

Anticipated acquisition by Nielsen of Ebiquity's Advertising Intelligence Division

Provisional findings report

© Crown copyright 2018

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

Contents

	<i>Page</i>
Summary	4
Provisional findings	19
1. The reference	19
2. The Parties	20
Ebiquity	20
Nielsen	20
3. The industry in which the Parties operate and their products	21
Advertising intelligence	21
Industry trends	23
Monitoring digital advertising	25
4. The transaction and the relevant merger situation	26
Transaction	26
Rationale	27
The relevant merger situation	27
Enterprises ceasing to be distinct	28
Turnover and share of supply tests	28
5. Market Definition	29
Introduction	29
The Parties' submissions	30
Evidence on whether Deep Dive and International products are in separate markets	32
Evidence on whether there are separate product markets within UK Deep Dive	34
UK Deep Dive product characteristics and scope	34
Evidence on the customer base for the UK Deep Dive products	39
Evidence from the Parties' internal documents	40
Evidence from customers	46
Evidence regarding separate markets for individual media channels including digital	47
Provisional conclusion on the supply of UK Deep Dive AdIntel	48
Evidence on whether there are separate product markets within International AdIntel	49
Nature of the Parties' International products	49
Evidence from customers	51
Views of other AdIntel suppliers	52
Evidence from the Parties' internal documents	53
Evidence on the customer base for the International products	54
Provisional conclusion on the supply of International AdIntel	54
Geographic market definition	55
Supply of UK Deep Dive AdIntel	55
Supply of International AdIntel	56
6. Counterfactual	57
Would Ebiquity's AdIntel business have been sold to a third party?	58
Parties' submissions	58
Our assessment	58
Would Ebiquity have closed down its UK Deep Dive business?	58
Overview of 'exiting firm test'	58
Parties' submissions	59
Our assessment	60

Provisional conclusion on the counterfactual	62
7. Assessment of the horizontal effects of the Merger in the supply of UK Deep Dive AdIntel products	63
Parties' submission	63
Our approach to the assessment of closeness of competition between the Parties	64
Evidence on the Parties' customer bases	65
Evidence on the Parties' revenues per customer	69
Evidence on competition in the Parties' internal documents	70
Evidence on customer switching and multi-sourcing	70
Direct evidence of competitive interaction	73
Evidence from customers on substitutability between the Parties' products ..	75
Assessment of current competition between the Parties	81
Evidence on the prospect of future competition between the Parties	82
Competitive constraint from other AdIntel suppliers and from products outside the relevant market	84
Provisional conclusion on the supply of Deep Dive	85
8. Assessment of the horizontal effects of the Merger in the supply of International AdIntel products	86
The Parties' submission	86
Evidence on the closeness of competition between the Parties	87
International AdIntel product features	87
Evidence on the Parties' customer bases and price proposals	88
Evidence on competition from the Parties' internal documents	89
Evidence on customer switching	90
Direct evidence of competitive interaction	90
Evidence from customers on the substitutability between the Parties' products	91
Assessment of current competition between the Parties	92
Evidence on likely future competitive constraints	93
Competitive constraint from other AdIntel suppliers and from products outside the relevant market	93
Provisional conclusion on the supply of International AdIntel products in the UK	95
9. Assessment of the vertical effects of the merger	96
Introduction and overview	96
Input foreclosure – Kantar	97
Ability	97
Incentive	98
Provisional conclusion on Kantar vertical theory of harm	100
Input foreclosure – [✂]	100
Input foreclosure – [✂]	101
10. Provisional conclusion on the SLC test	101

Appendices

- A. Terms of reference and conduct of inquiry
- B. Financial Analysis
- C. Evidence from the Parties' customers
- D. Summary of data attributes
- E. Evidence from the Parties' internal documents
- F. Analysis of the Parties' customer data
- G. Evidence on the Parties' negotiation and pricing strategy
- H. Evidence from other AdIntel Suppliers

Glossary

Summary

Introduction

1. On 25 June 2018, the Competition and Markets Authority (**CMA**) referred for an in-depth investigation the anticipated acquisition by Nielsen Media Research Limited and Nielsen Holdings PLC (collectively referred to as **Nielsen**) of the advertising intelligence (**AdIntel**) division of Ebiquity PLC (**Ebiquity's AdIntel division**) (the **Merger**). Throughout this summary Ebiquity's AdIntel division and Nielsen are collectively referred to as the Parties.
2. We provisionally conclude that the Merger may not be expected to result in a substantial lessening of competition (SLC) in the supply of UK Deep Dive AdIntel products and the supply of International AdIntel products to UK customers. We also provisionally conclude that the Merger may not be expected to result in an SLC as a result of input foreclosure in the supply of UK AdIntel data post-Merger.
3. We now invite any parties to make representations to us on these provisional findings by no later than 5pm on 1 November 2018. Parties should refer to our notice of provisional findings for details on how to do this.

