

Anticipated acquisition by Nielsen Holdings PLC of the Advertising Intelligence division of Ebiquity PLC

Statement of Issues

30 July 2018

The reference

1. On 25 June 2018, the Competition and Markets Authority (**CMA**) began an in-depth investigation by a group of CMA panel members (the **Inquiry Group**) of the anticipated acquisition by Nielsen Holdings PLC (**Nielsen**) of the advertising intelligence (**AdIntel**) division of Ebiquity PLC (**Bloom**), (the **Merger**).¹ Throughout this document Nielsen and Bloom are referred to collectively as the **Parties**.
2. Our in-depth phase 2 investigation follows a first phase (**phase 1**) investigation of the Merger.
3. The Inquiry Group must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
4. If a relevant merger situation has resulted, or may be expected to result, in an SLC, then the Inquiry Group must also decide:
 - (a) whether action should be taken by the CMA for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has resulted from, or may be expected to result from, the SLC;

¹ The CMA referred the Merger for a phase 2 investigation in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act).

- (b) whether to recommend the taking of action by others for such purposes; and
 - (c) in either case, what action should be taken and what is to be remedied, mitigated or prevented.
- 5. In deciding what actions should be taken, the Inquiry Group shall, in particular, have regard to the:
 - (a) need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it; and
 - (b) effect of any action on any relevant customer benefits (**RCBs**) in relation to the creation of the relevant merger situation concerned.
- 6. In this issues statement, we set out the main issues we are likely to consider in reaching our decision, having regard to the merging Parties' submissions and the evidence gathered to date. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
- 7. We are publishing this issues statement to help any interested parties submitting evidence to focus on the issues we expect will be relevant to our inquiry and to invite interested parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

- 8. On 13 February 2018, Nielsen and Ebiquity PLC agreed a carve out of the Bloom business via a share sale, the transfer of Bloom's UK business, and asset deals for related assets in [X]. The transaction is conditional upon clearance by the CMA.
- 9. Nielsen is a global information, data and media measurement company. It provides market research and media measurement services, including AdIntel products and services.
- 10. 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.
- 11. The Parties overlap in the provision of AdIntel services/products. AdIntel comprises the tracking and collation of advertising and media activity of a company. 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 their own advertising or the advertising of their competitors or customers.

12. Customers access AdIntel data through online platforms. The Parties market two types of online platforms:
 - (a) A Deep Dive platform, which provides access to in-depth AdIntel data for UK media. Nielsen's Deep Dive platform is called AdDynamics, while Bloom's is Portfolio UK.
 - (b) An International platform, which provides access to AdIntel data on a consistent basis across multiple countries, but at a less detailed level than Deep Dive platforms. Nielsen's International platform is called Nielsen Global AdIntel/WizzAd+, while Bloom's is Portfolio International.
13. The Parties' databases include adverts on all traditional media types such as print, outdoor, radio, digital, cinema and TV, though the actual media (ie titles, TV or radio stations) covered differ between the Parties. Customers, however, may purchase access to data covering only a specific industry (eg automobile sector) or specific media types (eg TV).

Frame of Reference

14. 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 CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account factors such as constraints outside the relevant market, segmentation within the relevant market, and other ways in which some constraints are more important than others.²
15. In general, we note that market definition and the analysis of competitive effects are both driven by considerations relating to the 'closeness' of substitution between the Parties' offers and those of alternatives.

Product market

16. The Parties overlap in the:

² See [Merger Assessment Guidelines](#) (CC2/OFT 1254), September 2010, paragraph 5.2.2.

- (a) supply of UK Deep Dive products;
 - (b) supply of International products; and
 - (c) upstream supply of UK AdIntel data as an input into International products.³
17. As set out in paragraph 34 of the CMA phase 1 decision, the Parties have submitted that the “AdIntel market” is broader than the Parties’ products because there are many ways of accessing the same or similar information from a number of other 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. . We will consider whether the relevant markets for each of the Parties’ four products are narrower or broader than Deep Dive products and International products. This will include considering whether the Parties’ Deep Dive products compete with each other and also whether the Parties’ International products compete with each other. We will also consider whether either of the Parties’ Deep Dive products are substitutes for either of the Parties’ International products.
18. Further narrower market segmentations considered by the phase 1 team were by media type (eg television, newspaper, digital); by industry sector (eg automotive, telecoms); and by customer type (media owners, media agencies, advertising agencies, advertisers, and market research companies). Such segmentations were not adopted at phase 1 as the Parties supply their products across all these segments.⁴ We intend to reconsider these possible segmentations.
19. We will investigate whether Deep Dive products covering a limited range of media types (e.g. digital only) are sufficiently close substitutes for either of the Parties’ UK Deep Dive products to be considered part of the same market or markets on which the Parties products are sold. We will also reconsider the possible segmentations discussed above and will investigate the extent to which International AdIntel products are substitutes for UK Deep Dive products. Our assessment will be based on evidence including that received through calls with the Parties’ customers and from other suppliers of AdIntel products.

