

COMPETITION COMMISSION ACCEPTANCE OF INTERIM UNDERTAKINGS

In the matter of a reference to the Competition Commission of the anticipated acquisition by Telefonaktiebolaget LM Ericsson (Publ) of Creative Broadcast Services Holdings (2) Limited

On 30 September the Office of Fair Trading (OFT) made the reference to the Competition Commission (CC) under section 33 of the Enterprise Act 2002 (the Act) concerning the proposed acquisition by Telefonaktiebolaget LM Ericsson (Publ) (Ericsson) and Creative Broadcast Services Holdings Limited (Creative).

The reference has not been finally determined in accordance with section 79(1) of the Act.

The CC wishes to ensure that no further action is taken pending final determination of the reference which might prejudice or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference.

Now, pursuant to section 80(2) of the Act for the purpose of preventing pre-emptive action, Creative hereby gives to the CC and the CC accepts the Undertakings which are set out in Annex A below and accordingly the Undertakings come into force in accordance with section 80(5) of the Act.

Signed by authority of the CC.

Roger Witcomb
Chairman
12 December 2013

INTERIM UNDERTAKINGS

ANTICIPATED ACQUISITION BY TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) OF CREATIVE BROADCAST SERVICES HOLDINGS (2) LIMITED

Undertakings given by CREATIVE BROADCAST SERVICES HOLDINGS LIMITED to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

- A. On 13 June 2013 Telefonaktiebolaget LM Ericsson (Publ) ('Ericsson') and Creative Broadcast Services Holdings Limited ('Creative') signed a share purchase agreement under which Ericsson would acquire 100 per cent of shares in Creative Broadcast Services Holdings (2) Limited ('CBSH2'). The proposed acquisition was notified to the Office of Fair Trading ('OFT') on 22 July 2013.
- B. Ericsson is 100 per cent owner of a number of subsidiary companies providing broadcast services collectively referred to as 'Technicolor'. Creative has a number of subsidiaries including Red Bee Media Limited ('Red Bee') which provides broadcast services and is 100 per cent owned by Creative.
- C. On 30 September the OFT made the reference to the Competition Commission ('CC') under section 33 of the Enterprise Act 2002 ('the Act') concerning the proposed acquisition.
- D. The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference. The reference has not been finally determined in accordance with section 79(1) of the Act.

Now Creative hereby gives to the CC the following Undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action.

Management of the Ericsson and Creative businesses until determination of proceedings

- 1. Except with the prior written consent of the CC, Creative undertakes that it will not during the specified period take any action which might prejudice the reference concerned or impede the taking of any action under the Act by the CC or other party which may be justified by the CC's decisions on the reference, including any action which might:
 - (a) lead to the integration of Creative or any of its subsidiaries and in particular the Red Bee business with the Ericsson business;
 - (b) transfer the ownership or control of Creative or any of its subsidiaries to Ericsson;
or
 - (c) otherwise impair the ability of the Ericsson or Creative businesses to compete independently in any of the markets affected by the proposed acquisition.
- 2. Further and without prejudice to the generality of paragraph 1, Creative will at all times during the specified period, ensure that except with the prior written consent of the CC:

(a) Confidential Information relating to the two businesses is only passed directly or indirectly, from Creative (or any of its employees, directors, agents or affiliates) to Ericsson (or any of its employees, directors, agents or affiliates), or vice versa, under the following circumstances:

- (i) Confidential Information may be provided on an outside counsel only basis to external advisers of Ericsson (which for the avoidance of doubt shall include external economic advisers and industry consultants) for the purposes of the reference; and/or
- (ii) Confidential Information may be passed to or exchanged between Ericsson and Creative in accordance with the Information Sharing Protocol set out in Appendix 2 to these Undertakings. Disclosure of reports prepared pursuant to such information exchange must always be in accordance with the terms of Appendix 2.

(b) The customer and supplier lists of the Ericsson business and the Creative business are operated and updated separately and any negotiations with the Creative business's customers or suppliers will be carried out by Creative alone and for the avoidance of doubt Ericsson will not negotiate on behalf of the Creative business or enter into any joint agreements with the Creative business.

(c) Any negotiations between Ericsson and Creative in the ordinary course of business will be conducted at arm's length and subject to the following conditions:

- (i) no Confidential Information will be disclosed other than that which is strictly necessary for the purposes of conducting the negotiations; and
- (ii) a report of the nature of the discussions shall be provided to the CC by the parties as soon as is reasonably practicable after each discussion.

