

17 July 2018

**ANTICIPATED ACQUISITION BY NIELSEN OF EBIQUITY PLC'S
ADVERTISING INTELLIGENCE DIVISION**

PARTIES' PHASE II INITIAL SUBMISSION

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EXECUTIVE SUMMARY

- 1 The proposed acquisition by Nielsen of Ebiquity's advertising intelligence (**AdIntel**) business (referred to as **Bloom**) is a **strongly pro-competitive merger**, combining highly complementary non-competing products, enabling the realisation of substantial cost savings and the emergence of a new integrated product offering, as well as the ability to utilize and justify the investment needed continuously to improve the tracking of digital ads for both parties' products.
- 2 Nielsen's Deep Dive product (AdDynamix) and Bloom's Deep Dive product (Portfolio UK) are **not demand side-substitutes**. Likewise, Nielsen's International AdIntel product (Nielsen Global AdIntel, or **NGA**¹) and Bloom's International AdIntel product (Portfolio International) are **not demand side-substitutes**. As such, there will be no reduction in customers' switching options and, therefore, no reduction in competition. This acquisition was mischaracterised as a 2-to-1 merger by the CMA in Phase I. In fact, the Parties compete in separate markets and they do not impose a pricing/quality/innovation constraint on each other. There can therefore be no realistic prospect of competitive harm arising from the Transaction².
- 3 With respect to the Parties' Deep Dive AdIntel products:
 - (a) **Nielsen's AdDynamix product is a post-advertising campaign analysis tool, whose data supports media investment planning.** It tracks all important media investment decisions in order to identify trends across all media channels in the UK, i.e. on the distribution of advertising spend across media channels. The information is used by media buying agencies (and, to a lesser extent, advertisers) to optimize the media investment strategy for their clients and to provide media owners with advertising intelligence to specify their commercial and marketing strategy. AdDynamix contains very limited ad creative content, just [X]. As such, customers do not (indeed, cannot) use it to plan their ad creative strategy or tactics.
 - (b) In contrast, Bloom's **Portfolio UK is an advertising creatives planning tool**, used by users - mostly advertisers and media creative agencies - to plan their ad creative strategy and tactics. To this end, Portfolio UK contains detailed coding of ad creative attributes, including descriptions and net spend data (and rate card data for press only), with the user able to search and compare those ad creative attributes and descriptions.
- 4 With respect to the Parties' International AdIntel products:
 - (a) **Nielsen's NGA data is used by advertisers for cross-border strategic media investment decision-making purposes**, and by agencies on behalf of their advertiser clients. It is a database of historic media investment planning data (with very limited ad creatives content) harmonised across multiple jurisdictions (90+ countries), updated every [X].
 - (b) In contrast, advertisers looking to track and compare competitors' advertising in different jurisdictions over time and across countries in order to inform their ad creative

¹ [X]

² Further, penetration rates of the Parties' products with UK advertisers are low: of the top 135 UK advertisers, only [X] ([X]%) purchase Deep Dive AdIntel products from Nielsen or Bloom. Of the top 500 UK advertisers, only [X] ([X]%) purchase Deep Dive AdIntel products from either Party. In addition, Bloom estimates that the top 100 advertisers spent X% of their collecting advertising budget on Bloom's Deep Dive ad creatives service in 2017.

strategies use Bloom's Portfolio International product. Portfolio International is updated much more frequently than NGA: [X] of its content is updated daily and the rest on a monthly basis. It focuses on tracking an ad's creative content, with users able to search and compare harmonised ad creative attributes and descriptions. To the extent Bloom's UK clients also require ad spend data (and Bloom currently has [X] who do), due to the limited amount of ad spend data tracked by Bloom this ad spend data is supplemented by third parties. This provides customers with linked creative and spend data according to customised taxonomies and ad tagging.

- 5 In its decision to refer the Transaction for a Phase 2 review (**SLC Decision**), the CMA states that "*a lack of switching between the Parties...does not necessarily indicate a lack of competitive constraint*". It is submitted that the evidence demonstrates that the absence of switching is precisely because the Parties' products are not substitutes and as such not competing with each other for customers' business. The SLC Decision purports to have identified "*limited actual switching*"³ and the CMA concluded that it could "*not rule out that at least one customer switched between the Parties*"⁴ and suggests that customers use the Parties' respective products as price benchmarks [X]. It is submitted that these statements are not supported by any robust evidence. More generally, the other reasons the CMA relied on to justify its conclusion that the Parties are close competitors, such as that customers "*considered*" or had "*initial discussions*" with both Parties⁵, are not probative of the CMA's conclusion.
- 6 Rather the constraint on the Parties' prices and service levels, which is felt very keenly by both Parties, comes largely from customers' limited advertising services budgets for discretionary marketing spend. Price increases are [X] each of the Parties loses customers regularly, almost all of whom stop buying AdIntel data altogether, but some of whom may switch to rival suppliers, including Kantar, Global AdSource, Pathmatics, Moat, AdBeat and Ad Clarity. This pressure is mounting in an industry where digital channels are becoming the primary medium for advertising. Digital advertising is difficult and expensive to track, and as indicated above, there are several competitors. Furthermore, customers – being major blue chip advertisers such as [X], global media buying and creative agencies such as WPP, and media owners and broadcasters such as [X] – would also not tolerate any attempt to increase prices above or reduce quality below competitive levels.
- 7 In short, the CMA's conclusion in the SLC Decision 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*"⁶ is clearly not sustainable (and, indeed, is a surprising conclusion to have drawn, even at Phase 1) in light of the clear evidence that the Parties' respective Deep Dive products are not functional substitutes, are not the subject of competitive switching by customers and are not used [by customers] to benchmark pricing or to obtain better pricing.
- 8 In a similar vein, the CMA's conclusion in the SLC Decision that "*the Parties are each other's closest competitor for International products to UK customers*"⁷ flies in the face of the clear evidence of a complete absence of switching, reflecting that the two products are simply not substitutes.

