

Anticipated acquisition by Nielsen Holdings PLC of the AdIntel division of Ebiquity PLC

Decision on relevant merger situation and substantial lessening of competition

ME/6733/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 13 June 2018 Full text of the decision published on 18 July 2018

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Nielsen Holdings PLC (**Nielsen**) has agreed to acquire the advertising intelligence (**AdIntel**) division of Ebiquity PLC (**Bloom**) (the **Merger**). Nielsen and Bloom are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of two types of AdIntel products:
 - (a) a Deep Dive AdIntel product, platform and service (**Deep Dive product**). Deep Dive products provide an in-depth and granular level of AdIntel data on a country-specific basis; and
 - (b) an International AdIntel product, platform and service (**International product**). International products provide harmonised AdIntel data across multiple countries at a less detailed or granular level (compared to Deep Dive products).

4. The Parties also overlap in the upstream supply of UK AdIntel data to overseas suppliers of International products.
5. The CMA has assessed the impact of the Merger in:
 - (a) the supply of UK Deep Dive products to UK customers;
 - (b) the supply of International products to UK customers; and
 - (c) the upstream supply of UK AdIntel data to suppliers of International products.
6. The CMA examined whether the Merger raises competition concerns as a result of horizontal unilateral effects in the supply of Deep Dive products to UK customers. The CMA found that the Parties are the only two suppliers of Deep Dive products across all media types in the UK and that there are no alternative suppliers of such Deep Dive products for some customers. Although there is limited switching of customers between the Parties' products, the CMA found evidence that the Parties' products are considered substitutes by some customers, and that they exert a competitive constraint on each other. For these reasons, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of UK Deep Dive products to UK customers.
7. The CMA also examined whether the Merger raises competition concerns as a result of horizontal unilateral effects in the supply of International products to UK customers. While the Parties' International products are more differentiated than their Deep Dive products, the CMA found that the Parties' products are considered substitutes by some customers, and that they impose some competitive constraint on each other. Although there are a couple of other suppliers which offer products which might be alternatives for some customers, the CMA has concluded that these alternatives are unlikely to provide sufficient competitive constraint on the merged entity. For these reasons, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the supply of International products to UK customers.
8. The CMA examined whether the Merger could result in total or partial input foreclosure in the upstream supply of UK AdIntel data to rival suppliers of International products. The CMA found only one international rival supplying UK customers that currently buys UK data from the Parties. The CMA believes that the merged entity is unlikely to have an incentive to engage in input foreclosure of that rival, in particular because any gains would be small relative to the potential costs of such a strategy. Moreover, even if the Parties' incentives changed, there is unlikely to be a significant effect on UK

customers [X]. The CMA therefore believes that there is no realistic prospect of an SLC arising through vertical effects as a result of the Merger.

9. The CMA considered whether to apply its discretion under the *de minimis* exception contained in section 33(2)(a) of the Enterprise Act (the **Act**). The CMA, however, considers that the market is of sufficient importance to justify making a reference.
10. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Parties have until **20 June 2018** to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

11. Nielsen is a global information, data and media measurement company. It provides market research and media measurement services, including AdIntel products and services.
12. Ebiquity is an international company providing media auditing, media consulting, marketing analytics, advertising technology advisory services and AdIntel services. Bloom is Ebiquity's AdIntel business. No other part of Ebiquity is active in supplying AdIntel products and services. The turnover of Bloom in 2017 was approximately £[X] million in the UK.

Transaction

13. The Merger relates to Nielsen's purchase of the AdIntel business of Ebiquity.
14. The Parties informed the CMA that the Merger is not the subject of review by competition authorities in other jurisdictions.

Procedure

15. The Merger was considered at a Case Review Meeting.¹

¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

Jurisdiction

16. As a result of the Merger, the enterprises of Nielsen and Bloom will cease to be distinct.
17. The Parties overlap in the supply of Deep Dive products, with a combined share of supply of [90-100]% (increment 40%)², and in the supply of International products, with a combined share of supply of approximately [50-60%] (increment [5%-10%]).³ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
18. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 April 2018 and the statutory 40 working day deadline for a decision is therefore 13 June 2018.

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴
21. The Parties submitted that the relevant counterfactual is where Bloom will remain part of Ebiquity, [REDACTED]. The Parties have not suggested that, in the absence of the Merger, Bloom would fail, and the CMA has not received evidence in this regard.
22. Third parties have not put forward arguments in relation to the counterfactual.
23. While the CMA recognises that [REDACTED], it has not seen compelling evidence to indicate what would happen to the business in the absence of the Merger. It is

² See para 79 below.

³ See para 113 below.

⁴ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

therefore realistic that it would continue to operate in the market providing a similar constraint on Nielsen. For this reason, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

24. AdIntel comprises the tracking and collation of advertising and media activity. The Parties collect and synthesise AdIntel data into a database that can be accessed by customers. Through an online platform, customers can search for a range of information on the advertising of their competitors or their customers, as described below.

Ad spend and ad creative data

25. The key information provided can be divided into two categories:

- (a) information on the format, timing, placement, and, where applicable, duration, size, location, the product being advertised, the brand, and the estimated cost of the advert (**ad spend data**); and
- (b) information on the creative content of the advert (which may include a photo, scan or video of the ad itself) (**ad creative data**).

26. Ad spend data can be used to understand whether an advertising budget was maximised or the intended targets reached, as well as to analyse competitors' or customers' marketing activities and spend. It gives companies insight into the advertising investment made by their competitors on specific products, brands or advertisers by media type and the consumer target of a campaign. Ad spend data can also feed into a wider analysis to estimate return on investment or whether a company's campaign generated product sales.

27. Ad creative data informs users about the creative messages competitors are running, how the creativity in a sector is changing over time or how an advert stands out from its competitors. Depending on the granularity provided, ad creative data can provide information on which retailer is supporting certain products, how many advertisers are using a particular theme, at which price points competitors are advertising, and provide a basis for further analysis into whether a company's brand guidelines have been met.

28. Customers' needs for ad spend and/or ad creative data and the granularity of the data required vary according to their business needs. The Parties submitted that there are four main customer types using AdIntel: media owners, advertising agencies, advertisers and market research companies. Based on the third-party responses received, the CMA understands that:

- (a) Media owners and media buying agencies will have a stronger interest in ad spend data and generally require less granular ad creative data.
- (b) Some 'creative' advertising agencies will have a need for more detailed ad creative data.
- (c) Advertisers will use both ad spend and ad creative data and the granularity required will vary according to need.

