

13 August 2018

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

PARTIES' RESPONSE TO THE CMA'S ISSUES STATEMENT



1 INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This is Nielsen's and Ebiquity's (collectively **the Parties**) joint response to the CMA's Statement of Issues dated 30 July 2018.

1.2 The Parties welcome that the CMA intends to:

(a) *"consider whether the relevant markets for each of the Parties' four products are narrower or broader than Deep Dive and International products"* and that its assessment of this issue will include a consideration of *"the overlap between the Parties' customer bases, their segmentation and evidence of customer switching"* and an *"assessment of the similarities and differences between the Parties' products and between each of them and third party AdIntel products and the extent to which customers see different products as substitutes"* (paragraph 17); and

(b) *"consider the closeness of competition between the Parties: in particular...whether the Parties are the closest alternative supplier for each 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"* (paragraph 29).

1.3 In the Parties' view, a detailed assessment of these issues is essential to a proper understanding of the competitive impact of the Merger and will show that **the Parties' respective Deep Dive and International AdIntel products are not functional substitutes for each other (they consist of very different data and platforms, providing solutions to very different customer demands), explaining why:**

(a) the Parties **largely service different customer bases;**

(b) there is **virtually no switching** by customers between the Parties' respective products; and

(c) there is **no evidence that either Party's pricing or service levels have been influenced by the other Party, nor has either Party been a material driver of the other's product innovations.**

1.4 The Parties' also welcome that the CMA proposes to *"examine any submissions made in relation to efficiencies arising from the Merger"* (paragraph 45). There will be **clear and significant Merger-specific customer benefits, in the form of:**

(a) **significant cost savings** flowing in particular from []; and

(b) the opportunity to bring to market a **new, integrated product offering** combining the best features of both Parties' products.

1.5 As such, the Merger is a **strongly pro-competitive transaction**, in that it will give rise to significant customer benefits not counterbalanced by any material reduction in existing competition between the Parties.

2 FRAME OF REFERENCE

2.1 The Issues Statement indicates the CMA's intention to consider the following market segmentations:

- (a) whether each of the Parties' four products are narrower or broader than Deep Dive and International products (paragraph 17);
- (b) whether Deep Dive and International products belong (or not) to separate product market(s) (paragraphs 16, 17 and 19);
- (c) whether narrower market segmentation should be considered by, separately, media type, industry sector and customer type (paragraph 18).

Each of the Parties' respective AdIntel products operates in a separate (product) market

2.2 The starting point for any market-definition analysis should be the substitutability of each of the AdIntel products supplied by the Parties (bearing in mind that Bloom is not active outside AdIntel¹) (as per the CMA's suggestion in paragraph 17 of the Issues Statement).

2.3 As explained in detail in Section 1 of the Initial Submission, this merger involves four unique products. They are all AdIntel products that collect and analyse data about advertisements placed in various UK and International media. At the back office level, there is an overlapping data-collection methodology for the products: employees view, 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); and
- (d) the supply of **International ad creative planning tools to UK customers** (although the relevant geographic market could in fact be wider).

UK Deep Dive

2.4 As regards the Parties' respective UK Deep Dive products, these are not functional substitutes and therefore belong to separate product markets:

- (a) The term 'Deep Dive' is used to describe the in-depth/comprehensive nature of Nielsen's *AdDynamix* and Bloom's *Portfolio UK* (i.e. it simply denotes the fact

¹ With the exception of ePublisher, an advouching service, which also forms part of the Bloom business.

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that both products contain detailed AdIntel data) and should not be used to suggest a potential interchangeability between the two products/datasets. As explained below, Nielsen's *AdDynamix* and Bloom's *Portfolio UK* have different characteristics and serve a different customer base.