³ SLC Decision paragraph 97 (re Deep Dive).

⁴ SLC Decision paragraph 120 (re International).

⁵ SLC Decision paragraph 99.

⁶ SLC Decision paragraph 102.

⁷ SLC Decision paragraph 128.

- 9 Importantly, the SLC Decision also did not given any proper consideration to the customer benefits the Transaction will bring. By enabling Nielsen to consolidate its and Bloom's complementary AdIntel businesses, the Transaction will deliver **significant efficiencies and in turn, benefits to customers**:
- (a) substantial economies of scale will be achievable in data collection and processing, ensuring the long-term viability of both Nielsen's and Bloom's services;
 - (b) there will be a significant increase in media coverage for all four products;
 - (c) there will be fully harmonised data and a single interface for customers purchasing more than one product (e.g. both AdDynamix and Portfolio UK);
 - (d) the Parties will be able to develop new analyses and reports which combine the data sources and offer deeper insights to customers; and
 - (e) the merger will make possible the development of a holistic digital service, combining the Parties' complementary tools across 42 countries, showing new ad formats, retargeting and contextually targeted ads, which will be integrated with the offline service to create a unique 21st century communications intelligence service.
- 10 Therefore, this Transaction will result in more relevant, more innovative, stronger and more sustainable products in the AdIntel industry but, crucially, this will not be at the expense of any existing competitive constraint imposed by Nielsen on Bloom or vice versa.

1 MARKET DEFINITION

1.1 This merger involves four unique products. They are all AdIntel products that collect and analyse data about advertisements placed in various UK media. At the back office level, there is an overlapping data collection methodology for the products: employees scan, watch, listen to ads and record information about them. The products rely to an extent on the same source data (albeit there are differences). However, the metadata – which is absolutely key to the success of these products - is very different, the user interface is very different (each product requiring its own user training), and the products are used by different groups of customers for very different purposes. Each product therefore operates in a separate market. The four relevant markets are:

- (a) the supply of **UK Deep Dive post-advertising campaign analysis tools**;
- (b) the supply of **UK Deep Dive ad creative planning tools**;
- (c) the supply of **International cross-border strategic media investment decision-making tools to UK customers** (although the relevant geographic market could in fact be wider)⁸; and
- (d) the supply of **International ad creative planning tools**⁹ to UK customers (although the relevant geographic market could in fact be wider).

1.2 This section describes the products and the markets in which they operate in detail.

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[><]

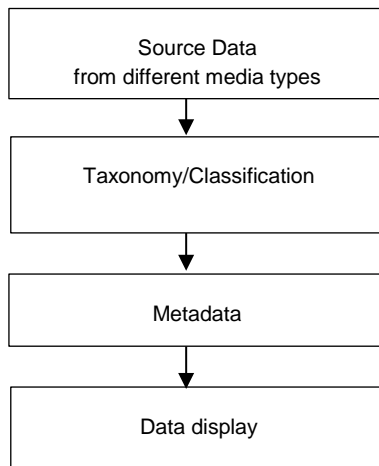
⁹

The CMA's conclusions at SLC Decision para 53 suggest that the CMA has not properly understood the Parties' products and it is difficult to see how the CMA reached the conclusion that they are "*substitutable to some extent*", given the absence of any switching between them. The Parties' respective International services do not consist in simply sending a client the Deep Dive data sets for multiple countries. The whole purpose of buying an International product is for the AdIntel supplier to undertake the harmonising (e.g. as between product categories, to account for different brand names used in different countries, who is the advertising group) to enable a client to have a consistent, comparable data set. The detailed data needs to be aggregated, with the spend data evaluated and translated into a single currency. Furthermore, licensing agreements may be required from third party AdIntel suppliers to cover any gaps in coverage (media or country).

Product design and delivery

- 1.3 The diagram below summarises the key stages of the AdIntel product design and delivery for both Deep Dive and International AdIntel products:

Figure 1



Source data

- 1.4 The source data comprises a defined set of the most relevant channels with advertising to provide a representative selection of ads across all media types, e.g. TV, print, digital, radio and outdoor advertisements¹⁰. Media channels in the selection are monitored to high accuracy and Nielsen monitors the full ad spend in the channel and across titles. Subscriptions may be needed to view the ads. Nielsen captures the creative content only to the extent necessary to identify the advertiser, product and brand. If the log data in the ad provides this, Nielsen will not provide any additional creative information at all. All four of the products in question report basic information on the source data of each ad, which comprises a unique code and basic information, i.e. the advertiser name, brand and product. However, since both Parties produce their respective products using a sample of adverts (rather than the entire population of adverts) the actual source data that they rely on overlaps on only [X]% of publications and channels covered between them across all media types. [X].
- 1.5 Even the same titles consist of different numbers of identified advertisers, product information and significantly different spend information. Both Parties collect the same media types, but differentiate in each with a different media coverage and even within the same station, title or website with a different level of monitoring and evaluation to provide a specific understanding of the advertising information related to its clients with different user interfaces to address the client requirements.
- 1.6 In addition, the underlying cost structures of the Nielsen and Bloom AdIntel businesses are different due to the different number of employees used by each to monitor each media type. Indeed, overall Nielsen has [X] employees compared to Bloom's [X], with significant differences in certain activities, for example, TV coding, where Nielsen has [X] coders (monitoring [X] channels including [X] channels not monitored by Bloom) and Bloom has [X] coders (monitoring [X] channels including [X] not covered by Nielsen).

