach its regulatory capital requirements.

5.3 However, there were financial pressures on CBS, given the position of its other group companies, to sell CBSPC, without which there was the prospect of administration. There was also little likelihood of sale in the timescales required to avoid administration other than to Argenta or HAL. Moreover, a quick sale was only likely to

¹⁸Paragraph 3.62 of CC2 states that for a firm to be considered a failing firm, the CC will need to be satisfied that the firm is unable to meet its financial obligations in the near future; and that the firm is unable to restructure itself successfully.

be to HAL since Argenta was not prepared at that stage to make a bid that was not conditional on the merger being cleared by the competition authorities.

- 5.4 Even though there seemed little prospect of sale to Argenta, we did consider whether this would have resulted in a more competitive outcome had the acquisition by HAL, for any reason, not occurred. Prior to the merger, HAL accounted for 38 per cent of individual members of Lloyd's, CBSPC 28 per cent and Argenta 34 per cent (on Hampden's figures, the shares are somewhat different for capacity: 35 per cent, 26 per cent and 39 per cent respectively). Tables 3 and 4 show that the effect on market shares and concentration of an acquisition by Argenta would not differ significantly from that of its acquisition by HAL. By the share of the number of individual members, acquisition by HAL has resulted in a small increase in concentration compared with acquisition by Argenta. By share of underwriting capacity, the acquisition by HAL has resulted in a small reduction in concentration compared with acquisition by Argenta.

TABLE 3 Effect on market shares of acquisition by HAL rather than Argenta

<i>Company</i>	<i>Market share by number of individual members %</i>	<i>Market share by capacity %</i>
<i>Acquisition by HAL</i>		
Hampden+CBSPC	66.5	61.2
Argenta	33.5	38.8
<i>Acquisition by Argenta</i>		
HAL	38.1	35.1
Argenta+CBSPC	61.9	64.9

Source: Hampden.

TABLE 4 Market concentration: comparison of HHI indices with acquisition by HAL rather than Argenta

	<i>HHI</i>
<i>By number of individual members</i>	
Acquisition of CBSPC by Argenta	5,283
Acquisition of CBSPC by HAL	5,546
Difference	263
<i>By underwriting capacity</i>	
Acquisition of CBSPC by Argenta	5,444
Acquisition of CBSPC by HAL	5,251
Difference	-193

Source: CC analysis.

- 5.5 The urgency of the requirement on CBS to sell CBSPC would in particular have deterred acquisition other than by HAL or Argenta, given the time required to obtain the necessary authorization from the FSA and approval by Lloyd's, a process which could have taken at least four to six weeks. But there are other reasons why sale to a third company or group of individuals was, in our view, unlikely:

- (a) The previous decline in number of individual members is likely to have deterred other companies from wishing to acquire CBSPC. As shown in Appendix C, there was an 85 per cent decline (16 per cent a year) over the 11 years to 2006, although that decline has decelerated more recently (a 17 per cent decline in 2005 being followed by a 5 per cent decline in 2006, reflecting the trend in underwriting returns). We noted in paragraph 4.65 Lloyd's suggestion that this decline could continue, unless there were improvements to the way in which unaligned capital participated. CBS expected that decline to continue, and even

though Hampden was less pessimistic, any prospects for stability in the number of individual members of Lloyd's or of future growth remain highly uncertain. Most of the parties from whom we heard—including Lloyd's, the FSA, a number of members and their associations—supported the view, in evidence to the OFT and ourselves, that the decline in the number of members' agents, including as a result of this merger, was the 'inevitable' result of the decline in the number of members.

- (b) We have also noted CBS's consequential projections of CBSPC incurring losses by 2008.
- (c) Although some parties asserted to us that some individual members might have been prepared to acquire CBSPC, in our view there is insufficient reason to have expected this to have occurred, or, even if it might have occurred, that the market structure that prevailed before the merger could have been maintained as a result. A prolonged and uncertain process of sale to any other possible purchaser could have resulted in individual names' executives being recruited by HAL and the transfer of many of the individual members to HAL. Further prospects for CBSPC in such circumstances would also have been highly uncertain.
- (d) There was also little prospect of a management buyout, particularly given the preference for CBSPC senior management to stay in CBS. A management buyout would, among other things, have required funding (of up to £2 million) to meet the financial requirements for Lloyd's (although, as noted in paragraph 4.67, Lloyd's would have been willing to revisit these requirements).

5.6 We nonetheless also considered whether there were other means by which the market situation prevailing before the merger could have been sustained. An alternative possibility to a sale by CBS might have been CBS going into administration. But had this occurred:

- (a) A rapid sale of CBSPC to HAL would again have been the most likely outcome. Sale to a third party would have been particularly unlikely given the need to obtain authorization from the FSA and approval by Lloyd's and the time taken to do so.
- (b) Any more prolonged process of sale would have led to the possibility of Argenta as well as HAL competing to attract members directly, or more indirectly attracting names' executives, during the process of administration; or of Lloyd's using its substitute agents' provision to allocate members more evenly between them. But some members may also have left the market due to the continued uncertainty.
- (c) Even if Lloyd's were to have used the substitute agency provision, names' executives and their members could well have been recruited by HAL or Argenta, irrespective of any allocation by Lloyd's. So it is unlikely that CBSPC's 28 per cent market share would have been divided evenly between HAL and Argenta. But even if this had occurred, the resulting market structure (with market shares of 52 per cent and 48 per cent respectively) would not in our view have resulted in a substantially more competitive outcome than the current market structure.
- (d) The prospect of a third buyer emerging is even more unlikely in a period of such uncertainty, with names' executives and individual members being recruited to HAL or Argenta, or leaving the market.

5.7 In our view, therefore:

- (a) CBS had no alternative but to sell CBSPC.
- (b) The most likely purchaser was HAL; but an alternative of a sale to Argenta would not have materially changed any effect on competition.
- (c) There was insufficient reason to expect sale by CBS to another company or group of individuals that would have resulted in a substantially more competitive outcome than the current market structure.
- (d) The outcome of any period of administration is highly uncertain, but sale to HAL would still have been the most likely outcome; given the uncertainty and disruption of this process, there can be no expectation that a more competitive market structure would have resulted.
- (e) Hence, the prospect of a sale to an alternative buyer and of three members' agents remaining in the market, with a similar structure to that prevailing before the merger, is remote.

5.8 In our view, therefore, CBSPC is unlikely to have continued to operate, had the merger not occurred. Irrespective of the circumstances of this transaction, the decline in the number of members suggests to us that the previous market structure with three members' agents is unlikely to have been maintained beyond the short term.

6. Conclusion

6.1 We therefore conclude that:

- (a) Competition before the merger was very limited, and we have seen no reason to believe that there is any SLC following the merger which would give rise to unilateral effects (see paragraphs 4.58 and 4.77).
- (b) The market did not exhibit coordinated effects prior to the merger (see paragraph 4.47); nor are the competitive conditions of the market sufficiently different following the acquisition to make coordinated effects more likely in the future (see paragraphs 4.58 and 4.77).
- (c) Even on the basis of our initial assessment of the supply of members' agency services before and after the merger, the merger has not and may not be expected to give rise to any SLC in its effects on relationships with managing agents of syndicates (see paragraph 4.84).
- (d) CBSPC is unlikely to have continued to operate, and the previous market structure with three members' agents is unlikely to have been maintained beyond the short term, had the merger not occurred (see paragraph 5.8). This is also a reason why the merger has not and may not be expected to result in an SLC.

6.2 We conclude that the merger has not resulted and may not be expected to result in an SLC.