- (b) 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 owners to provide advertising intelligence to increase market share and provide sales leads to optimise their commercial strategy. For media-buying agencies (and, to a lesser extent, advertisers) the data is used to optimize the commercial performance to improve media investment strategy for their clients. *AdDynamix* contains very limited ad creative content, []. As such, customers do not (indeed, cannot) use it to plan their ad creative strategy or tactics.
- (c) In contrast, Bloom's *Portfolio UK* is an advertising creative planning tool, used by users – mostly advertisers and media agencies – to plan their ad creative strategy and tactics. To this end, *Portfolio UK* contains detailed coding of creative attributes, including [].
- (d) For these reasons, the Parties' Deep Dive products operate in separate markets which are:
 - (i) the supply of UK Deep Dive post-advertising campaign-analysis tools and;
 - (ii) the supply of UK Deep Dive ad creative planning tools.

International

2.5 As regards International, the Parties' respective products are also not functional substitutes and so belong to separate product markets. The Issues Statement seems to acknowledge this by stating that "*their products are differentiated*" (paragraph 31).

- (a) The term "International" is used to describe the international/cross-border nature of Nielsen's *NGA* and Bloom's *Portfolio International* (i.e. it simply denotes that both products contain AdIntel data for multiple countries), and should not be used to suggest a potential interchangeability between the two products/datasets. As explained below Nielsen's *NGA* and Bloom's *Portfolio International* contain largely different data, have very different characteristics and address different customer demands.
- (b) 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 historical media-investment planning data [] harmonised across multiple jurisdictions (90+ countries), [].
- (c) 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 strategies use Bloom's Portfolio International product. *Portfolio International* is updated much more frequently than *NGA*: []. It focuses on

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tracking an ad's creative content, with users able to search and compare harmonised ad creative attributes and descriptions. [].

- (d) For these reasons, the Parties' International products operate in separate markets which are:
 - (i) the supply of International cross-border strategic media investment decision-making tools to UK customers; and
 - (ii) the supply of International ad creative planning tools to UK customers.

Deep Dive and International products

2.6 The Issues Statement also envisages looking at the substitutability of Deep Dive and International products (paragraph 19).

2.7 It is submitted that the relevant question for the CMA to consider is not whether Deep Dive AdIntel products in general are substitutes for International AdIntel products in general. Rather, the pertinent issue is whether:

- (a) Nielsen's NGA/WizzAd+ product exerts any competitive constraint on Bloom's Portfolio UK product (or vice versa); or
- (b) Nielsen's AdDynamix product exerts any competitive constraint on Bloom's Portfolio International product (or vice versa).

We are not aware of any evidence (whether the customer overlap analysis, the Parties' internal documents or otherwise) providing any support for the proposition that there is any such competitive constraint. This is in large part reflective of the very different data, characteristics and end use functions which each Party's respective Deep Dive and International products have.

2.8 In addition, it is clear that there are certain key inherent differences between a Deep Dive AdIntel product and an International AdIntel product that would further explain why any competitive constraint exerted by one on the other, even if both the Deep Dive and International products/platforms contained broadly similar categories (e.g. as between Bloom's *Portfolio UK* and Bloom's *Portfolio International* products, both of which contain detailed data on the creative content of ads), would be very limited:

- (a) Deep Dive products aim to capture most advertising across a very wide range of publications/channels in a given country. Using customisable taxonomies, they provide very granular information with detailed categorisation, descriptions and tagging. Searches across the database are used to get a deep understanding of advertising messaging and spend. Deep Dive AdIntel data is generally accessed by clients via an online platform, in return for the agreed subscription payment. The data is uploaded to the interface, and is generally updated very frequently (daily if not more frequently).
- (b) In contrast, International AdIntel products track fewer media and provide a less "deep" read list within each medium for each country; on the other hand, these products contain AdIntel data for a large number of countries and the data is harmonised across all the countries covered (this being the defining hallmark of an "International" AdIntel product). Each country's data must be harmonised

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to be provided in a single format, enabling customers to compare, at a high level, advertising trends/data across multiple countries and brands. The user typically has an annual subscription to a defined set of countries.

Do digital-only AdIntel products exert a competitive constraint on all-media AdIntel products?