¹⁰ Nielsen also covers cinema and direct mail.

Taxonomies/classifications

- 1.7 The source data is collated and analysed by the Parties in different ways, i.e. different classifications/taxonomies are applied¹¹.

Metadata

- 1.8 The metadata is the very detailed data about either the positioning of the advert (Nielsen) or the creative content of the advert (Bloom) and differs across the four products.
- 1.9 The metadata used to produce Nielsen's products is collected with the aim of helping media buying agencies (and, to a lesser extent, advertisers) to make ad placement decisions, analyse post-advertising the momentum of their campaigns, effectiveness analysis and competitive scenario analysis of their advertiser clients. It enables media owners (publishers/broadcasters) to monitor ad placement trends for the purpose of defining their marketing strategies, evaluate the performance of their portfolios of media outlets and analyse their client portfolio composition. It supports their commercial negotiations with media buying agencies. Therefore the metadata includes very detailed data on ad positioning (e.g. [redacted] etc.). Nielsen produces ad spend¹² across all industries and media, which is used as the commonly relied upon data source [redacted].
- 1.10 The metadata used to produce Bloom's products is collected with the aim of helping advertisers and creative agencies make decisions about the creative content of their ads. Therefore the metadata is very detailed, searchable data on the content of adverts. It also includes information on ad spend (estimated net spend across all media and rate card spend (in addition to net spend) for print ads only). This enables advertisers and creative agencies to see what the advertiser's competitors creative positioning is and how much they are estimated to be spending.

Data display

- 1.11 Finally, the data is supplied to a client through a user interface¹³. The interface for each of the four products is very different and requires user training. By way of example, Nielsen's WizzAD+ platform can generate technical data files to pull required information for further use in other applications and AdDynamix is designed to set up complex filtering by the user to select specific reports important for the user's business. Bloom's application is designed to provide an immediate dashboard view to advertiser clients to their respective brands with the new creatives and detailed campaign information.

Customers' use of the products

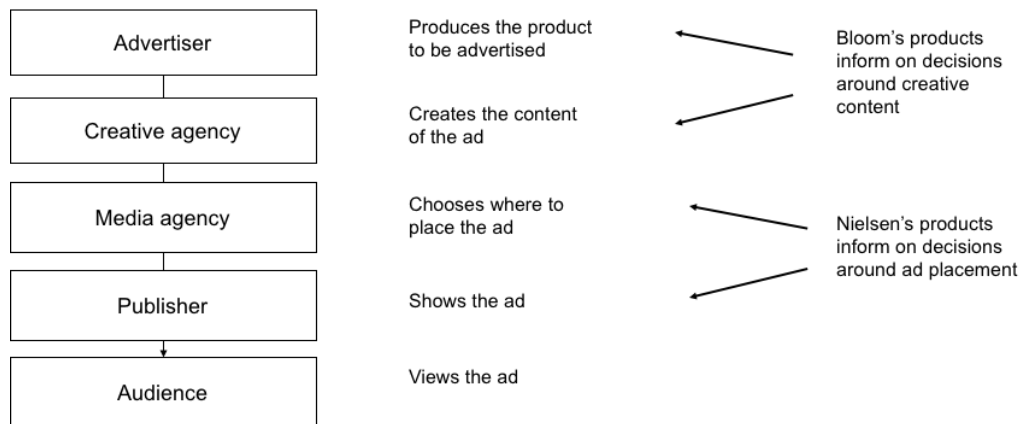
- 1.12 The Parties' customers operate in different segments of the advertising industry. The diagram below shows the main customer groups of the Parties and their role:

Figure 2

¹¹ According to [redacted] analysis, Nielsen in the UK has [redacted] unique additional taxonomy / classification structures as compared to Bloom, and which are relevant to provide Nielsen's ad spend analysis.

¹² Based on multiple detailed evaluations by utilising gross rate cards and weighting in order to allow cross media comparison.

¹³ Nielsen International product, NGA, is [redacted].



Bloom's UK Deep Dive product, customers and competitors

- 1.13 Bloom's UK Deep Dive product, Portfolio UK, is the only cross-media Deep Dive analysis of creative advertising data in the UK, providing details on the content of the ad, including details of the ad image, text and audio on the ad, contact details, web addresses, any other brands mentioned in the ad, incentives advertised, prices or reported financial information. An indication of ad spend (in terms of estimated net spend for all media, plus also rate card spend for press) is provided in order to benchmark the importance of the ad to the advertiser, but most importantly the information provided is about the campaign and the communication approach. In order to analyse the ad creatives, the ad content data needs to be coded with attributes, descriptions and an ability to compare and search. Bloom invests significant time, effort and cost manually typing to text an entire ad to ensure all possible ad creative data is captured.
- 1.14 Portfolio UK is used primarily by advertisers and creative agencies when designing the creative content of their adverts. In particular, Portfolio UK has a search function that enables users to search for specific creative information and for specific ad attributes, e.g. adverts for car financing at 0% APR.
- 1.15 Bloom also supplies additional unique ad creative AdIntel services to customers that Nielsen does not supply, including the Vehicle Finance Report, which is a print and online advertising report of car financing offers; and compliance marking, i.e. working with companies to ensure their brands are being used in line with their brand guidelines.
- 1.16 In addition to Bloom, there are other companies who provide Deep Dive creative content planning tools, focussing on digital media, including Ad Clarity, Kantar Media¹⁴ and MOAT.