The Parties

Ebiquity's AdIntel division

4. Ebiquity plc (**Ebiquity**) is a multinational company listed on the London Stock Exchange (company registration number 03967525) that describes itself as a leading independent marketing and multi-media consultancy.
5. Part of Ebiquity's business is the provision of AdIntel products. *Portfolio UK* provides a detailed analysis of UK advertising, capturing detailed data about the content of the advert, such as the strapline and the dialogue of the advert typed to text. *Portfolio International* provides a cross-country view of advertising but with less in-depth data than is available in the Portfolio UK product.
6. Ebiquity has agreed with Nielsen the carve out of Ebiquity's AdIntel division and subsequent sale to Nielsen.

Nielsen

7. Nielsen Media Research Limited is a subsidiary of Nielsen Holdings plc (a company registered in England and Wales under number 09422989)

(collectively **Nielsen**). Nielsen's ultimate parent is Nielsen Holdings PLC a multinational company registered in the USA and headquartered in Connecticut, USA and listed on the New York Stock Exchange. Its two main activities are measuring and analysing a) what consumers buy and b) what they watch.

8. As part of its watch service Nielsen provides two main AdIntel products. AdDynamix provides a detailed analysis (Deep Dive) of the spending on advertising (referred to as ad spend data) and the associated placement of that advertising. The data in AdDynamix is sufficiently granular that it can create reports that show how much advertising spending was undertaken in particular sectors, in particular titles or stations and by particular advertisers. Nielsen Global AdView (NGA) is an international product that allows for a cross country analysis of ad spend data.

Industry Background

9. Both Ebiquity and Nielsen collect and distribute AdIntel which includes a variety of components including estimates of the amount an advertiser has spent on media; information as to which media categories have been used; which titles or media brands were chosen within a category; when it was spent; the identities of the advertising and media agencies engaged to create the advertising content and then plan and buy the media chosen; and the content of the advertising.
10. The information may vary in its industry focus, its geographic coverage, its scope, in the speed and timing with which it is delivered to the customer or the distribution channel or format chosen for the service.
11. Advertising industry participants include:
 - a) Advertisers, who wish to communicate with their chosen audience. Advertisers will be particularly interested in the activities of their competitors.
 - b) Creative agencies, who supply the creative input to advertising campaigns. Like advertisers, creative agencies will have an interest in the messaging and treatment being deployed by their clients' competitors.
 - c) Media agencies, who plan and buy the media where advertisements will be placed. Media agencies will be primarily interested in the amount their clients' competitors are spending, where and when.
 - d) Full service agencies, who carry out both of the functions performed by creative agencies and media agencies.

- e) Media owners, whose job is to sell their advertising space/airtime to media agencies. Media owners will wish to ensure that they achieve at least an equivalent share of advertisers' budgets as do their competitors.
 - f) Media auditors, who, on behalf of advertisers, analyse how media agencies have deployed their clients' budgets, including whether they have done so efficiently and in line with their contractual obligations to the client.
 - g) Other agencies, who provide a wide range of services to industry participants including market and customer surveys.
12. The advertising industry has experienced very significant changes in the last twenty years. Advertisers increasingly focus on obtaining return on investment insights for their campaigns and a number of analytical and consultancy services also compete for a share of the advertisers' marketing budget. In particular, however, there has been a huge growth in the use by advertisers of digital advertising.
13. Digital advertising differs from traditional advertising in that the advertising served to a visitor to a website may depend on the web activity/browsing history of that individual. Advertisers are thus able to serve highly targeted adverts to consumers offering goods or services that they know are relevant to that consumer at a time when they may be considering a purchase.
14. These developments have had significant consequences for businesses monitoring advertising expenditure because of the number of media channels/brands that must be monitored and because of the technical difficulties of monitoring the targeted advertising messages served to online audiences.
15. For advertising monitoring services like those provided by Ebiquity's AdIntel division and Nielsen this has meant that instead of simply monitoring advertising messages sent to large numbers of consumers at the same time on 'mass' media they have had to develop ways of capturing targeted advertising. This has proved a challenge for all of the traditional advertising intelligence providers and a number of digital-only monitoring businesses have emerged to compete in this field.