- 2.9 The Issues Statement indicates that the CMA will investigate whether it would be appropriate to consider narrower market segmentation by reference to media type (paragraph 18) and 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 (paragraph 19).
- 2.10 It is submitted that a number of third parties' "digital only" creative AdIntel products (including AdClarity, Pathmatics and MOAT), [].

Other proposed segmentations

- 2.11 Otherwise, it is submitted that the segmentations listed in the Issues Statement (at paragraph 18), such as by sector or by type of customer (media-buying agency, creative agency, media owner, advertiser) are not relevant segmentations, as AdIntel suppliers can generally target all sectors and all customer types.

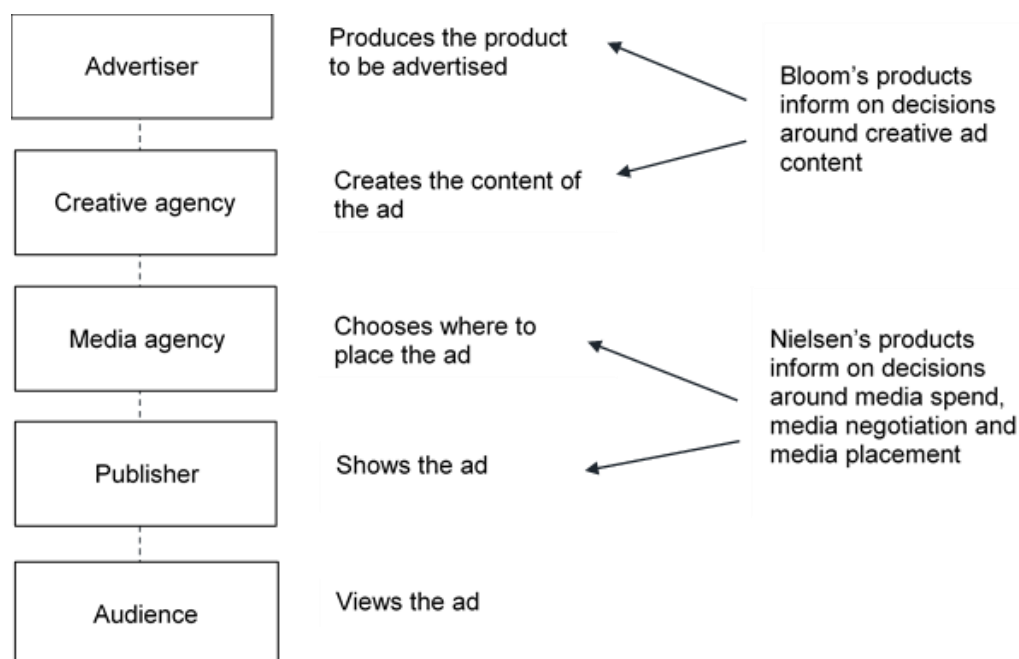
3 COUNTERFACTUAL

- 3.1 As explained in some detail by the Parties in the Initial Submission (see Section 6), the correct counterfactual is one in which []. A standalone counterfactual paper with additional detail will be provided to the CMA shortly.

4 UK DEEP DIVE HORIZONTAL EFFECTS THEORY OF HARM

- 4.1 The Parties' views as regards this theory of harm are set out in paragraphs 2.1-2.16 and 3.1-3.19 of the Initial Submission. Of particular note are the following considerations:
- (a) The Parties' respective products are used to address distinct needs of customers in the media industry (Nielsen's focus) and/or the advertising industry (Bloom's focus). As explained above, Nielsen's product informs the decisions of media-buying agencies as to media spend and media planning. It is used []. In contrast, Bloom's product informs the decisions of advertisers and creative agencies as to the creative content of an ad. The diagram below

shows the main customer groups of the Parties and their respective roles in the media and advertising industries.