Nielsen's UK Deep Dive products, customers and competitors

- 1.17 Once the creative content of an advert has been determined, the advert needs to be placed in appropriate media to reach the desired target audience. Media planning agencies draft and implement a media plan on behalf of an advertiser, selecting the right media and placement (i.e. frequency/position) in the respective media type across all media, in order for the advertising campaign to reach the defined target group of the advertiser's clients in the most effective way. In other words, what is key is efficiency, proper investment and optimizing the ad placement. Media owners analyse the shifting of advertising budgets and look for new sales leads, using ad spend AdIntel data as key performance metrics.

¹⁴ <https://www.kantarmedia.com/uk/our-solutions/advertising-monitoring-and-evaluation/creative-monitoring>.

- 1.18 Nielsen's Deep Dive AdIntel product, AdDynamix¹⁵, is a post-advertising campaign analysis tool, whose data supports media investment planning, and the only Deep Dive analysis of advertising expenditure and ad positioning data across all media types in the UK. It provides very detailed intelligence on where and when adverts were placed, who placed the ads and the [redacted]. For example: [redacted]]¹⁶
- 1.19 Nielsen's customers use its data to inform their advertising placement decisions. The data is also used in negotiations; in particular the rate card information that Nielsen produces has long been established as the industry standard measure of rate card spend. For example, a contract between a media agency and a media owner (say a newspaper) might specify that an advert for a supermarket is shown three times in a week, that twice it has to be the first supermarket advert in the newspaper and that once it can be within the first three, "as reported by Nielsen". Nielsen's AdDynamix is thus fundamental to placement verification, and its customers are primarily media owners and media buying agencies. Where available, the product does enable the user to view ads tracked but does not otherwise include Deep Dive creative content.
- 1.20 While there are other companies who provide UK Deep Dive AdIntel data with respect to digital advertisements¹⁷ (such as AdClarity (owned by Kantar) and Moat) including some data on digital ad spend, it is submitted that these products do not contain ad spend data directly equivalent to Nielsen's and as such, Nielsen does not view these providers as offering a comparable tool to Nielsen's¹⁸¹⁹.

Bloom's International ad creatives planning tool, customers and competitors

- 1.21 Bloom's International ad creatives planning tool, Portfolio International, provides harmonised ad creative data across countries. It is updated much more frequently than Nielsen's NGA. [redacted]%-[redacted]% of its content is updated daily and the rest on a monthly basis, enabling customers to use it for short- and long-term creative and strategic planning and ad content decisions. To the extent Bloom's UK clients also require ad spend data (of which it has [redacted] who do), this is often sourced by Bloom from [redacted].
- 1.22 Global Ad Source is the key rival in this market, Bloom having [redacted] - to them. In addition, Kantar's International AdIntel product does contain ad creative descriptions/attributes (unlike Nielsen's product, which does not)²⁰.

Nielsen's International cross-border strategic media investment decision-making tool, customers and competitors

- 1.23 Nielsen's International cross-border strategic media investment decision-making tool, NGA, provides international ad spend and placement data (but not [redacted]) across countries that is calculated, harmonised and presented in a consistent manner and is used for long-term

¹⁵ [redacted]

¹⁶ [redacted]

¹⁷ Zenith Media, Advertising Expenditure Forecasts March 2018, page 9.

¹⁸ Notwithstanding that, for completeness, Nielsen listed them in its response to Q.23 of the CMA's 25 June 2018 request for information.

¹⁹ Digital advertising represents is the growth segment in advertising, contributing 85% of estimated growth according to Zenith Media, Advertising Expenditure Forecasts March 2018, page 11.

It is expected that digital media will be around 50% of total global ad spend by 2020). eMarketer, eMarketer releases new global media ad spending estimates, 7 May 2017, available at: <https://www.emarketer.com/content/emarketer-total-media-ad-spending-worldwide-will-rise-7-4-in-2018> (accessed on 9 July 2018).

²⁰ In this respect, Kantar's International AdIntel product has always been a hybrid product, competing both with Nielsen's International media investment tool and with Bloom's International ad creatives tool.

strategic media investment planning. The key characteristic of the spend data is its comparability across countries and therefore the main value added service is the collection and harmonisation of the data. At the same time, it is based on the currency adspend information in each local market, therefore is very representative.

1.24 NGA is usually purchased for international advertisers (either direct or on behalf of their media buying agency), whose global teams use it to access large volumes of data quickly, in order to analyse trends at a global level. For example, an analysis may be performed just once a year or monthly/quarterly to identify in a model if long-term advertising targets are improving across various jurisdictions, or to assess the advertising effectiveness in combination with other data sources such as audience reach, sold units or products revenue. NGA is updated [X] every [Y], due to Nielsen undertaking a detailed harmonization process of advertiser names and mapping products/brands from various suppliers, as requested by the particular client.

1.25 [X] provides a very similar product (and is [X] Nielsen in this market).

The Parties' respective products provide solutions to different customer needs

1.26 **Table 1** below demonstrates what questions the Parties' respective customers are seeking to answer in satisfying their particular requirements (post-ad campaign analysis for Nielsen's customers, ad creative planning for Bloom's).