Our Provisional Findings

Jurisdiction

16. We provisionally find that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger

situation. The jurisdictional test of the Enterprise Act 2002 (the Act) is therefore met.

Market Definition

17. We considered whether the Parties' UK Deep Dive products and International products are part of the same market. We then examined the degree of competitive constraint imposed between the two UK Deep Dive products, and separately, the two International products. We also considered the role played by specialist digital AdIntel products.
18. We note that in many merger assessments it is standard practice to employ the hypothetical monopolist or 'SSNIP' test. However, because the evidence we received indicates that the prices of the Parties' UK Deep Dive products are individually negotiated with each of their customers we do not use the test in our assessment of the Merger. Instead, we have focused on a broader qualitative assessment of the degree of functional substitutability between the Parties' products.

Evidence on whether Deep Dive and International products are in separate markets

19. We provisionally conclude that the Parties' UK Deep Dive products and their International products belong to separate product markets. This view is based on the different characteristics of the Parties' UK Deep Dive products and International AdIntel products, the different set of competing suppliers for the two types of products, and customer evidence pointing towards a lack of substitutability between International AdIntel products and Deep Dive products.
20. We found that there are important differences between the two sets of products which are likely to significantly limit the degree to which customers could use them as substitutes. In particular:
 - a) International AdIntel products provide consistent information across a number of different countries, whereas Deep Dive products only provide information on one country (in this case, the UK).
 - b) Deep Dive products offer significantly greater coverage and granularity of information compared with International products.
 - c) Information provided in Deep Dive products is typically updated more regularly. As a result, it can be used to track market developments on close to a 'real time' basis.

21. The Parties' internal documents describe the competitive landscapes within which the Parties' products are offered. While little can be found in Nielsen's internal documents specific to Deep Dive and International AdIntel, documents from Ebiquity typically discuss Deep Dive and International AdIntel separately. This view is consistent with what we were told by third parties.
22. Views expressed by the Parties' customers on the substitutability between International and Deep Dive AdIntel products indicated that collecting local advertising data from each country and then using that data as an alternative for an International AdIntel product was not feasible, as it would require substantial investment and time.
23. Finally, the evidence of switching behaviour indicated very limited substitutability.

Evidence on whether there are separate product markets within UK Deep Dive

24. We provisionally conclude that the relevant market is no wider than the supply of UK Deep Dive AdIntel products.
25. On the basis of the Parties' submissions, customer evidence and our own direct assessment, we found that although it is also possible to identify certain similarities, Nielsen's and Ebiquity's UK Deep Dive products differ significantly, Nielsen's has a strong emphasis on ad spend data whereas Ebiquity's focuses on creative data. We considered the degree of similarity between the Parties' products with respect to the coverage of the products; the analysis performed on and the meta-data applied to each advert; the user interface (UI) provided to their customers and the range of features in that UI; and the database access packages sold.
26. The types of customers that tend to purchase each of the two products differ (creative agencies and advertisers tend to purchase AdIntel from Ebiquity whereas media agencies and media owners tend to purchase from Nielsen). This indicates that the functional differences between the products may make the different products principally appeal to different customer types. However, our analysis also showed that there are no hard and fast divisions as at least some customers of every type can be found using either of the Parties' UK Deep Dive product.
27. This is supported by our review of the Parties' internal documents which shows that products are marketed by both Parties at three customer types: advertisers; media owners; and media agencies and that, in addition, Ebiquity markets its product towards creative agencies. The evidence suggests that the products are principally designed and marketed for different uses, even by the same customer groups. However, with respect to advertisers and media

owners there appears to be some overlap in the tasks to which the products can be put. We found little evidence in Nielsen's internal documents to support the view that Nielsen views its AdDynamix product as competing closely with Portfolio UK. Ebiquity's documents indicate that Ebiquity views AdDynamix as a competitor to Portfolio UK but that the constraint imposed is not strong.