- (b) The Parties' respective Deep Dive products are not the subject of competitive switching by customers, since customers do not view them as substitutes. When the Parties lose customers, it is rarely to the other party, and when it is to the other party it is almost always because of a change in need that the original supplier cannot meet.
- (c) The Parties' respective Deep Dive products are not used by customers to benchmark pricing or to obtain better pricing, again as clearly demonstrated by the 2015 – 2018 customer-overlap analysis which has been provided to the CMA. [].
- (d) The Parties' customers have countervailing buyer power, in that both [].

4.2 In light of the above factors and evidence, there is no basis on which to treat Nielsen's AdDynamix product and Bloom's Portfolio UK product as "the closest alternative supplier for each other's customers", nor is there any basis on which to conclude that Nielsen's AdDynamix influences how Bloom sets the prices or other service aspects for Portfolio UK (or vice versa).

4.3 It is submitted that the issue of whether the Parties are able to "price discriminate between customers...to identify and set different prices for customers who have no, or few, alternative options" (paragraph 29(c)) is redundant. The plain fact is that both Parties will operate under the assumption that any given customer will almost certainly not be prepared to switch to the other Party's AdIntel product to secure a better price/terms (where there is a "switch", this is nearly always due to a customer's changing needs, not a competitive switch). []. The relevant correspondence submitted by Nielsen in response to Q1 and Q12 of the Market Questionnaire illustrate how customer budget constraints exert pressure on Nielsen's pricing.

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4.4 As regards whether one Party's product could be said to influence the other Party's product innovations (paragraph 29(a)):

- (a) Nielsen does continually innovate² and this is driven in particular by a need to ensure that Nielsen's UK Deep Dive product stays "relevant" in an advertising landscape increasingly dominated by digital advertising. There is no evidence that Bloom has been in any way a factor in any Nielsen innovation to AdDynamix;
- (b) As regards Portfolio UK, the main driver of innovation for Bloom has until now not been Nielsen but rather the need to remain "relevant" in the evolving advertising landscape [].
- (c) In any event, were the Merger not to proceed, [] (see Section 3 above).

5 INTERNATIONAL HORIZONTAL EFFECTS THEORY OF HARM

5.1 The Issues Statement recognises that the Parties' International products "*are differentiated*" but we see no basis on which the CMA might conclude that Nielsen's NGA/WizzAd+ and Bloom's Portfolio International products are "*close competitors*" (paragraph 31). The products are not functional substitutes, there are no instances of customers switching between them, there are very few common customers and no evidence that either Party is a material influence on the other Party's prices/terms/service levels or a driver of the other's innovation.

5.2 The Parties' views as regards the International products market definition and this theory of harm are set out in Section 1 and paragraphs 3.1-3.19 and 4.1-4.8 of the Initial Submission and are summarised below:

- (a) Nielsen's International product is part of the (separate) market/segment for the supply of international cross-border strategic media investment decision-making tools to UK customers:
 - (i) [];
 - (ii) [];
 - (iii) No customers have bought products from both Parties in the same year;
 - (iv) Nielsen's largest rival in this segment is Kantar with [];
 - (v) Out of the 6 customers questioned in the CMA's Phase 1 market investigation, half were not aware of Nielsen's product.
- (b) Bloom's International product is part of the (separate) market/segment for the supply of international ad creatives planning tools to UK customers:
 - (i) Nielsen is not active in³ and not planning to enter this market/segment;

² See paragraphs 16.2 - 16.3 and 17.1 of Nielsen's Response to the Market Questionnaire, summarising recent and planned AdIntel innovations.

³ Although users of NGA can view some (not all) individual ads, which is the limit of the creative content available and crucially, they don't have the ability to search/track creative

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- (ii) [];
- (iii) Bloom's largest rivals are [] (to which Bloom lost major customers such as []), but [] also exert a competitive constraint on Bloom;
- (iv) Ad creative planning tools are a [].⁴