Table 1: Different products addressing different needs

Nielsen	Bloom
Post-ad campaign analysis tools	Ad creative content planning tools
<i>Media buying agency / media owner</i>	<i>Manufacturer/advertiser/creative agency</i>
Did I maximize my ad budget?	What creatives messages are my competitors running?
What was my return on investment?	Which retailer is supporting my/my competitor's products?
Did my ad campaign generate product sales?	How many advertisers are using this creative theme/endline?
Did I reach my target?	What are my competitors' price points?
Did my agency do a good job?	How is creativity and spend in my sector changing over time?
How much is detailed investment on product/brand/advertiser level in each media type to reflect media owner's market?	How did my ad stand out among competitors?
Which particular titles are they planning on, where is white space?	Have my brand guidelines been met in all regions?
Are they using other media or only print, TV...filtering to direct leads?	
What consumer target are they talking to?	

2 ABSENCE OF HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF UK DEEP DIVE POST-AD CAMPAIGN ANALYSIS TOOLS

Introduction

- 2.1 There can be no SLC in respect of the supply of UK Deep Dive post-ad campaign analysis tools, in terms of increased prices or reduced service, quality or innovation.
- 2.2 The CMA's conclusions in the SLC Decision are based to a large extent on a mischaracterisation of the nature of Nielsen's post-ad campaign analysis product, in particular, that it and Bloom's UK ad creatives planning tool "*serve similar customers with similar information and therefore are alternatives to some extent*"²¹, a view which is impossible to reconcile with the absence of switching and the fact that when Nielsen loses customers, it is not to Bloom.
- 2.3 In fact the most significant binding constraint on the price of Nielsen's post-ad campaign analysis tool is that customers will decide not to purchase it at all, due to their being constrained by limited marketing budgets and the need to make a decision as to whether the service they are buying is still relevant to them and considered to be business critical spend.
- 2.4 In addition, Kantar has already started supplying a digital Deep Dive AdIntel product and would certainly have the ability to broaden this product to cover other media. Further, a number of the digital AdIntel firms (such as [X]) (which is very popular with media owners) as well as [X]) provide additional insights, e.g. [X].
- 2.5 The SLC Decision also fails to address the fact that Nielsen's customers, being major media owners, publishers and powerful consolidated media buying agencies (many of whom operate globally), would simply not tolerate an increase in price or decrease in service quality.

Absence of switching

- 2.6 In the SLC Decision (at paragraph 97(c)), the CMA claims that two customers (out of a total of [X] customers²², or [X]% of customers) have "*decided to switch between the Parties*", [X] (we assume) and another (unnamed).
- 2.7 However, there is in fact no known "switching" from Nielsen's media investment planning tool to Bloom's ad creatives planning tool in 2015-2017, in other words, there are no examples of customers switching between two substitutable products. Whilst there are some limited examples of customers who stop using one Party's product and start using the other's product²³, this is due to the customer deciding to use a different product that better suits its needs at that particular time, and these events should therefore not be treated as a "switch".
- 2.8 [X] is a prime example of this. [X] stopped buying from Nielsen and started buying from Bloom [X,] due to its requirements having changed and its now requiring [X.]. Indeed, it told Bloom that Bloom's "[X]"²⁴;
- 2.9 Customers have limited budgets to buy AdIntel products/services. Some customers do purchase both AdDynamix and Portfolio UK, albeit for different purposes (as explained above). There will be occasions where, due to budgetary constraints, a customer purchasing both may decide to drop one product (just as it frequently happens that one Party's unique customer will

²¹ SLC Decision paragraph 88.

²² For 2015-2017.

²³ And some customers who buy both Parties' products.

²⁴ [X]. [X].

decide, for various reasons²⁵, to stop purchasing with no suggestion that it is reallocating its budget to another AdIntel product). Similarly, a customer of one Party may become aware of the other Party's product and decide to allocate its budget to that product if deemed more responsive to its needs ([redacted]). However, it is submitted that none of these instances can be characterised as "switching" for the simple reason that Portfolio UK and AdDynamix are distinct products, which are not substitutes. Indeed, there are no instances of any "switch" (i.e. a customer stopping using one Party's product and starting using the other's) being motivated by a customer seeking a comparable product at an improved price. In any event, even if such instances are (wrongly) characterised as "switching", they are rare.

Nielsen's pricing

- 2.10 The reasons the CMA gave in the SLC Decision for concluding that, in this case, "*limited actual switching does not imply a lack of competitive constraint*", were that "*many customers...compare the Parties' products and...use the other as a benchmark for pricing and [redacted]*"²⁶ ²⁷.
- 2.11 [redacted].²⁸
- 2.12 The CMA places undue reliance on third party statements about the supply of AdIntel, which it is then struggling to reconcile with actual empirical data as to the absence of switching. The fact that some customers have "*initial discussions*"²⁹ with both Parties cannot possibly be interpreted as meaning they are considering both Parties' products in respect of the same service. Those discussions might arise as some clients are simply not aware of the capabilities of each product and result in the customer realising one product is not suitable for its needs (which would explain why the Parties do not see this activity, as it simply shows customers working out which product suits them), and the CMA cannot draw any conclusions from that as to closeness of competition.
- 2.13 While some customers do buy both products, for entirely different purposes, Nielsen is of the view that many of its customers (particularly media owners) [redacted] (please see further section 3 below).

There is no prospect of Bloom entering the UK Deep Dive post-ad campaign analysis tools market

- 2.14 Customers of Nielsen's post-ad campaign tool are predominantly media owners (publishers/broadcasters) and media buying agencies, which Bloom services to a minimal extent³⁰. To get meaningful traction with media owners or media buying agents, Bloom would need [redacted].
- 2.15 [redacted]
- 2.16 In short, the CMA's conclusion in the SLC Decision 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*"³¹ is not sustainable (and, indeed, is quite a surprising conclusion to

²⁵ e.g. due to budgetary constraints or not having new product launches to plan for or due to a decision to use expert knowledge for competitive information instead of a data tool.