AdIntel platforms

29. Customers access the ad spend and ad creative data through online platforms provided by suppliers. The Parties market two types of online platforms:
- (a) a Deep Dive platform which provides access to in-depth AdIntel data for UK media; and
 - (b) an International platform which provides access to consistent and comparable AdIntel data across multiple countries, but at a less detailed level than Deep Dive platforms.
30. AdIntel platforms vary in relation to their scope, level of detail, and the media covered. For example:
- (a) The Parties' databases include adverts on all traditional media types such as print, outdoor, radio and TV, though the actual media (ie titles, TV or radio stations) covered differ between the Parties.
 - (b) In relation to digital advertising, while the Parties' databases also include online adverts, the Parties' coverage in digital advertising is [redacted]. There are suppliers that focus exclusively on digital adverts and, in particular, adverts in online search results.
 - (c) The granularity of ad creative data may vary, from a simple copy of the advert to detailed metadata, a transcript of the advert with the possibility to search the text, specific content information,⁵ or information on the creative execution of the advert.
31. The granularity of data accessed through a single platform can vary between customers even though they subscribe to the same platform. For example, a

⁵ For example price or rates offered.

customer may purchase access to data covering a single industry sector only (eg cars), or purchase access to data covering a particular medium (eg TV).

Frame of reference

32. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁶
33. The Parties overlap in the supply of Deep Dive and International AdIntel products to UK customers. The Parties also overlap in the upstream supply of UK AdIntel data.

Product scope

34. The Parties submitted that the AdIntel market is broader than just the Parties' products because there are many ways of accessing the same or similar information from a number of suppliers. However, the Parties did not suggest a product scope comprising all AdIntel. Rather, they submitted that AdIntel should be segmented into: (i) Deep Dive products and (ii) International products.
35. The CMA has considered this and other possible segmentations below.

Segmentation of AdIntel into Deep Dive and International

36. The Parties each operate different platforms for their Deep Dive products and International products:
 - (a) Nielsen's Deep Dive product is called AdDynamix and Bloom's is called Portfolio UK.
 - (b) Nielsen's International product is called WizzAd+ and Bloom's is called Portfolio International.

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

37. The purpose of Deep Dive and International products differ, as does the harmonisation process which the Parties undertake.⁷ Deep Dive products provide detailed data focussed on AdIntel in one country, whereas International products analyse and harmonise data across multiple countries. Therefore, from a demand-side perspective, Deep Dive is unlikely to be an alternative for a customer who wants to analyse AdIntel data across different countries. The Parties submitted that customer switching between Deep Dive and International was very limited.
38. Third parties provided mixed evidence on whether Deep Dive and International should be considered as separate frames of reference. The majority of customers responding to the CMA's questionnaire said that International products would not be an alternative to Deep Dive products; however, some customers indicated that International products could be used as an alternative to Deep Dive products. For example, one customer submitted that Nielsen's WizzAd+ is very similar to Nielsen's AdDynamix because it [REDACTED].⁸ Another customer submitted "we are a global business and it may be sufficient to lose some depth in order to have harmonised breadth".⁹
39. The CMA understands that [REDACTED]. This suggests that an International product could be an alternative for some customers (given customers can subscribe to only one country's data in the International product). In addition, the Parties submitted that "[REDACTED]. There is thus a degree of competitive constraint exerted by International AdIntel products on UK Deep Dive creative AdIntel products."
40. The CMA noted that some customers subscribe to both International and Deep Dive, indicating a degree of complementarity between the products.
41. AdIntel suppliers generally indicated that Deep Dive and International products were complementary,¹⁰ or that International was an expansion of Deep Dive.¹¹ Suppliers generally indicated a limited degree of supply-side substitutability between Deep Dive and International product offerings, although one supplier of digital AdIntel said that it did not distinguish its data between Deep Dive and International as all of its data was of the same granularity.¹²
42. On the basis of this evidence, the CMA believes that Deep Dive and International products could be alternatives for some customers, in particular

⁷ Harmonisation means taking account of the branding and/or categorisation differences of a product across countries and organising the relevant data such that a common, harmonised output can be generated.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

that International may provide an asymmetric constraint on Deep Dive for some customers. However, on a cautious basis, the CMA believes that the supply of Deep Dive products and the supply of International products should be considered as separate product frames of reference. Accordingly, the CMA has considered any substitutability between the products in its competitive assessment.

Further possible segmentation: ad spend and ad creative data

43. The CMA considered whether it was appropriate further to segment the product frames of reference into ad spend and ad creative segments.

Deep Dive

44. While the Parties submitted that their UK Deep Dive products are substantially different and not demand-side substitutes (ie Bloom focuses on ad creative, while Nielsen focuses on ad spend), they did not submit that the frame of reference should be segmented into ad spend and ad creative segments.
45. The Parties both offer ad spend and ad creative data and both offer customers a product based on the customer's requirements, which may include the customer's own media selections from the database available or in some cases include bespoke additions. The Parties submitted, supported by evidence from their internal documents, that Bloom's creative and spend data are usually linked and sold together – although a customer can choose only to purchase ad creative data.
46. Most customers who responded to the CMA's questionnaire submitted that they use both ad spend and ad creative data, and that they prefer to purchase this from the same supplier. Only one customer noted that it uses Bloom's [REDACTED].¹³
47. The CMA found that other suppliers of AdIntel data, in particular suppliers of digital AdIntel, take a mixed approach, with some offering a choice of either ad creative or ad spend data, while others only offer both sets of data together. One supplier¹⁴ noted that customers generally cannot use one without the other.
48. Based on this evidence, the CMA believes that, for the purposes of its assessment of the Merger, a segmentation of Deep Dive into ad spend and

¹³ [REDACTED]

¹⁴ [REDACTED].

ad creative data is not appropriate. The CMA has taken into account the differentiation between the products in its competitive assessment.