28. Information received from the Parties' UK Deep Dive customers indicate a wide range of opinion regarding whether and how closely the Parties' UK Deep Dive products compete. Overall, the evidence indicated that although the UK Deep Dive products are not substitutes for many customers, for some customers and for some uses they may be functional substitutes.

Evidence regarding separate markets for individual media channels including digital

29. We have considered whether AdIntel about each individual media channel might constitute a separate market. For traditional media, we have provisionally concluded that this is not the case. Customers tend not to take AdIntel for individual media channels – Nielsen's product contains all media channels as standard and most Ebiquity customers we spoke to wanted coverage of more than one media channel. We have found no evidence in the Parties' internal documents to support the view that they see individual media channels as separate markets.
30. We have also considered whether the supply of digital AdIntel is a separate market given the very different technical challenges of supplying this product and the different set of firms that supply digital AdIntel compared to those supplying AdIntel for traditional media. We consider that the supply of UK Deep Dive AdIntel includes digital coverage but that specialist digital only providers are not part of that market. This is principally because the customers of UK Deep Dive AdIntel mostly need a multi-media view of the market that includes traditional media as well as digital media. Any competitive constraint imposed by digital specialists on the Parties has been taken into account in our competitive assessment.

Provisional conclusion on the supply of UK Deep Dive AdIntel

31. Overall, the evidence shows that the Parties' UK Deep Dive products are significantly differentiated. That differentiation covers a wide range of differences but can be summarised as a focus on spend data and advert positioning data in the AdDynamix product and a focus on creative data in Portfolio UK. Those product differences mean that the products are best suited to different tasks. This is reflected in the customer base for each

product, as the mix of customer types varies substantially between the two products. Nevertheless, there is some overlap in the information provided by the two products and, consequently, in the tasks that advertisers, advertising agencies and media owners might use the products to undertake. Both businesses have customers of each customer type and several customers indicated the products as functional substitutes. In addition, the degree of differentiation between the Parties' products is largely a result of their historical strategies rather than in the types of media they cover.

32. We provisionally conclude that the relevant market is no wider than the supply of UK Deep Dive AdIntel products.

Evidence on whether there are separate product markets within International AdIntel

33. We provisionally conclude that the relevant market is no wider than the supply of International AdIntel products. For the purpose of the competitive assessment, we have treated the Parties' International AdIntel products as part of the same market, which also includes Kantar's and Global Ad Source's International products. We have considered the degree of differentiation between the products as part of our competitive assessment.

Nature of the Parties' International products

34. The Parties' International products service various customer types, but principally advertisers, with information about adverts. We found that both Parties offer customers a harmonised data set for multiple countries. Both International products are highly customised, with the customers choosing which countries they would like included.
35. The process of producing the International products differs between the Parties more than does the process for producing UK Deep Dive products.
36. Portfolio International is focused on providing insights into the creative content of an advert and includes ad spend data only upon specific request by a customer. Where such data is requested, Ebiquity uses its in-house data and supplements it with third-party ad spend data for countries in which it does not collect such data in-house. Nielsen's NGA focusses on providing spend data information and includes creative information, while Portfolio International also includes translations of the advertisement.
37. Evidence from customers suggests that the Parties' International products are significantly differentiated and that most customers do not see them as alternatives. We consider the evidence points toward some degree of functional substitutability between the Parties' International AdIntel products

but that the products may be closer substitutes for some customer types than for others.

38. We spoke to companies that the Parties submitted were active in the provision of International AdIntel products in the UK and competed to varying degrees with the Parties' products. We consider that the evidence from other International AdIntel providers is consistent with the Parties' view that there is significant differentiation between products focused on ad spend data and those focused on creative content.
39. Nielsen's internal documents indicate that Nielsen considers the Parties' International products to be complementary. Ebiquity's internal documents, on the other hand, suggest that Ebiquity considers Nielsen as a potential substitute to its International product for some customers.