³ Phase 1 Decision, paragraph 33.

⁴ For a more detailed explanation of the reasoning, see the Phase 1 Decision, paragraphs 54-63.

Geographic market

20. In terms of the geographic market definition, the phase 1 investigation reached the following conclusions:
- (a) Suppliers of UK Deep Dive products generally sell with a local presence, while customers are typically UK-based and place importance on national expertise and support.⁵ For these reasons, and on a cautious basis, the geographic scope was considered to be limited to the UK.⁶
 - (b) Customers of International AdIntel products often require a supplier to have a nationally-based sales/support team.⁷ On a cautious basis, the geographic scope was considered to be the UK.⁸
21. We will reconsider the extent to which the market or markets on which the Parties products are sold are wider than the UK. This is particularly relevant for International products, as the Parties' customers include non-UK firms, while the set of suppliers may include firms without a UK presence. This is made possible by the widespread practice of suppliers licencing each other's data, to be able to provide a product covering countries where they do not collect data themselves.
22. Our assessment will be based on evidence from calls with the Parties' customers and AdIntel suppliers, to understand the suppliers' ability to compete in the UK and in other countries, and the level of local support and data customisation necessary to compete in the UK.

Assessment of the competitive effects of the merger

Counterfactual

23. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would be likely to prevail absent the Merger). In making our assessment, we will consider possible alternative scenarios of competitive conditions and decide upon the appropriate counterfactual based on the facts

⁵ Phase 1 Decision, paragraph 69.

⁶ Phase 1 Decision, paragraph 70.

⁷ Phase 1 Decision, paragraph 72.

⁸ Phase 1 Decision, paragraph 73.

available to us and the extent to which events or circumstances and their consequences are foreseeable.⁹

24. In Phase 1, the CMA considered the prevailing conditions of competition to be the relevant counterfactual as it found there was a realistic prospect that Bloom would continue to operate in the market providing a similar constraint on Nielsen.¹⁰
25. As set out in paragraph 21 of the CMA phase 1 decision, the Parties have submitted that the relevant counterfactual is one in which Bloom will remain part of Ebiquity [X].
26. Our assessment of the most likely counterfactual will be informed by an analysis of Ebiquity's internal documents and of the details of Bloom's sale process, including the existence of alternative bidders.

Assessment of the impact of the merger on competition

27. Theories of harm describe the possible ways in which an SLC could arise as a result of the merger and provide the framework for our analysis of the competitive effects of the merger. We have set out below the three theories of harm which we intend to investigate. The identification of a theory of harm in this issues statement does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence.¹¹ We welcome views on the theories of harm set out below.

Horizontal unilateral effects from loss of competition in the supply of UK Deep Dive AdIntel products

28. The Parties may be the main, and possibly only, suppliers of UK Deep Dive AdIntel products. If that is so, the removal of one Party as a competitor or potential competitor could provide the incentive for the Parties to increase the price of their products or otherwise reduce their quality. The Merger may also result in a reduced incentive for the Parties to innovate and improve their current product offering.
29. We will examine the following factors:
 - (a) Closeness of competition between the Parties: in particular, we will consider whether the Parties are the closest alternative supplier for each

⁹ [Merger Assessment Guidelines](#), paragraph 4.3.2.

¹⁰ Phase 1 Decision, paragraph 23.

¹¹ [Merger Assessment Guidelines](#), paragraph 4.2.1.

other's customers, and whether competition between the Parties influences how they set prices or other aspects of their service, or has influenced the introduction of product innovations.

- (b) Closeness of competition from other AdIntel suppliers: we will consider the extent to which other suppliers are alternatives for the Parties' customers.
- (c) The ability of the Parties to price discriminate between customers: in particular, their ability to identify and set different prices for customers who have no, or few, alternative options.

30. Our assessment will be based on the analysis of internal documents and of evidence from the Parties' customers and other AdIntel suppliers. We will consider the overlap between the Parties' customer bases, their segmentation and evidence of customer switching. Evidence from telephone interviews with customers and AdIntel suppliers will inform our assessment of the similarities and differences between the Parties' products and between each of them and third party AdIntel products, and of the extent to which customers see different products as substitutes.

Horizontal unilateral effects from loss of competition in the supply of International AdIntel products

31. The Parties appear to be among the main suppliers of International AdIntel products to UK customers. Although their products are differentiated, as recognised in the CMA phase 1 decision,¹² they may still be close competitors. If that is so, the removal of one Party as a competitor could provide the incentive for the Parties to increase the price of their products or reduce their quality. The Merger may also result in a reduced incentive for the Parties to innovate and improve their current product offering.
32. The factors we plan to examine and the main evidence sources are analogous to those discussed in paragraphs **Error! Reference source not found.**-30 for the theory of harm relating to Deep Dive products.