International

49. The Parties submitted that their International products should be assessed in separate frames of reference as they are fundamentally different and do not constitute demand-side substitutes. The Parties said that, while Nielsen's product focuses on the provision of ad spend and volume information, Bloom's product focuses on tracking creative content. They added that for Nielsen to expand into International ad creative AdIntel would require significant investment.
50. The Parties noted various differences in their International products:
- (a) Nielsen's product does not provide ad creative, whereas Bloom focuses on ad creative but does also provide ad spend data to some of its International customers.
 - (b) The two products are aimed at fulfilling different customer needs. While Nielsen's WizzAd+ product supports strategic decision making, Bloom's Portfolio International product provides a comparative overview and insights into competitors' creative execution.
 - (c) The Parties' principal International customers differ by type (Nielsen's are mostly advertisers and media buying agencies, while Bloom's are mostly advertisers and creative agencies), indicating different customer uses for their International products.
 - (d) The Parties' lead times for harmonising data differ.¹⁵
51. The CMA noted that Bloom, on its customers' request, supplements ad creative data with ad spend data. While Bloom has [redacted] customers that request ad spend data, Bloom sources ad spend data for these customers from both in-house supply and from other suppliers (including Nielsen).¹⁶ This evidence indicates that Bloom provides both ad spend and ad creative in its International product.

¹⁵ Nielsen harmonises data within [redacted], whereas Bloom harmonises [redacted] of its data on [redacted] and the remainder on at least [redacted].

¹⁶ [redacted].

52. With regard to creative content, the CMA understands that, while Nielsen is not currently providing detailed ad creative data to its UK customers, it does provide high-level creative data.
53. Based on this evidence, the CMA found that, whilst the Parties' International products are differentiated, they will be substitutable for some customers to some extent. For this reason, the CMA believes that, for the purposes of its assessment of the Merger, a segmentation of the Parties' International products into ad spend and ad creative data is not appropriate. The CMA has taken into account the differentiation between the products in its competitive assessment.

Further possible segmentation: media types and industry sectors

54. The CMA considered whether the frame of reference should be segmented based on different media types (eg television, newspaper, online / digital, etc). Similarly, the CMA considered segmentation by industry sector (eg cars, telecoms, etc).
55. The Parties submitted that the product frame of reference should not be segmented by type of media or industry sector because the Parties (and other suppliers) collect data covering all types of advertising, media and industry sectors.
56. The CMA notes that some suppliers of AdIntel identified by the Parties provide products limited to one media type only (eg digital). In contrast, the Parties' products provide AdIntel across a full range of media (excluding some digital content, eg ad placement in search engine results). Moreover, some customers of the Parties told the CMA that they often require AdIntel across a full range of media channels. Customer responses also indicated that customers find the coverage of a full range of media channels to be important. The CMA therefore believes that those suppliers who offer AdIntel products across a broad spectrum of media are strongly differentiated from those suppliers focusing on only a specific media channel.
57. The CMA also found that the Parties both supply customers across a range of different industry sectors. The CMA received no evidence from third parties indicating that the frame of reference should be segmented with reference to industry sectors.
58. For these reasons the CMA has not segmented the product frame of reference by media type or industry sector. The CMA has considered in its competitive assessment any competitive constraint exerted on the Parties by

suppliers of Deep Dive or International products by AdIntel suppliers focussing on a single media type.

Further possible segmentation: customer types

59. The CMA also considered whether the product scope should be segmented by customer type. The Parties explained that AdIntel products are purchased by four main customer groups i) media owners, ii) advertising agencies, iii) advertisers and iv) market research companies.
60. The Parties did not submit that the frame of reference should be segmented by customer type, though they did submit that their products are different and target different customer groups. The Parties submitted that this is due to each company's legacy focus on different customers, and because different types of customer have a preference for either ad spend or ad creative data.ⁱ
61. Evidence from the Parties indicated that they both supply all customer types, with some customers who might traditionally have been Nielsen customers using Bloom, and vice versa.
62. Third-party evidence also did not support a segmentation based on different customer needs, indicating no clear differentiation in the Parties' products by customer type.
63. On the basis of this evidence, the CMA has not segmented the product frame of reference by customer type. The CMA has considered any differences in demand by customer type in its competitive assessment.

Upstream supply of UK AdIntel data as an input of for International products

64. In order to develop International products, suppliers of AdIntel products buy AdIntel data (both ad spend and ad creative content) from AdIntel suppliers operating in other geographic markets.
65. The CMA has considered the upstream supply of UK AdIntel data to suppliers of International products as a separate frame of reference. This is for the purposes of assessing the vertical theory of harm as set out in the competitive assessment below.¹⁷

¹⁷ See paragraph 129.

Conclusion on product scope

66. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the following product frames of reference:
- (a) the supply of UK Deep Dive products;
 - (b) the supply of International products; and
 - (c) the upstream supply of UK AdIntel data as in input into International products.

Geographic scope

Deep Dive

67. The Parties submitted that the relevant geographic frame of reference for the supply of UK Deep Dive AdIntel is potentially EEA-wide or even wider. Nielsen submitted that, from a demand-side perspective, the Deep Dive product is limited to the UK because the product focusses on UK adverts and UK media, and is aimed at UK customers; however, on the supply side, there is no requirement for UK infrastructure as monitoring can be conducted remotely or outsourced to a local supplier.
68. In contrast, third parties told the CMA that UK infrastructure is necessary to sell UK Deep Dive AdIntel, at least for traditional (rather than digital) media.
69. The CMA found that:
- (a) Customers of UK Deep Dive products are typically either UK-based or sell products in the UK.
 - (b) Customers place importance on national expertise and support.¹⁸
 - (c) Suppliers generally sell with a local presence. One supplier of AdIntel (that does not currently supply to UK customers) said that, in order to compete effectively, it needs nationally-based teams to sell data in national markets.¹⁹ Another global supplier of AdIntel suggested that a national presence is necessary to supply Deep Dive data sourced from

¹⁸ See for example [redacted] submission.

¹⁹ [redacted].

traditional media – although a national presence is not required to supply Deep Dive data sourced from digital media.²⁰

70. For these reasons, and on a cautious basis, the CMA believes that the UK is the appropriate geographic frame of reference for the supply of UK Deep Dive products.

International

71. The Parties submitted that the relevant geographic frame of reference for the supply of International products is EEA-wide or even wider because no local presence is necessary or relevant. The Parties said that a supplier with no local presence can buy the necessary data from another supplier.
72. However, third parties indicated that, as with UK Deep Dive products, there is often a requirement from customers for a supplier of International products to have a nationally-based sales/support team. Third parties also said that, for UK customers, the International data input must be harmonised to UK brands, creating a local perspective to the product.
73. For these reasons, and on a cautious basis, the CMA believes that the UK is the appropriate geographic frame of reference for the supply of International products.