Provisional conclusion on the supply of International AdIntel

40. The evidence from customers and from the Parties' customer data is consistent with the Parties' claim that their International products are significantly differentiated and used in most cases for different purposes. It is evident from Nielsen's internal documents that it perceives Ebiquity's product as a complement rather than a substitute. Similarly, other AdIntel suppliers see themselves either as competing with Nielsen (Kantar) or with Ebiquity (Global Ad Source) but not with both.
41. However, the functionality of the products is such that they overlap for some customers. In addition, we consider that the demand for creative data information expressed by some of Ebiquity's clients may well be met by the limited information available in Nielsen's product, but that those Ebiquity clients were unaware of the Nielsen product. We also consider that both products can to some degree be customised to customers' specifications, which may allow these bespoke offerings to overlap more closely than the standard offering, which we consider is demonstrated by Ebiquity adding spend data for some of its clients. Ebiquity's internal documents also support the view that it considers Nielsen as a competitor even allowing for the differences between the products.

Geographic market definition

Supply of UK Deep Dive AdIntel

42. On the demand side, the nature of the UK Deep Dive product, with its in depth information on the UK advertising landscape, is such that it is unlikely to be of use to companies not operating in the UK. This is confirmed by analysis of the Parties' customer bases.

43. On the supply side, the Parties have not identified any suppliers of UK multi-channel Deep Dive products covering traditional media other than themselves. Furthermore, third party AdIntel providers, not currently active in the supply of UK Deep Dive products, told us that a UK presence was important to compete in the supply of UK Deep Dive AdIntel.
44. Based on the evidence received we provisionally conclude that the geographic scope of the relevant Deep Dive market is the UK.

Supply of International AdIntel

45. Taken in the round, the evidence received so far indicates that, both on the demand and on the supply side, the market(s) for International AdIntel may be wider than the UK. This continues to be the case if we only consider the provision of International AdIntel products that include some UK data. We therefore provisionally conclude that the geographic scope of the market is wider than the UK. We note, however, that the precise definition of the geographic scope of the market does not affect the results of our competitive assessment.

Counterfactual

46. We assess the possible effects of the Merger on competition compared with the competitive situation that would have prevailed absent the Merger (i.e. the counterfactual situation). That is, the counterfactual acts as a benchmark against which to assess the competitive effects of the Merger.
47. In establishing the most likely counterfactual, we have assessed whether absent the Merger, (i) Ebiquity's AdIntel division would have been sold to a third party or (ii) Ebiquity would have closed down its UK Deep Dive business as these were the likely possible scenarios.
48. We provisionally conclude that, absent the Merger, Ebiquity would not have sold its AdIntel business to a third party and it would be likely to have retained it under its ownership. We find that it would be likely to continue to offer both products; the UK Deep Dive product and the International product, and we adopt this as our counterfactual.
49. We acknowledge that it is likely that the UK Deep Dive product would not continue to be offered in its current form, but it has not been possible for us to form a sufficiently firm view on the way or extent to which the UK Deep Dive business would differ in the foreseeable future absent the Merger. We have nonetheless considered the Parties' submissions on the future prospects of the UK Deep Dive business in our assessment of the competitive effects of the Merger.

Competitive Assessment

Horizontal effects of the Merger in the supply of UK Deep Dive AdIntel products

50. We provisionally found that the Merger would not result in a substantial lessening of competition as a result of horizontal unilateral effects in the supply of UK Deep Dive products. This is based on the finding that the Parties impose very little competitive constraint on each other, in particular, the Parties are close alternative suppliers for each other's customers only in a very small number of cases. We have also provisionally found that absent the Merger the Parties would not become stronger competitors to each other in the future.
51. We note that there is likely to be some loss of competition as a result of the Merger for a small number of customers who are currently buying the UK Deep Dive AdIntel products from one of the Parties, however, given the very limited constraint the Parties impose on each other pre-merger, we provisionally consider that the lessening of competition resulting from the Merger is unlikely to be substantial.
52. In assessing the closeness of competition between the Parties and the potential impacts of the Merger, we have taken into account that (i) the Parties' UK Deep Dive products are significantly differentiated, (ii) the Parties' customer bases include different types of customers, with specific customer needs; (iii) the pricing of the Parties' UK Deep Dive products are individually negotiated; and (iv) the advertising industry has experienced a rapid growth in the importance of new media types using digital platforms which has led to changes in the way advertising information is collected and to the emergence of AdIntel providers specialising in these new media.