²⁶ SLC Decision paragraph 97(a).

²⁷ SLC Decision paragraph 97(b).

²⁸ SLC Decision paragraph 97.

²⁹ SLC Decision paragraph 99.

³⁰ Bloom audits media agencies. [redacted]

³¹ SLC Decision paragraph 102.

have reached, even at Phase 1) in light of the clear evidence that the Parties' respective Deep Dive products are not functional substitutes, are not the subject of competitive switching by customers and are not used by customers to benchmark pricing or to obtain better pricing.

3 ABSENCE OF HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF DEEP DIVE AD CREATIVE PLANNING TOOLS IN THE UK

Introduction

- 3.1 The Transaction will not give rise to an SLC in respect of the supply of Deep Dive ad creative planning tools in the UK.
- 3.2 As explained in section 2 above, the CMA's conclusions in the SLC Decision are based to a large extent on a mischaracterisation of the nature of Bloom's Deep Dive ad creatives planning product, in particular, that it and Nielsen's UK post-ad campaign analysis tool "*serve similar customers with similar information and therefore are alternatives to some extent*"³², a view which is impossible to reconcile with the different customer uses for the two products, the consequent absence of switching and the fact that when Bloom loses customers, it is not to Nielsen.
- 3.3 In fact, the most significant constraint on Bloom's pricing of its ad creatives planning tool is that customers will simply decide not to purchase it at all, reflecting the fact that creative Adintel represents a discretionary spend, as illustrated by the low penetration rate amongst advertisers and the fact that Bloom's ad creatives planning tool is just one of numerous services that compete for a share of an advertiser's advertising budget. In addition, Bloom's coverage of digital ads faces significant competition from a variety of suppliers of digital AdIntel, in particular, Ad Clarity (owned by Kantar), Moat and Pathmatics. In addition, there is a realistic prospect of Kantar starting to supply a UK Deep Dive ad creatives planning tool, not least as it has already started supplying a digital Deep Dive AdIntel product.
- 3.4 The SLC Decision also fails to address the fact that Bloom's customers, being major advertisers and creative media agencies, would simply not tolerate an increase in price or decrease in service quality. Indeed, Bloom struggles to persuade many clients, including the likes of [X] and [Y], even to [Z].
- 3.5 Furthermore, [X]. Alternative sources include self-monitoring, free digital data providers such as YouTube or Google, and data providers such as AdForum or "David Reviews" (which charges £1,000 per year for basic ad monitoring).

Absence of common customers and switching

- 3.6 As explained above in Section 2 above, there is no switching from Bloom to Nielsen, reflecting that their respective UK Deep Dive AdIntel products are not functional substitutes, and it is submitted that the two "switches" the CMA purported to rely on its SLC Decision are not instances of competitive switching.

Constraints on the ad creatives planning tools market

- 3.7 Increasing digitalisation of traditional media is eroding the ad creative planning tools market. Increasingly, traditional media, such as newspapers and magazines, are moving online, with digital advertising becoming personalised, making ad capture and monitoring significantly more

³² SLC Decision paragraph 88.

challenging. Indeed, online advertising outstripped TV advertising revenue in 2017 and is expected to be 60% of all ad spend in the UK in 2019.

- 3.8 Even the key TV advertising market is moving from a push to a pull model in terms of content delivery, with consumers deciding what they want to watch and streaming or downloading content from “on-demand” content publishers such as Netflix and catch-up TV. Advertising is increasingly being served digitally to individual viewers rather than being broadcast to all customers viewing at a given time. This level of addressability, currently the preserve of online advertising, is already being tested by Sky through their return path capability, Sky AdSmart, and is expected to be rolled out to all platforms over the next five to ten years. This will lead to a significant change in the way that AdIntel businesses need to capture TV advertising, with further significant investment required.
- 3.9 [redacted]. Bloom's focus on digital competition and the constraint exercised by digital players/the threat of new entry is therefore far more significant than the CMA suggests³³ (i.e. the impact that digital-only players have on Bloom's competitive strategy is much greater than the CMA might expect from market share alone³⁴). This is in fact evidenced by Bloom's internal documents, which show that digital specialist ad monitors – such as AdClarity (owned by Kantar), Zulu5 and Moat – [redacted].
- 3.10 Digital-only suppliers have none of the fixed capital costs associated with the manual ad monitoring of traditional media, and are therefore much better placed to capture digital advertising than traditional AdIntel companies. To be competitive in the digital media space, AdIntel suppliers will have to invest constantly in IT technology (both in terms of development and infrastructure) to ensure capture and monitoring systems keep pace with the rapidly evolving technology and will face more competitors in the sale of the data (such as Alphonso TV and iSpot TV). As content becomes increasingly digitised (from on-demand television to digital provision of traditional media such as newspapers and out-of-home magazines), this threat extends across much of Bloom's business model.
- 3.11 [redacted].
- 3.12 [redacted].
- 3.13 [redacted].
- 3.14 [redacted].