Upstream supply of AdIntel data as an input into International product

74. The CMA understands that the upstream supply of AdIntel data is likely to take place on a national level since the data is specific to each country. Therefore, the CMA believes that the UK is the appropriate geographic frame of reference for the upstream supply of UK AdIntel data as an input into International products.

Conclusion on frame of reference

75. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frames of reference:
- (a) the supply of UK Deep Dive products to UK customers;
 - (b) the supply of International products to UK customers; and

²⁰ [🔗]

- (c) the upstream supply of UK AdIntel data as in input into International products.

Competitive assessment

76. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.²¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.

Horizontal unilateral effects in the supply of UK Deep Dive products to UK customers

77. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of UK Deep Dive products to UK customers.
78. In its assessment, the CMA considered:
- (a) the Parties' shares of supply;
 - (b) closeness of competition between the Parties; and
 - (c) competitive constraints.

Shares of supply

79. The Parties estimated that they have a combined share of supply of UK Deep Dive products to UK customers of [90-100]%, with an increment of 40%.
80. These estimates indicate strong *prima facie* competition concerns, although, as discussed below, the Parties also submitted that their products are highly differentiated and do not compete closely.

Closeness of competition

81. The CMA considered the closeness of competition between the Parties by assessing: (i) the Parties' service propositions; (ii) evidence from internal documents; (iii) information on customer data and switching; and (iv) third-party views.

²¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Parties' service propositions

82. The Parties submitted that they are the only two suppliers offering ad spend and ad creative Deep Dive data across a broad range of media in the UK. The CMA has found no other direct rivals to the Parties providing products across a broad range of media.
83. However, the Parties submitted that their Deep Dive products are highly differentiated,²² including by the use of different taxonomies, different media title coverage, different data focuses and different pricing strategies. The Parties said that, for these reasons, there is little competitive interaction between their UK Deep Dive products.
84. The Parties submitted that the differentiation between their products is indicated by their different customer bases. The Parties said that they have historically focussed on different types of customer, according to customers' requirements for either ad spend or ad creative data.
85. The CMA recognises that the Parties' products contain different levels of information; utilise a different structure, taxonomy and classification; and analyse the data in different ways. The CMA also recognises that Nielsen appears stronger than Bloom in ad spend while Bloom seems stronger than Nielsen in ad creative. However, the CMA found that the Parties both supply all customer types and currently compete for the sale of both ad spend and ad creative data. The CMA found that some customers who might be expected (based on their type and focus on either ad spend or ad creative data) to purchase one Party's Deep Dive product currently purchase the other Party's Deep Dive product. This suggests that the Parties can, and do, supply a full range of customer groups, and that the products are alternatives for some customers.
86. In addition, the CMA found that the Parties' UK Deep Dive products can be configured to the needs of individual customers, and that the Parties have [redacted].²³ Products are adapted to a particular set of tracked media, which can be updated, and further information can be added. For example, the Parties said that, if a client requires a certain publication to be tracked, this could be added. Bloom's project [redacted]²⁴ demonstrates that [redacted].

²² Paragraphs 44 above.

²³ Although some prices might be based on rate cards.

²⁴ Annex 24 Merger Submission

87. The CMA also found that there are significant similarities in the data collected by the Parties. The CMA noted that the Parties considered the possibility of [REDACTED], suggesting that there is some duplication in their activities.²⁵
88. This evidence suggests that the Parties' products, although differentiated to some extent, serve similar customers with similar information, and therefore are also alternatives to some extent.

Internal documents

89. The CMA has reviewed the Parties' internal documents to investigate: (i) the extent to which the Parties view each other as close competitors; (ii) the possibility of data collection synergies arising from the Merger, which may indicate the extent to which their services currently overlap; and (iii) how the Parties may have become closer competitors absent the Merger through the execution of pre-Merger business plans.
90. Some of the Parties' internal documents indicate that they see each other as close rivals in the supply of UK Deep Dive products. In particular, internal documents show that:
- (a) although the Parties have different customers (ie very few customers purchase from both Parties), they both serve and target all customer groups (ie both by industry/sector and by type of AdIntel);²⁶
 - (b) Ebiquity sees Nielsen as [REDACTED];²⁷ and
 - (c) Nielsen's competitor discussion shows that [REDACTED].²⁸
91. The Parties' internal documents also indicate that they were researching the possibility of [REDACTED]. The CMA believes that, although there could be some savings [REDACTED].
92. The CMA also noted several internal documents which indicate that the Parties might have become even closer competitors to each other in the absence of the Merger. In particular:
- (a) An Ebiquity internal document refers to it having been approached recently by a greater number [REDACTED] (traditionally Nielsen's customer base)

²⁵ Annex 27 Merger Submission, see also paragraph 91.

²⁶ Annex 24 Merger Submission.

²⁷ [REDACTED].

²⁸ Annex 23, Merger Submission.

for the supply of services. The document notes that this may be because of customer [REDACTED].²⁹

- (b) The same document discusses the objective of [REDACTED]. The document notes as a risk of pursuing this objective: [REDACTED].³⁰
- (c) Ebiquity aims to become the most comprehensive supplier in both ad creative and ad spend, stating in one document: “It is our ambition [to] become one of the most comprehensive, best-tagged, and most searchable real-time archives of advertising creative executions and spend data.”³¹

- 93. The CMA found no internal documents which suggested that the Parties monitor AdIntel providers with a comparable Deep Dive offering to UK customers.
- 94. This evidence suggests that the Parties view each other as close competitors, and as each other’s only competitor, of UK Deep Dive products to UK customers. Moreover, the documents indicate that they might have competed even more closely in the future absent the Merger.

Customer data and switching

- 95. The Parties submitted that there is limited switching between their UK Deep Dive products, and that customers would be more likely to cease purchasing rather than switch to another supplier. The Parties said that AdIntel is a non-essential product for most customers.
- 96. The CMA’s analysis of the customer data provided by the Parties found that switching between the Parties is limited. However, the CMA noted that the Parties both have high customer retention rates and customers may not switch in response to a small worsening of offering for a number of reasons. The CMA found:
 - (a) Bloom’s 10 largest clients (across its whole business) have been with Bloom for more than 10 years.

²⁹ Annex 24 Merger Submission, p.1-2.

³⁰ Annex 24 Merger Submission, p 2.

³¹ Annex 009 Merger Submission, p 11.