Evidence considered

53. We considered the following evidence:
 - a) Evidence on the Parties' customer bases and from their bidding data suggests that the Parties are targeting largely different customer types.
 - b) We looked at evidence on the Parties' revenues per customer as significant differences in the amount customers spend for the Parties' products can be seen as evidence that these products are different and not close substitutes. We provisionally found that in relation to many of their customers, the Parties are selling significantly different products, which are priced at different pricing points compared to the other Party.

- c) Evidence on competition in the Parties' internal documents gives no indication that Nielsen sees Ebiquity as a significant competitive threat. In contrast, Ebiquity's internal documents indicate that it sees Nielsen as a competitor but the documents offer mixed evidence on the strength of the constraint imposed.
- d) A very small number of customers switch between the Parties, both in absolute terms and in comparison to the number of customers ceasing to buy any UK Deep Dive product. However, as low rates of switching between the Parties do not necessarily imply an absence of competitive pressure we therefore considered the negotiations between the Parties and their customers to assess whether the Parties imposed a competitive constraint on each other's pricing behaviour or on each other's development of their respective products or improvement of their service. However, we found no evidence of customers threatening to switch, or referring to the other Party, as a strategy to negotiate a better price. In most cases that we examined there appeared to be no negotiation over price or service.
- e) Evidence from the Parties' customers:
 - (i) Advertisers we talked to who were using the UK Deep Dive product to monitor dealers' or retailers' compliance did not consider the Parties' products as substitutes. The views of advertisers who were mainly interested in monitoring competitors' advertising varied significantly between customers of Nielsen and of Ebiquity.
 - (ii) Evidence from media owners and media agencies was mixed. It is, however, important to note that, overall, media owners and media agencies overwhelmingly choose Nielsen's Deep Dive product. There is nevertheless evidence of some customers in this category switching between the Parties.
 - (iii) We interviewed four customers that used the Parties' AdIntel data as an input to the products or services they provide to their own clients and all considered the Parties' products as functional substitutes.

Assessment of competition between the Parties

54. The evidence indicates that the Parties impose very little competitive constraint on each other:

- a) The Parties target largely different customer bases and rarely submit proposals to each other's customers.

- b) Sales data shows a very low number of customers switching between the Parties in the period 2010-2018, both in absolute terms and compared to the much larger number of customers leaving the market in the same period.
- c) Direct evidence of competitive interaction between the Parties is limited. Negotiation emails between the Parties and their customers show no evidence of threats of switching being used by customers as a bargaining strategy. The Parties' internal documents show no evidence of the other Party being considered when setting prices and very limited evidence of competition between the Parties having an impact on product innovation. The main constraint appears to come from the threat of customers ceasing to buy the product.
- d) The Parties do mention each other as competitors in their internal documents; however, some documents show that the competitive constraint the Parties impose on each other is considered by the Parties themselves to be weak.
- e) While some of the customers we contacted during the investigation told us that the Parties' UK Deep Dive products were to a certain extent functional substitutes, in many cases either these views were based on a limited knowledge of the substitute product (ie the product that the customer did not currently use) or there were reasons to believe that functional substitutability may not translate into price substitutability (ie an actual ability to switch between the Parties in response to a price increase).

55. Nevertheless, the evidence suggests that, for some customers, the Parties' products are substitutes. Given that prices are individually negotiated, we consider it is possible that the Parties might be able to raise prices to these customers post-Merger. We also acknowledge that several of the customers we contacted expressed a concern with the Merger. Given the limited number of customers we contacted and the large variations in customer needs, it is difficult to precisely estimate the size of the customer type that could be negatively affected by the Merger.

- a) The customers that we have contacted, who have expressed a concern with the Merger, and for which the Parties' products are (at least to a certain degree) substitutes accounted for 6% of the Parties' combined Deep Dive revenues in 2017. However, as discussed at 7.4(e) in several cases the views expressed by customers reflected the possible functional substitutability of the Parties' products, rather than price substitutability.