Nielsen is not a close competitor for UK Deep Dive ad creative planning tools

- 3.15 It is fundamentally incorrect to suggest, as the CMA does in the SLC Decision, that “the Parties both supply all customer types and currently compete for the sale of both ad spend and ad creative data”³⁵ and indeed difficult to understand how this conclusion was reached given the empirical evidence. Nielsen does not [redacted]. Its customers purchase Nielsen's media investment planning product precisely because it is an ad spend and ad positioning tool, which they use to assess their strategic ad investment plans. If the parties' respective deep dive products are used by the same advertiser, they will be used by different departments (e.g. whereby the adspend

³³ SLC Decision para 109(d).

³⁴ We would also note that, while customers might emphasise the importance of traditional media tracking, they may not (yet) appreciate the extent to which traditional media is increasingly digital.

³⁵ SLC Decision para 85.

data is used by the Media Research Department and the Bloom creative product by the marketing department to define and design a new campaign).

3.16 [X].

3.17 Nielsen has not [X].

3.18 As customers of Deep Dive ad creative planning tools are primarily advertisers, Bloom has established advertiser specific coding rules and classifications. In order for Nielsen to expand more directly into servicing advertiser clients, it would need to establish the client relationship and tailor its offering to such clients. This would take a substantial amount of work, such as coding the data according to the individual advertiser client rules (including back data for one year) and developing a dashboard tool to show the requested KPIs and creative description. Nielsen believes the costs of establishing such a tool with backdata would be approximately £[X] in set up costs and £[X] in annual tracking costs.

3.19 Again, the notion 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*”³⁶ is clearly wrong and contradicted by the available evidence.

4 ABSENCE OF HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF INTERNATIONAL CROSS-BORDER STRATEGIC MEDIA INVESTMENT DECISION-MAKING TOOLS TO UK CUSTOMERS

Introduction

4.1 The Transaction will not give rise to an SLC in respect of the supply of International cross-border strategic media investment decision-making tools, either in terms of increased prices or reduced service, quality or innovation.

4.2 The CMA’s conclusions in the SLC Decision are weak, contradictory, based on a fundamental mischaracterisation of the nature of International cross-border strategic media investment decision-making products, entirely dismissive both of actual rival suppliers (despite evidence of business lost to them) and of the absence of competitive rivalry from Bloom.

4.3 Nielsen has had [X] unique UK customers of its International AdIntel product since 2014, none of which switched to it from Bloom’s Portfolio International product. Likewise, when Nielsen loses customers, it is because they stop buying Nielsen’s NGA altogether. Nielsen lost [X] customers in the period 2014-2017, of which none switched to Bloom’s Portfolio International. No customers have bought International AdIntel products from both Parties in the same year. The CMA is reduced in its SLC Decision to noting that “*the CMA cannot rule out from the data it received that at least one customer switched between the Parties*”, which seems a very flimsy basis on which to conclude that the Phase 1 SLC test was triggered as regards International AdIntel products.

4.4 Nielsen’s largest rival in this market is Kantar (a data collection organisation owned by WPP), with estimated revenues of £[X] and share of [X]%, considerably larger than Nielsen (£[X]) ([X]%).

³⁶ SLC Decision paragraph 102.

- 4.5 Given all this evidence, and the fact the CMA concludes the Parties' International products "are differentiated"³⁷, and that switching is "limited"³⁸ (an understatement – there is no switching), it is somewhat extraordinary that the CMA nonetheless concludes that the Parties International products "...impose some competitive constraint on each other"³⁹.

There is no prospect of Bloom entering the International cross-border strategic media investment decision-making tools market

- 4.6 [X]. Please see further section 6 on the Counterfactual.

Third party views

- 4.7 It is difficult for Nielsen meaningfully to comment on the third party views quoted in the SLC Decision given the level of redactions and without knowledge of what questions customers of its International product were asked⁴⁰. However, of the 6 customers referred to, Nielsen would note that three of these (50%) were not aware of Nielsen's product and "a further Ebiquity customer [X] said that it had ruled out using Nielsen as it considered it a competitor for a different product".
- 4.8 In short, the CMA's conclusion in the SLC Decision that "the Parties are each other's closest competitor for International products to UK customers"⁴¹ flies in the face of all probative evidence to the contrary.

5 ABSENCE OF HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF INTERNATIONAL AD CREATIVES PLANNING TOOLS TO UK CUSTOMERS

Introduction

- 5.1 The Transaction will not give rise to an SLC in respect of the supply of International ad creatives planning tools to UK customers, either in terms of increased prices or reduced service, quality or innovation.
- 5.2 The CMA's conclusions in the SLC Decision are weak, contradictory, and:
- (a) are based upon a fundamental mischaracterisation of the nature of International ad creatives planning tools (and in particular, a misunderstanding of the ease with which Nielsen could enter this market);
 - (b) dismiss the fact that 67% of customers confirmed that the Parties' respective products do not exert a competitive constraint on each other;
 - (c) entirely dismiss the constraint imposed by actual rival suppliers (despite evidence of business lost to them); and

³⁷ SLC Decision paragraph 53.

³⁸ SLC Decision paragraph 120.

³⁹ SLC Decision paragraph 7.

⁴⁰ The Parties note that they have dropped their request for access to further information provided at Phase 1 by third parties on the basis that – as confirmed by James Macbeth in a call with SPB on 5 July - because the Phase 1 customer questions and answers did not get to the level of identifying in any detail the functionality of the Parties' respective products, the CMA will not be relying on them in Phase 2.

⁴¹ SLC Decision paragraph 128.

- (d) ignore the absence of any competitive rivalry (switching/common customers) between the Parties.