- (b) Some customers told the CMA that the cost of AdIntel products, in the context of their overall expenditure, is minimal so there is limited incentive to consider switching suppliers.³²
- (c) Third parties told the CMA that there is some cost associated with switching as each supplier utilises a different structure, taxonomy and classification for its products. In particular, third parties mentioned time costs for training purposes.³³

97. The CMA believes that, in this case, limited actual switching does not imply a lack of competitive constraint for a number of reasons:

- (a) As set out below,³⁴ many customers told the CMA that they compare the Parties' products and that they use the other as a benchmark for pricing and negotiation with their supplier.
- (b) Given [redacted] pricing, suppliers can match rivals' prices to retain a customer.
- (c) During the course of its investigation, the CMA became aware of two customers that have decided to switch between the Parties. One of these customers told the CMA that it switched due to a proposed cost increase.³⁵ While the other commented that it was able to negotiate a [redacted] with its new supplier because of competition from its existing supplier.³⁶

Third-party views

98. Most third parties who responded to the CMA expressed concerns regarding the Merger. Many UK customers, and the suppliers of AdIntel products that responded, submitted that the Parties are each other's closest competitor for UK Deep Dive products, and/or that there are no other close alternatives. Those customers who said that the Parties are alternatives almost all had experience or knowledge of both products. Some customers told the CMA that the Parties are either the only two viable suppliers, or the two leading suppliers, of UK Deep Dive products, though some added that the Parties' products have different interfaces and focus on different aspects, ie ad spend or ad creative. For example, one customer submitted: "When we considered moving [redacted], the services were very similar across all aspects. The key difference was the delivery of the data and reports in types of the user

³² [redacted]

³³ [redacted]

³⁴ See paragraph 98.

³⁵ [redacted]

³⁶ [redacted]

interface, look and feel.”³⁷ Another customer reviewed both platforms and told the CMA: “Based on this review we concluded that the data itself is relatively similar. There is no real differentiation in the methodology or accuracy provided by either platform. The main difference was in the interface and user experience, where we felt [redacted] was superior.”³⁸

99. Around a third of respondent customers had either considered, or had initial discussions with, the other Party. One Bloom customer submitted that it had considered Nielsen but had not switched because the proposal was not substantially more attractive.³⁹ Another customer⁴⁰ submitted that, although both products were suitable for its business needs, at its last review it felt that Ebiquity was offering a better solution and at a better rate than Nielsen at that time.
100. Even those customers who saw the Parties’ products as complementary said that the Parties’ capabilities are similar and the Parties’ products are each other’s next best alternative. For example, one customer submitted that, even though it used the Parties’ products for different purposes, the Parties exerted a competitive constraint on each other, and it would use this as a benchmark should it need to react to a price rise.⁴¹ This customer noted that, due to high barriers to entry, Bloom was the only business that could provide a service substitutable to Nielsen’s service.
101. This evidence from the Parties’ customers strongly suggests that the Parties are close competitors, and are each other’s only competitor, for UK Deep Dive products.

Conclusion on closeness of competition

102. On the basis of all the evidence set out above, the CMA believes that the Parties are close competitors, and are each other’s only competitor, for UK Deep Dive products, and that they provide a significant constraint on each other for these products to UK customers.

Competitive constraints

103. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has considered whether there are alternative

³⁷ [redacted]
³⁸ [redacted]
³⁹ [redacted].
⁴⁰ [redacted]
⁴¹ [redacted].

suppliers which would provide a competitive constraint on the combined entity.

104. The Parties submitted that there are many suppliers of AdIntel services, offering a variety of products to UK customers. The Parties said that some of these suppliers offer products which are comparable to some extent to the Parties' products (eg Kantar, Global AdSource and AdVision), while others provide more generalist ad monitoring services (such as Ipsos and GfK).
105. The Parties said that, although they might not be direct substitutes for UK Deep Dive products, alternative AdIntel products are being taken into account by customers and do act as an indirect competitive constraint on the Parties. Among these alternatives are digital suppliers, which the Parties submitted are imposing an increasing constraint.
106. The Parties added that, while free products provided by, for example, Google, Pinterest, Twitter and YouTube are not directly comparable to the Parties' products (as they do not track ad spend or provide cross-media data), [REDACTED].
107. Nielsen submitted that it does not undertake formal monitoring of AdIntel competitors, but said [REDACTED]. Nielsen's internal strategy document⁴² refers to several other competitors (although their activity is not related specifically to the UK), such as [REDACTED].
108. Similarly, Bloom submitted that it does not engage in any formal or routine [REDACTED]. Some of Bloom's internal documents refer to broader market competitors (see below), but none of their documents specifically refer to [REDACTED].
 - (a) One internal document notes that [REDACTED].⁴³
 - (b) Another internal document notes [REDACTED] competitive pressure from, [REDACTED].⁴⁴
 - (c) Another internal document⁴⁵ provides a graph and description of Bloom's global competitors, which include [REDACTED].
 - (d) Another internal document⁴⁶ refers to the challenges faced in the near-term, one of which is [REDACTED].

⁴² Annex 23, p.5 Merger Submission.

⁴³ Annex 17 Merger Submission.

⁴⁴ Annex 18 p.2. Merger Submission.

⁴⁵ Annex 25 Merger Submission.

⁴⁶ Annex 19(d), p.6 Merger Submission.

109. The CMA believes that the alternative suppliers of AdIntel are not effective competitors to the Parties in the supply of UK Deep Dive products to UK customers for the following reasons:
- (a) The other suppliers of AdIntel with comparable breadth of media coverage (eg [redacted]) are not active in providing UK Deep Dive products.
 - (b) Most customers did not identify any other suppliers of UK Deep Dive products apart from the Parties.
 - (c) Those suppliers contacted by the CMA did not identify any close competitors to the Parties for UK Deep Dive products. Where they did identify an alternative supplier, the alternative did not provide the same breadth/coverage of media types as the Parties, which was also noted by those suppliers as a limitation, resulting in a weak constraint.
 - (d) The CMA is aware of a number of AdIntel suppliers which focus on a single media channel, in particular digital AdIntel. However, several customers of the Parties indicated that it is important for their needs to be able to look across all media channels.⁴⁷
 - (e) Most customers said that they could not meet their AdIntel needs in-house by sourcing data from several suppliers and bundling their own product.
110. On the basis of this evidence, the CMA believes that the merged entity would face limited competitive constraints in the supply of UK Deep Dive products to UK customers from alternative suppliers.