3. Should the proposed acquisition not complete, any records or copies (electronic or otherwise) of Confidential Information about Creative held by Ericsson will be returned or destroyed (on request by Creative) or rendered inaccessible, to the extent possible.

4. Creative undertakes that, except with the prior written consent of the CC, it will not during the specified period:

(a) exchange Confidential Information other than in accordance with paragraphs 2(a)(i) and 2(a)(ii); or

(b) engage in integration planning discussions with Ericsson.

Compliance

5. Creative shall procure that it and each of its subsidiaries and in particular Red Bee Media Ltd complies with these Undertakings as if it had given them.

6. Creative shall provide to the CC any information or a statement of compliance as the CC may from time to time require for the purposes of monitoring compliance by Creative and its subsidiaries with these Undertakings. In particular, on **5 December 2013** and subsequently on the 5th day of each month, (or, where the 5th does not fall on a working day, the first working day thereafter) [insert name] of Creative shall provide a monthly statement to the CC on behalf of Creative confirming, to the best

of their knowledge, compliance with these Undertakings in the form set out in Appendix 1 to these Undertakings.

7. At all times during the specified period, Creative will actively keep the CC informed of any material developments relating to the Red Bee Media business which includes but is not limited to any customer contracts won or lost by the Red Bee Media business.
8. Creative shall comply, in so far as it is able, with such written directions as the CC may give from time to time requiring Creative to take such steps as may be specified or described in those directions for the purpose of carrying out or securing compliance with these Undertakings.

Interpretation

9. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
10. For the purposes of these Undertakings:

'the Act' means the Enterprise Act 2002;

'access services' means the creation of additional files to help the audio and visually impaired;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'the CC' means the Competition Commission;

'the Creative business' means the business of Creative and its subsidiaries;

'creative services' means the creation of advertisements/advertisement campaigns, brand identities and strategies and includes, but is not limited to, trailers and other promotional work;

'Confidential Information' means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature which is not in the public domain or known to Ericsson or Creative (as the context requires) otherwise than by breach of these Undertakings. For the avoidance of doubt, this does not include information which either party is required—pursuant to operational obligations under their respective customer contracts—to provide to the other party;

'the decisions' means the decisions of the CC on the questions which it is required to answer by virtue of section 36 of the Act;

'the Ericsson business' means the business of Ericsson and its subsidiaries;

'integration planning discussions' means discussions with Creative regarding integration of the Creative business with the Ericsson business and specifically

discussions relating to integration into the Ericsson Group of Creative's services in the areas of metadata, access and creative services.

'metadata' means the creation of information about broadcast material itself including scheduling information, programme hierarchy, programme descriptions and control and signalling information;

'the proposed acquisition' means the proposed acquisition by Ericsson of Creative proposed on 13 June 2013;

'the specified period' means the period beginning on the date of these Undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act or earlier if agreed by the parties and the CC;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the two businesses' means the Ericsson business and the Creative business;

'working day' means a business day in the main country of business of the person to whom the timing restriction applies;

'written consent' shall include consent given by email;

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF CREATIVE BROADCAST SERVICES HOLDINGS LIMITED

Signature

Name

Title

Date

Signature

Name

Title

Date

Compliance statement for Creative

I, [insert name], to the best of my knowledge, confirm on behalf of Creative Broadcast Services Holdings Limited that:

- (a) Creative has complied with the Undertakings given by it and accepted by the CC on [date] ('the Undertakings') in the period from [insert date] to [insert date].
- (b) Creative's subsidiaries have also complied with the Undertakings in the period from [insert date] to [insert date].
- (c) No action has been taken by Creative in the period from [insert date] to [insert date] that will impede the taking of any action by the CC which may be justified by its decision on the reference.
- (d) Creative and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the Creative business in accordance with paragraph 7 of the Undertakings.
- (e) No Confidential Information has passed, directly or indirectly, from Creative (or any of its employees, directors, agents or affiliates) to Ericsson (or any of its employees, directors, agents or affiliates), or *vice versa* except as permitted in paragraphs 2 and 3 of the undertakings.
- (f) Creative's external advisers (if any appointed) have complied with the restrictions imposed upon them in the Undertakings (including Appendix 2 to the Undertakings) during the period [date] to [date].
- (g) Except as listed in paragraph (h) below there have been no material developments in Creative's business in the UK.
- (h) [list of material developments]