- b) Advertisers using Ebiquity's Portfolio UK to monitor their competitors were the customer type who most frequently saw the Parties' products as substitutes. This overall group (including customers we did not contact) would account for 12% of the Parties' combined Deep Dive revenues in 2017. However, given that substitutability was typically indicated as limited, we believe that many of these customers do not see the Parties' products as sufficiently close substitutes to be willing to switch between the two.
56. Looking at the evidence in the round, we consider that the strength of substitutability is only sufficient to act as a competitive constraint in only a very small number of cases.
57. We also assessed if competition between the Parties was likely to become closer in the foreseeable future. The evidence we saw does not suggest that, in recent years, Nielsen has introduced innovations to its UK Deep Dive products in response to competition from Ebiquity, nor has aimed at competing more closely with Ebiquity. Nielsen has not made such investments in the past and, in the current context of structural decline of demand for traditional media AdIntel in the UK such investments are likely to become less and less attractive.
58. The evidence we have seen does not suggest that Ebiquity will start competing more closely with Nielsen. We note that Ebiquity set out to compete with Nielsen from the outset, aiming to 'become the standard currency of media spend in the UK', but that it has not replaced Nielsen's data as the accepted 'currency'. We think it is unlikely that Ebiquity would make the investments necessary to become a stronger competitor to Nielsen in the foreseeable future.

Horizontal effects of the Merger in the supply of International AdIntel products

59. We provisionally conclude that the Merger is not likely to lead to an SLC in the provision of International AdIntel in the UK. We consider that the balance of evidence indicates that the competitive constraint between the Parties is weak. We also do not consider it likely that either Party will attempt to make its International product a stronger competitive competitor to the other. In addition, we found evidence suggesting that the parties may face some competitive constraint from other suppliers of International AdIntel products.

Evidence considered

60. Both Parties principally sell their International AdIntel products to advertisers, in particular, multinational companies. The features of the Parties' International products nevertheless differ significantly. In addition, there is a

high level of customisation in each of the products. Reflecting this, the pricing for the International AdIntel products is also individualised. We have considered which customers have been targeted by price proposals from each of the Parties; the evidence showed that there is very limited overlap between the Parties' potential customer bases.

61. Evidence on the Parties' internal documents regarding how they view the competitive landscape for their International products show that Nielsen makes no direct reference to competition faced by their International product, Ebiquity's documents make more references to competition indicating that it competes with a number of businesses including Nielsen but there is no discussion of the closeness of competition.
62. The Parties' sales data shows that the degree of switching between the Parties' International products is very low. In most of the cases identified, customers simultaneously bought the two Parties' products, suggesting that they did not consider them to be substitutes.
63. To assess the competitive interaction between the Parties and their customers we have examined correspondence between each Party and a sample of their customers. We found only one instance of a customer benchmarking the product against the other Parties' in all of the cases reviewed.
64. The evidence we obtained from the customers of the Parties' International product indicates that the degree of competitive interaction between the Parties' International AdIntel products is weak:
 - a) Advertisers explained that they use the products in a variety of different ways. Four of the five advertisers told us that they did not see NGA as a substitute for Portfolio International.
 - b) We spoke with three creative agencies, all of whom purchased Portfolio International. They did not describe NGA as a substitute for Ebiquity.
 - c) The two media agencies we spoke to were predominantly interested in ad spend data. Neither saw NGA and Portfolio International as substitutes.

Assessment of competition between the Parties

65. Based on this evidence we provisionally conclude that there is limited competitive constraint between the Parties.
66. While there is evidence that some customers view the Parties as functional substitutes, we do not see this as strong evidence of price substitutability, ie

of the willingness of customers to switch in response to a price increase. We are aware of only one example of a customer switching between the two Parties' products and found no evidence in either Parties' internal documents that they saw each other as a strong competitive constraint. Our provisional conclusion is further supported by the review of the Parties' internal documents and bidding data.

67. We have also considered the evidence on likely future competitive constraints. We do not consider it likely that Nielsen will attempt to make its International product a stronger competitive constraint on Portfolio International. The structural decline in traditional media AdIntel means we think it unlikely that Nielsen would divert investment resources towards trying to focus its product more closely on Portfolio International customers. For the same reason, we do not think that Ebiquity will try to make its product more similar to Nielsen's.