Conclusion on the supply of UK Deep Dive products to UK customers

111. For the reasons set out above, the CMA believes that the Parties are close competitors, and are each other's only competitor, for UK Deep Dive products to UK customers, and that they face limited constraints from alternative suppliers. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of UK Deep Dive products to UK customers.

⁴⁷ [redacted]

Horizontal unilateral effects in the supply of International products to UK customers

112. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of International products to UK customers.

Shares of supply

113. The CMA estimated that the Parties have a combined share in the supply of International products to UK customers of at least [50%-60%], with an increment of [5%-10%].⁴⁸ This combined share of supply is indicative of *prima facie* competition concerns.
114. The CMA estimated Kantar to have a [10%-20%] share of supply.⁴⁹ The Parties attributed a share (c.19%) to “others”, but without any clear indication of who these others are. The Parties named further providers of International AdIntel and the CMA estimated them to have a combined share of supply of [0%-10%]. The CMA could not identify any other providers of International products to UK customers.

Closeness of competition

115. The CMA has examined the closeness of competition between the Parties and has considered within its assessment: (i) the Parties’ service propositions; (ii) information on customer data and switching; and (iii) third-party views.

The Parties’ service propositions

116. The Parties submitted that their International products are fundamentally different. They told the CMA that there was no creative data in Nielsen’s International product, and Bloom’s product was focused on the creative side, although it does provide ad spend data for some customers.
117. The CMA notes that Nielsen may be able to provide ad creative data with its International product as it already holds the raw data for UK advertisement and could purchase the necessary inputs from other suppliers, as Bloom does for certain countries. One competitor, which offers a similar International product to Nielsen, confirmed this possibility by saying that it could, if

⁴⁸ Methodology: Parties’ estimates supplemented by third-party responses.

⁴⁹ The CMA notes that [X].

requested, purchase ad creative data to supplement its International ad spend product.⁵⁰

118. While Nielsen told the CMA that the addition of ad creative data to its UK International product would entail significant cost, the CMA understands that Nielsen's International platform already provides high-level creative data in some jurisdictions including the UK.

Switching data

119. The Parties submitted that, in the event of a price rise or a worsening of service, customers of their International products would stop using these products rather than switch to the product of the other Party, and that there is no switching between their products.
120. The CMA's analysis of the customer data provided by the Parties supports the view that switching is limited, although the CMA cannot rule out from the data it received that at least one customer⁵¹ switched between the Parties. However, the CMA notes that, for the same reasons as set out above in relation to UK Deep Dive products,⁵² a lack of switching between the Parties in their International products does not necessarily indicate a lack of competitive constraint.

Third-party views

121. The CMA has received evidence from a small number of customers using the Parties' International products. One customer suggested that the Parties' International products are close competitors,⁵³ while another indicated that the Parties' International products are competitors to some extent.⁵⁴ Three other customers of Ebiquity's product were not aware of Nielsen's product, and a further Ebiquity customer said that it had ruled out using Nielsen as it considered it a competitor for a different product.
122. One supplier of digital AdIntel in the UK, and one supplier of AdIntel not active in the UK submitted that the Parties' International products compete with each other.⁵⁵

⁵⁰ [REDACTED]

⁵¹ [REDACTED]

⁵² See paragraph 95.

⁵³ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

Conclusion on closeness of competition

123. On the basis of this evidence, the CMA recognises that the Parties' International products are differentiated but believes that they compete to some extent, in particular as close competitors in the supply of International ad spend data. Moreover, Nielsen already provides high level creatives which makes its product a close alternative for customers that require ad spend and high-level creatives. The CMA believes that the Parties' International products are substitutes for some customers and therefore impose a competitive constraint on each other.

Competitive constraints from rivals

124. The Parties submitted that there are a number of other companies which supply International products to UK customers, and that certain customers would be able to replicate the product in-house by using public sources of AdIntel data. However, apart from Kantar and Global AdSource, the Parties could not identify any competitors with a significant share of supply of International products to UK customers.
125. While one supplier of International AdIntel services named Kantar as an alternative supplier in the UK, albeit focused on ad spend,⁵⁶ another supplier of International AdIntel services said: "*There are no other competitive multimedia products in the UK that we are aware of beyond Nielsen and Ebiqity*".⁵⁷ One customer said that there are no credible alternatives to the Parties' International products in the UK, and that it would not be feasible to replace the products with an in-house service.⁵⁸
126. With respect to the two competitors named by the Parties, the CMA noted:
- (a) In the UK, Kantar uses data from Nielsen and Bloom as its [redacted] inputs for its International product, and only sources directly [redacted]. Kantar's International product [redacted]. One customer said that Kantar was technically a competitor but it did not have sufficient expertise in the UK to represent an alternative to the Parties.⁵⁹
 - (b) Global Ad Source provides ad creative data only and does not provide ad spend data. It does not purchase its data from the Parties but it has only [redacted].

⁵⁶ [redacted]

⁵⁷ [redacted]

⁵⁸ [redacted]

⁵⁹ [redacted]

127. On the basis of this evidence, the CMA believes that neither Kantar nor Global Ad Source can be relied upon as effective competitors to constrain the Parties post-Merger in the supply of International products to UK customers. The available evidence also does not indicate that any other supplier, or in-house supply, provides any significant constraint on the Parties.

Conclusion on horizontal unilateral effects – International

128. For the reasons set out above, the CMA believes that the Parties are each other's closest competitor for International products to UK customers, and that they face only limited competitive constraints from other suppliers. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of International products to UK customers.

Vertical effects: the upstream supply of UK AdIntel data as in input into International products

129. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
130. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁶⁰
131. In the present case, the CMA has considered whether, as a result of the Merger, the Parties, as the main or sole suppliers of UK Deep Dive data, may be able to fully or partially foreclose the supply of UK AdIntel data to competing suppliers of International products who require this UK data as an input to their International products.
132. Nielsen and Bloom currently both licence their UK Deep Dive data to other suppliers of International products. In particular, Kantar buys its UK data from the Parties and supplies its International product to UK customers, in competition with the Parties.

⁶⁰ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

133. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁶¹ These conditions cumulatively form the theory of harm, so if one condition is not met, it may not be necessary to assess the other conditions.