FOR AND ON BEHALF OF CREATIVE BROADCAST SERVICES HOLDINGS LIMITED

Signature

Name

Title

Date

Information Sharing Protocol

1. Introduction

The purpose of this Information Sharing Protocol is to record the guidelines for the exchange, use and storage of 'Confidential Information' (as defined in the interim undertakings given by Ericsson and Creative to the Competition Commission (the 'CC') on [date] (the 'Interim Undertakings') relating to the businesses of Telefonaktiebolaget LM Ericsson (Publ) ('Ericsson') and Creative Broadcast Services Holdings Limited ('Creative') (collectively the 'parties') during the 'specified period' (as defined in the Interim Undertakings) in connection with the parties' assessments and preparations for a possible merger (the 'Transaction') which may proceed in the event that clearance of the Transaction is obtained from the CC.

2. Exchange of Confidential Information

In accordance with the Interim Undertakings, Ericsson, Creative, and their respective external advisers will be permitted to share Confidential Information with a Clean Team within each party (as defined in paragraph 3 of this Appendix 2) for the purpose of preparing Clean Team Reports (as defined in paragraph 4 of this Appendix 2) provided that such information does not include:

- 2.1. prices charged to specific customers or contracts;
- 2.2. future pricing intentions for specific customers or contracts.

3. Clean Teams

- 3.1 Access to Confidential Information at each party shall be limited to a defined list of people (a party's '**Clean Team**'). The identity of the individuals in each party's Clean Team as at the date of this Protocol are listed at Annex 1.
- 3.2 The identity of the Clean Team members will not be changed without the consent of the CC and the other party.
- 3.3 Each member of a Clean Team who is permitted access to Confidential Information pursuant to this Protocol shall be advised that information they receive may be confidential and may contain business secrets confidential to the other party and that information is being provided subject to the terms of this Protocol. Each member of Ericsson's Clean Team will be asked to acknowledge receipt of this Protocol by sending an email to [insert name].
- 3.4 Members of the Ericsson Clean Team shall not pass Confidential Information to other employees or other persons within Ericsson. Creative confidential information may be used in Clean Team Reports. Clean Team Reports must meet the requirements of paragraph 4 and can be shared with others within Ericsson.

4. Preparation of Clean Team Reports

In accordance with paragraph 3 of the Interim Undertakings, the Ericsson Clean Team can prepare reports (a 'Clean Team Report') to share with other individuals within Ericsson using the information received by them in accordance with the Interim Undertakings provided that:

- 4.1. such reports do not include any of the following information:
 - 4.1.1. input costs, manufacturing costs and other product related cost items at a customer or contract specific level;
 - 4.1.2. expenses and overheads at a customer or contract specific level;
 - 4.1.3. margins and sales data at a customer or contract specific level (including projected data);
 - 4.1.4. customer information (including rebates and discounts) at a customer or contract specific level;
 - 4.1.5. sales and marketing strategies relating to individual customers;
 - 4.1.6. current and planned product development;
 - 4.1.7. brand plans;
 - 4.1.8. copies of specific customer or supplier contracts; and
- 4.2. a copy of the Clean Team Report has been provided in advance to the CC and the CC has granted consent for the Clean Team Report to be shared more widely within Ericsson. In any event, the CC must confirm whether consent has been granted within 2 working days of receipt. If consent is not granted, the CC will indicate which aspects of the Clean Team Report need to be changed in order for consent to be granted.

5. External advisers

- 5.1 Access to Confidential Information by each external adviser shall be limited to those employees/partners/consultants who are involved in advising their client on the Transaction on a strictly 'need to know' basis. The parties' external advisers and the key contact person(s) at each external adviser as at the date of this Protocol are listed at Annex 2.
- 5.2 Each employee/partner/consultant of an external adviser who is permitted access to Confidential Information pursuant to this Protocol shall be advised that information may be confidential and may contain business secrets confidential to either party and information is being provided subject to the terms of this Protocol.

6. Storage and disposal of Confidential Information

- 6.1 Each party's Clean Team shall take all reasonable steps to ensure that other persons within their organisation cannot access Confidential Information relating to the other party held by them.

Dated: 28 November 2013

Annex 1

Clean Team Details

Ericsson Clean Team	
Name	Function
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
Creative Clean Team	
Name	Function
[X]	[X]
[X]	[X]
[X]	[X]

Annex 2

External Advisers' Details

Ericsson's external advisers	
Name of external adviser	Key contact person(s) at external adviser
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
Creative's external advisers	
Name of external adviser and key contact person	
[X]	