Input foreclosure in the supply of UK AdIntel data to International AdIntel products suppliers

37. The Parties may be the main or sole suppliers of UK Deep Dive data. If that is so, the Merger may therefore result in the Parties having the ability and

¹² Phase 1 Decision, paragraph 123.

incentive to foreclose (either fully or partially) the supply of UK Deep Dive data to competing suppliers of International AdIntel products.

38. The phase 1 investigation considered the possible foreclosure of Kantar, which had been identified as a potentially significant competitor to the Parties in the supply of International AdIntel products and currently relies on UK data provided by Nielsen.¹³ We will assess the likelihood of foreclosure in relation to all the third parties currently purchasing AdIntel data from the Parties and using them as inputs for their own AdIntel products.
39. We will examine the following factors:
 - (a) Whether the Parties have the ability to foreclose their downstream rivals. This is more likely to be the case if the input they provide is essential for the rivals to be able to compete downstream and if there are no close alternatives to such input.
 - (b) Whether the Parties have the incentive to foreclose their rivals. This depends on the likelihood of the Parties recapturing the sales lost by the foreclosed rivals. The rivals' ability to retaliate in other markets would also affect the Parties' incentive to foreclose.
 - (c) Whether the foreclosure would lead to a substantial lessening of competition in the downstream market. This is more likely if the foreclosed rivals impose a significant competitive constraint on the Parties downstream.
40. We note that the CMA phase 1 decision concluded that the Parties would not have the incentive to foreclose Kantar, as they rely on Kantar's AdIntel data covering other countries to create their International products. The phase 2 investigation, however, is not bound by the conclusion reached in phase 1. Our assessment will be based on an analysis of the supply relationship between the Parties and other AdIntel suppliers. In particular, we will consider the bargaining power of the AdIntel suppliers purchasing data from the Parties based on (i) the Parties' internal documents; (ii) the availability of alternative suppliers for the data supplied by the Parties; and (iii) the availability of alternative suppliers for the data the Parties purchase from Kantar and the other AdIntel suppliers. Our assessment of the competitive constraints these third parties impose downstream will be informed by internal documents and evidence from customers and other AdIntel suppliers.

¹³ While the Parties supply UK data to other third parties, these do not appear to compete with the Parties downstream. The Parties, therefore, would not have an incentive to foreclose them, nor would foreclosure have an impact on downstream competition.

Countervailing factors

41. We intend to consider whether there are countervailing factors which are likely to prevent or mitigate an SLC. In particular, we intend to consider:
- (a) Entry and expansion;
 - (b) Countervailing buyer power; and
 - (c) Efficiencies.

Entry and expansion

42. We will consider whether entry or expansion by competitors could prevent any SLC that might otherwise arise. To do this, we may assess evidence relating to:
- (a) whether entry or expansion by rivals is likely, including any plans and the certainty of those plans; and
 - (b) whether entry or expansion by rivals is likely to occur in a timely manner, which may include an assessment of the costs and time necessary to enter and/or expand;
 - (c) whether entry or expansion is likely to be sufficient to prevent an SLC from arising.

Countervailing buyer power

43. In some circumstances, customers may be able to use their negotiating strength to limit the ability of the merged firms to worsen prices or service.¹⁴ We will examine whether such power exists in the current case and whether it is sufficient to prevent an SLC from arising.

Efficiencies

44. The Parties submitted a number of efficiencies resulting from the Merger. The phase 1 Decision concluded that the evidence provided by the Parties so far did not constitute compelling, detailed, and verifiable evidence of relevant customer benefits that could outweigh competition concerns.¹⁵

¹⁴ [Merger Assessment Guidelines](#), paragraph 5.9.1.

¹⁵ Phase 1 Decision, paragraphs 175-176.

45. We will examine any submissions made in relation to efficiencies arising from the Merger. In particular, we will examine whether any potential efficiencies are rivalry-enhancing and could be expected to offset any loss of competition.

Possible remedies and relevant customer benefits

46. Should we provisionally conclude that the Merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a provisional remedies statement around the time of our provisional findings.
47. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Evidence sources

48. Our evidence sources may include:
- (a) In-depth calls with the Parties' customers;
 - (b) An analysis of the Parties' internal documents;
 - (c) In-depth calls with other AdIntel suppliers; and
 - (d) Other comments and evidence requested from the Parties.

Responses to the issues statement

49. Any party wishing to respond to this statement of issues should do so in writing, by no later than 13 August 2018.

Please email NielsenEbiquity@cma.gov.uk or write to:

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