Ability

134. The CMA believes that, after the Merger, the Parties, as the only upstream suppliers of UK AdIntel data, could increase the price charged for this data to Kantar, or decrease the quality of the service provided, thereby making it harder for Kantar to compete effectively in the supply of International products to UK customers. The Parties could stop supplying Kantar altogether, or refuse to licence data to it for use by particular end customers, thereby making its product less attractive. The CMA believes that, post-Merger, there would be no alternatives to whom Kantar could switch to source UK AdIntel data across all media.
135. Third parties told the CMA that UK data is an essential input for an International product being sold to UK customers.⁶²
136. Therefore, the CMA believes that the merged entity may have the ability to engage in a foreclosure strategy, weakening its rival's International product to UK customers.

Incentive

137. The Parties may have an incentive to fully or partially foreclose Kantar (or another supplier) if doing so will render this competitor less effective, and lead to the capture of customers from that the rival for International products.
138. The CMA understands that the Parties may be able to restrict the licensing of their data to particular end users, and so target those end users who are most likely to switch (ie UK customers). The Parties would still be able to sell UK AdIntel data to [redacted] for [redacted] to use in its International product sold to customers elsewhere.
139. However, the CMA found that only one international rival active in the UK, Kantar, currently buys UK data from the Parties, or is likely to do so in the foreseeable future. The CMA found that any gains in the UK for the Parties from foreclosing would be [redacted] as Kantar's sales [redacted]. Conversely, the CMA

⁶¹ [Merger Assessment Guidelines](#), paragraph 5.6.6.

⁶² [redacted].

noted that the costs for the Parties from such a foreclosure strategy could be significant as both the Parties are reliant on AdIntel data from Kantar in other countries to create their International products. The CMA found that both of the Parties licence [X]. The Parties would therefore risk losing many global customers of their International products who require Kantar's data for only a small potential gain in the UK.

140. For this reason, and on the basis of the evidence which the CMA has been able to gather in its phase 1 investigation, the CMA believes that it is unlikely that the Parties will have an incentive to engage in this foreclosure strategy.

Effect

141. If this foreclosure strategy led to fewer or less effective competitors in the supply of International products to UK customers, this could result in higher prices or worse quality for customers of these products. However, even if (contrary to the above) the Parties were to have an incentive to engage in this foreclosure strategy, any effect on competition in the UK is likely to be limited given that Kantar has [X]⁶³ and is not a significant competitor for most customers.⁶⁴

Conclusion on vertical effects

142. For the reasons set out above, the CMA believes that, on the basis of the evidence which the CMA has been able to gather in its phase 1 investigation, the Parties are unlikely to have an incentive to engage in an input foreclosure strategy. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in the upstream supply of UK AdIntel data as an input into International products.

Barriers to entry and expansion

143. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁶⁵

⁶³ The sale of UK data to Kantar relates [X].

⁶⁴ See paragraph 112f.

⁶⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

UK Deep Dive

144. The Parties submitted that barriers to entry in the supply of UK Deep Dive products are low. The Parties said that other suppliers, such as Kantar, which has its own Deep Dive product in other countries (eg France), could easily enter the UK. The Parties also said that a physical presence in the UK is not required to provide an in-depth, advert-tracking service. The Parties added that they are already constrained by new entrants and expansion in the supply of digital AdIntel data.
145. As discussed above,⁶⁶ the CMA believes that suppliers of digital AdIntel only provide a limited constraint on the broad proposition offered by each of the Parties and are not close competitors to the Parties.
146. With regard to possible entry in the supply of UK Deep Dive products, the Parties' internal documents demonstrate that the Parties' experience high contract renewal⁶⁷ and high customer retention rates, which would make it difficult for a new rival to gain share.⁶⁸ Moreover, third-party responses suggest that barriers to enter are high. For example:
- (a) one respondent submitted that the investment to build a database and relevant systems would be too substantial for it to consider entry;⁶⁹
 - (b) this respondent also indicated that customers often require local customer service, increasing the costs of entry.
 - (c) some suppliers of AdIntel in other geographic markets submitted that, as retrospective data would be required to compete effectively, the time required to develop the product and database would be substantial, taking around a year or longer;⁷⁰
 - (d) another potential entrant submitted that a local presence is necessary to monitor traditional media;⁷¹ and
147. Several third parties told the CMA that Nielsen's data is the "currency" or universal benchmark for ad spend. This indicates that having an established methodology in the tracking and collation of AdIntel data is important, creating a high barrier to entry.

⁶⁶ See paragraph 109.

⁶⁷ Annex 13 Nielsen internal document estimates [REDACTED] contract renewal rate.

⁶⁸ Annex 17 Bloom internal document: top 15 customers been with company for 10+ years.

⁶⁹ [REDACTED]

⁷⁰ [REDACTED].

⁷¹ [REDACTED]

148. The CMA has received no evidence to indicate any planned entry in the supply of UK Deep Dive products to UK customers.

International

149. As explained above,⁷² third parties told the CMA that Nielsen's ad spend data is viewed as "currency", and as a necessary input when supplying UK customers with an International product. This creates a high barrier to entry in the supply of International products to UK customers.

150. One supplier of AdIntel in other geographic markets noted that, although it would like to, it has not yet sold its International product in the UK, in part due to the long-term contracts that the Parties negotiate with their clients, as well as contracts spanning different jurisdictions which make it difficult for smaller suppliers to enter a single geographic market.⁷³

151. The CMA has received no evidence to indicate any planned entry in the supply of International products to UK customers.

Conclusion on barriers to entry and expansion

152. For the reasons set out above, the CMA believes that it cannot rely on entry or expansion being sufficient, timely and likely to prevent the realistic prospect of SLC, as identified in paragraphs 111 and 128, as a result of the Merger.

Countervailing buyer power

153. Countervailing buyer power typically requires a buyer to have alternatives to the merging party. In the present case, the CMA found no credible alternatives to the Parties for UK Deep Dive products to UK customers and limited alternatives for International products to UK customers. Moreover, the CMA notes that, even if some customers were to have some degree of countervailing buyer power, since prices are negotiated individually, this would not protect other customers.

Third-party views

154. The CMA contacted customers and other suppliers of AdIntel, including those that the Parties named as competitors. Most customers and many suppliers raised concerns regarding the Merger.

⁷² See paragraph 147.

⁷³ [REDACTED]

155. Third-party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on SLC

156. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of (i) UK Deep Dive products to UK customers and (ii) International products to UK customers. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in the upstream supply of UK AdIntel data as an input into International products.