Competitive constraints on the supply of International ad creatives planning tools

- 5.3 Bloom lost [redacted] customers over the period 2015-2017, none of which switched to Nielsen.
- 5.4 Bloom's principal competitor in this market is Kantar and Global Ad Source. Global AdSource aggregates data from many domestic and one International ad monitoring company, Advision, in order to deliver its global ad creatives planning service. The CMA erroneously dismisses the constraint posed by Global Ad Source⁴², which is most strange given Bloom has lost more customers⁴³ to it than it has to Nielsen.
- 5.5 In addition, a factor entirely overlooked by the CMA in the SLC Decision⁴⁴ is that creative agencies are also active in their own right in the International segment, as they are able to collect AdIntel data from different sources and provide it to clients that might otherwise come to Bloom for ad-hoc inquiries. For example, FMCG advertisers interested in creative AdIntel can obtain International-equivalent AdIntel data from creative agencies (who can find increasing amounts of advertising creatives on the internet for free), rather than from Bloom. Indeed, Bloom considers that this has accounted for a [redacted].
- 5.6 In fact the most significant binding constraint on the price of Bloom's International ad creative planning tool is that customers will decide not to purchase at all, due to their being constrained by limited marketing budgets. Ad creative planning tools are a "nice to have" discretionary spend for most clients. Most of Bloom's advertiser customers have a single budget to cover all their marketing services spend, and there are numerous services that compete for this budget. This means that Bloom's customers have to consider a range of services when deciding the importance and priority of subscribing to AdIntel data. While these other services may not be directly substitutable, they may be sufficient to obviate the need for separate AdIntel data.

There is no prospect of Nielsen entering the International ad creative planning tools market

- 5.7 Customers quite simply [redacted].
- 5.8 The CMA suggests 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*". However, this ignores the practical realities of how this would need to be achieved, as though it is as simple as just buying in data and reselling it on to customers, ignoring the fundamental part of an AdIntel supplier's process of actually producing the tool, i.e. harmonising and customising in order to produce a tool which meets the customer's requirements for a cross-media, cross-border comparative view.
- 5.9 Rather, expansion into the provision of International ad creative AdIntel services to UK customers would require significant and highly speculative investment in order to target rival suppliers' setup, back data and capabilities of the user interface. Nielsen's current International ad spend information services requires a [redacted] harmonization process before data is provided to clients. Advertiser clients require a much faster service for tactical ad creatives information. In addition, the International ad creative planning service would require daily coding with delivery

⁴² SLC Decision paragraph 126(b).

⁴³ Bloom lost [redacted] to Global AdSource.

⁴⁴ SLC Decision paragraph 127.

to an established international brand structure, which would need to be set up with back data coding for comparison. Nielsen would need to establish a new reference data model for International data views, with immediate data transfers with less granularity, given the current complex nature of the UK market structure.

5.10 Again, the CMA misunderstands the nature of the ad creative data provided by Nielsen (and indeed the nature of the service provided by suppliers of International ad creative planning tools), when it suggests “Nielsen’s International platform already provides high level creative data in some jurisdictions including the UK”⁴⁵, “which makes its product a close alternative for customers that require ad spend and high level creatives”⁴⁶. As explained in paragraph 5.9 above, Nielsen cannot simply buy in data in order to supply an ad creatives planning tool. Furthermore, the CMA’s reference to “high level creatives” must be a reference to the fact that users of NGA can view some (not all) individual ads, which is the limit of the creative content available and crucially, without the ability to search/track creative descriptions/attributes.

5.11 In light of the above factors, it is simply not sustainable to conclude that “the Parties are each other’s closest competitor for International products to UK customers”⁴⁷.

6 COUNTERFACTUAL

6.1 The issue of the appropriate counterfactual against which to assess the competitive impact of the Transaction is, in this case, somewhat of a moot point, for the reason that the Parties’ respective AdIntel products are not, in any event, competitive substitutes. However, it seems inherently contradictory for the CMA, in its SLC Decision⁴⁸ to, on the one hand, acknowledge that “[redacted]” and, on the other hand, to conclude that “it would continue to operate in the market providing a similar constraint on Nielsen”.

6.2 [redacted]

6.3 [redacted]

6.4 [redacted]

6.5 [redacted]

6.6 [redacted]

7 CUSTOMER BENEFITS AND EFFICIENCIES

7.1 The merger will give rise to significant efficiencies that will directly benefit customers. Nielsen intends to continue selling all four products.

- (a) First, the duplication in collecting source data will be eliminated. This will result in savings from subscriptions (for example, newspapers, magazines) and also from human effort. Pre-merger, a person in Newcastle might have been recording creative data from ads shown in the Sunday Times for Bloom while another person in Bracknell might have been recording product placement data from ads shown in the Sunday Times for Nielsen. Post-

⁴⁵ SLC Decision paragraph 118.

⁴⁶ SLC Decision paragraph 123.

⁴⁷ SLC Decision paragraph 128.

⁴⁸ SLC Decision paragraph 23.

merger, one person will be able to extract the relevant data needed for both products. [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) Finally, Nielsen intends to combine the data to produce new analyses and new insights for customers. Clients which subscribe today to both products will be able to take advantage of a simplified data integration into their own systems.

7.2 Nielsen estimates that the integration will cost approximately [REDACTED] over FY2018-2019, but that will lead to annual cost savings of [REDACTED]. This will [REDACTED].

7.3 Furthermore, whilst this is primarily a B2B merger, there are nonetheless ultimately also benefits for UK consumers. Because the Parties' customers will significantly benefit from using the Parties' combined data to better position, create and target ads, as described above, so end consumers of advertising will benefit from better-targeted ads about existing and new products, services, events, important social issues and will derive an entertainment benefit from properly crafted ads.