6 VERTICAL INPUT FORECLOSURE THEORY OF HARM

- 6.1 The Parties are surprised and disappointed that the CMA has decided to reopen the issue of possible vertical input foreclosure, given the Phase 1 decision-maker rightly decided (at paragraph 142 of the reference decision) that this consideration did not even give rise to a "*realistic prospect*" of a substantial lessening of competition (**SLC**).
- 6.2 The Issues Statement states that the CMA intends to "*assess the likelihood of foreclosure in relation to all the third parties currently purchasing AdIntel data from the Parties and using them as input for their own AdIntel products*" (paragraph 38), whilst recognising 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*" (paragraph 40).
- 6.3 Kantar is [] third party supplier of cross-media International AdIntel data to UK customers and [] third party AdIntel supplier (ignoring media agencies, which are customers) which either Party supplies its UK AdIntel data to. Any risk of a merged Nielsen/Bloom attempting to implement an input foreclosure strategy as regards Kantar is purely theoretical:
- (a) firstly, there is no merger effect, as the Parties' respective UK Deep Dive data is not substitutable. [];
 - (b) secondly, and as the CMA rightly concluded in the reference decision, [].

7 ENTRY AND EXPANSION

- 7.1 The issue of whether "*entry or expansion by competitors could prevent any SLC that might otherwise arise*" (paragraph 42) is moot, as the Parties' respective AdIntel products are not functional substitutes and do not exert any material competitive constraint on each other.
- 7.2 In any event, any entry/expansion barriers are not insuperable and new entry as regards digital AdIntel is already a feature of each Party's markets, with Kantar being a recent example of the launch of a UK digital Deep Dive product (see paragraph 27.1 of Nielsen's Response to the Market Questionnaire). Other entrants in the last four years have included Adthema, AdBeat, Zulu 5, MOAT, AdClarity and Pathmatics.

8 COUNTERVAILING BUYER POWER

descriptions/attributes and as such NGA cannot be viewed as an alternative (even a weak one) to Bloom's *International Portfolio* to any extent.

⁴ Moreover, of the top 135 UK advertisers, only [] purchase AdIntel Deep Dive products from Nielsen or Bloom. Of the top 500 UK advertisers only [] purchase AdIntel Deep Dive products from either Party.

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- 8.1 Customers are generally large agencies, broadcasters, or advertisers with significant power to resist any attempt by the merged firm to increase prices or reduce service quality, just as they currently very effectively do with respect to each Party's respective AdIntel products.
- 8.2 Customers spend less than 0.1% of their operating cost budget on the Parties' products and []. Similarly, the majority of advertisers in the UK (56% of the top 135 advertisers) do not buy AdIntel data from the Parties, indicating that these advertisers are able to meet their requirements through other means. The fact that there are realistic outside options for the Parties' customers in itself exerts a direct competitive constraint equivalent to switching to a rival product, and the merged firm will continue to be subject to this constraint.
- 8.3 Furthermore, with the rise of internet shopping and Amazon's e-commerce, customers are now having to reduce advertising budgets in order to counter-balance margin pressure from competitors in the marketplace, also enforcing a direct competitive constraint on the Parties.

8.4 [].

9 EFFICIENCIES

- 9.1 The Issues Statement indicates that the CMA proposes to "*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*" (paragraph 45).
- 9.2 The merger-specific efficiencies and customer benefits which the Merger will give rise to are significant and will arise in the short-term.
- 9.3 We refer to Nielsen's response to Questions 38 and 39 of the Market Questionnaire and to Annexes N008 and N009 (submitted in response to Questions 2 and 3 of the 25 June 2018 RFI).
- 9.4 In summary, 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) [];
 - (b) [];
 - (c) [];
 - (d) []; and
 - (e) [].
- 9.5 []. We submit that this evidence does constitute "*compelling, detailed and verifiable evidence of relevant customer benefits*".
- 9.6 [].

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- 9.7 It is respectfully submitted that, to the extent the CMA were to decide (contrary to the Parties' arguments and evidence) that there were some degree of competitive constraint between the Parties' respective AdIntel products, the benefits and efficiencies/cost savings identified and evidenced above and in earlier submissions should be accepted as more than offsetting any such minimal loss of competition between the Parties.