Exceptions to the duty to refer

157. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a), decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the ***de minimis*** exception). The CMA may also decide not to refer the merger if any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the SLC concerned and any adverse effects of it (the **relevant customer benefits** exception). The CMA has considered in the present case whether it is appropriate to apply either the *de minimis* exception or the relevant customer benefits exception.

Markets of insufficient importance

158. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.⁷⁴

'In principle' availability of undertakings in lieu

159. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.⁷⁵ In most cases, a clear-cut undertaking in lieu will involve a

⁷⁴ [Mergers: Exception to the duty to refer in markets of insufficient importance](#) (CMA64), 16 June 2017.

⁷⁵ [Mergers: Exception to the duty to refer in markets of insufficient importance](#), paragraph 21.

structural divestment. A divestment will not in principle be available if the competition concerns arising from the merger relate to such an integral part of the transaction that to remedy them via structural divestment would be tantamount to prohibition of the merger.⁷⁶

160. In the present case, the CMA's competition concerns relate to the supply of UK Deep Dive products and International products to UK customers. These concerns could be addressed in a clear-cut way by the divestment of these two products and/or related business units; however, this would be tantamount to prohibiting the Merger.

161. Accordingly, the CMA does not consider that an 'in principle' clear-cut undertaking in lieu is available in this case.

Relevant factors

162. The CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact.⁷⁷ The CMA will also consider the wider implications of a *de minimis* decision.⁷⁸ Each is considered in turn below.

Market size

163. The combined revenue of Nielsen and Bloom in the supply of UK Deep Dive products to UK customers and International products to UK customers in 2017 was approximately £11.3 million. Given the limited alternatives to the Parties for these products, the CMA estimates that the total combined size of the markets for the supply of UK Deep Dive and International products to UK customers is around £[~~11.3~~]. This is towards the higher end of the £5 million to £15 million range within which the CMA will consider the factors set out in its guidance in deciding whether to exercise its *de minimis* exception.

⁷⁶ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 2.25.

⁷⁷ *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 28.

⁷⁸ *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraphs 40-44.

Strength of the CMA's concerns

164. The CMA may attach weight to the strength of its belief that the merger will have an anti-competitive effect (ie whether its level of belief is nearer the 'is the case' standard than the 'may be the case' standard).
165. Given the limited alternatives available to the Parties products, the CMA believes that its concerns are closer to the 'is the case' standard than the 'may be the case' standard. The CMA's level of belief is therefore higher than the minimum required to make a reference.

Magnitude of competition lost

166. The Parties submitted that any harm resulting from the Merger would be limited as it would only apply to increased prices for potential switchers.
167. However, as set out in the competitive assessment, the Merger will reduce the number of competitors in the supply of UK Deep Dive products to UK customers from two to one, and only limited alternatives will remain to constrain the merged entity in the supply of International products to UK customers. This would suggest that the magnitude of competition lost as a result of the Merger will be significant. This loss of competition could be expected to result in significant price increases and/or reductions in quality or innovation. The CMA believes that there may be many more customers affected than the potential switchers identified by the Parties as many customers told us that they currently use the alternative Party as a benchmark.

Durability

168. As discussed above, the CMA believes that there are high barriers to entry. Moreover, the CMA does not believe that the durability of the Merger's impact will be limited by technological or market transformation rendering the Merger effects short-lived. While the CMA recognises the growth of digital AdIntel services, the third-party responses indicated that the Parties' customers are interested in AdIntel services across a broad range of media. Third parties gave no indication that this demand would weaken, and the CMA has identified no prospect of greater competition to constrain the Parties in the foreseeable future.

Replicability

169. The CMA is less likely to apply the *de minimis* exception where it believes that the merger in question is one of a potentially large number of similar mergers that could be replicated across the sector.⁷⁹
170. Given that the Parties are the only two suppliers of UK Deep Dive products to UK customers and the two major suppliers of International products to UK customers, the CMA does not believe that issues of replicability arise in the present case.

Conclusion on the application of the de minimis exception

171. Taking all the above factors into consideration, the CMA believes that the markets concerned in this case are together of sufficient importance to justify the making of a reference. As such, the CMA believes that it is not appropriate for it to exercise its discretion to apply the *de minimis* exception.

Relevant customer benefits

172. The CMA may take into account relevant customer benefits as a potential exception to the duty to refer. Under section 30(1) of the Act, the benefits must accrue to customers in the form of lower prices, higher quality or greater choice of goods, or greater innovation. The claimed benefits must be merger specific, timely, likely, and sufficient.
173. For the CMA to consider exercising its discretion, the evidence in support of relevant customer benefits must be compelling. In other words, the parties must produce detailed and verifiable evidence of any anticipated price reductions or other benefits.⁸⁰
174. Nielsen submitted that the Merger will lead to greater innovation and product development, in particular by allowing features of both products to be integrated; and will result in benefits to customers, in particular from the spreading of fixed costs, economies of scale and the pass-through of double marginalisation in the International product.
175. However, the CMA does not believe that the evidence provided by the Parties constitutes compelling, detailed, and verifiable evidence of relevant customer benefits. The CMA notes that it has found that the Merger may bring about

⁷⁹ Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance, paragraphs 2.40.

⁸⁰ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 4.9.

potentially significant price rises (or degradations in quality/innovation) for some customers.

176. The CMA therefore does not have sufficient evidence that the claimed relevant customer benefits will outweigh the competition concerns it has identified to exercise its discretion not to refer the case.

Decision

177. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the UK.
178. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised⁸¹ whilst the CMA is considering whether to accept undertakings⁸² instead of making such a reference. The Parties have until **20 June 2018**⁸³ to offer an undertaking to the CMA.⁸⁴ The CMA will refer the Merger for a phase 2 investigation⁸⁵ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides⁸⁶ by **27 June 2018** that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Sheldon Mills
Senior Director
Competition and Markets Authority
13 June 2018

Endnote:

- i) Paragraph 60 should read: The Parties submitted that this is due to each company's historic focus on different customers, and because different types of customer have a preference for either ad spend or ad creative data.

⁸¹ Section 33(3)(b) of the Act.

⁸² Section 73 of the Act.

⁸³ Section 73A(1) of the Act.

⁸⁴ Section 73(2) of the Act.

⁸⁵ Sections 33(1) and 34ZA(2) of the Act.

⁸⁶ Section 73A(2) of the Act.