Vertical effects of the merger

68. Both Nielsen and Ebiquity (the Parties) sell UK AdIntel data to third parties that use it as an input for their own products. Some of these third parties may then compete against the Parties with these products. We considered the possibility of input foreclosure post-Merger towards three businesses and provisionally found that the Merger is not likely to lead to an SLC as a result of input foreclosure in the supply of UK AdIntel data post-Merger. With regard to the first business this is because the merged entity is unlikely to have an incentive to engage in foreclosure as this business is likely to be in a strong bargaining position, allowing it to respond to any attempted foreclosure from the Parties. With regard to the second business, the information we received leads us to provisionally conclude that it is unlikely that the merged entity would have an ability to foreclose it. With regard to the third business, the evidence we have received indicates that Nielsen is unlikely to have the incentive to foreclose it.

Provisional conclusion

69. We provisionally conclude that the Merger may not be expected to result, in an SLC in (i) the supply of UK Deep Dive AdIntel products and (ii) the supply of International AdIntel products to UK customers. We also provisionally conclude that the Merger may not be expected to result in input foreclosure in the supply of UK AdIntel data post-Merger.

Provisional findings

1. The reference

- 1.1 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 Media Research Limited and Nielsen Holdings PLC (collectively referred to as **Nielsen**) of the advertising intelligence (**AdIntel**) division of Ebiquity PLC¹ (**Ebiquity's AdIntel division**), (the **Merger**).² Throughout this document Nielsen and Ebiquity's AdIntel division are referred to collectively as the **Parties**.
- 1.2 In exercise of its duty under section 36(1) of the Enterprise Act 2002 (**the Act**) the CMA must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation 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.
- 1.3 This requires that the CMA assesses what effect the Merger would have on competition. An SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice).³
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes our provisional findings. Further information, including submissions from the Parties can be found on our website.⁴

¹ Ebiquity PLC is referred to as **Ebiquity**.

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

³ Quick guide to UK merger assessment (CMA18), paragraph 3.1.

⁴ See [Nielsen/ Ebiquity case page](#) on the CMA website.

2. The Parties

Ebiquity

- 2.1 Ebiquity PLC (a company registered in England and Wales under number 03967525) (**Ebiquity**) is a multinational company listed on the London Stock Exchange that describes itself as a leading independent marketing and multi-media consultancy. Ebiquity has its origins in Thomson Intermedia which was launched in 1997. According to commentary in the trade press at the time its ambition was to offer advertisers and creative advertising agencies operating in the UK a cross-media monitoring system which linked information on the advertising itself (**creative**) to expenditure on that advertising (**ad spend**).
- 2.2 Ebiquity is a multinational business with over 750 staff in 20 offices. AdIntel accounts for a quarter of its global revenues, of which two thirds is generated from its UK AdIntel operations.⁵ Its worldwide turnover in the 2017 financial year was £87 million of which £26 million was UK turnover.⁶

Nielsen

- 2.3 Nielsen Media Research Limited (a company registered in England and Wales under number 01765758) is a subsidiary of Nielsen Holdings PLC (a company registered in England and Wales under number 09422989), which is itself a subsidiary in the group of international companies controlled by Nielsen Holdings PLC, a multinational business registered in the US, headquartered in Connecticut, USA and listed on the New York Stock Exchange. It reports its activities in two main segments: measuring and analysing a) what consumers buy and b) what they watch.⁷ The former provides consumer packaged goods manufacturers and retailers with information and insights into consumer purchasing behaviour and the latter provides media and advertiser clients audience measurement services. The business was founded in Chicago in 1927 and now operates in over 100 countries.⁸ Its worldwide turnover in the 2017 financial year was USD 6.6 billion of which USD 194 million was UK turnover.⁹ Revenues for its UK AdIntel product totalled USD [X] for 2017 out of a total including its International product of USD [X] across Western Europe.¹⁰

⁵ CMA analysis based on information provided by Ebiquity.

⁶ Ebiquity Annual Report 2017, page 68.

⁷ Nielsen website: corporate profile.

⁸ Nielsen website: corporate history.

⁹ Nielsen plc Form 10-k for the fiscal year ended December 2017, page 112.

¹⁰ CMA Analysis based on information supplied by Nielsen.

2.4 In the UK, Nielsen's media monitoring service sought primarily to serve the needs of the media buying departments of advertising agencies, the increasing number of independent media buying agencies and media owners – the former buying access to a desired audience and the latter selling access to that audience.

3. The industry in which the Parties operate and their products

3.1 In this section, we describe the nature of the business that Nielsen and Ebiquity's AdIntel division are engaged in, the main participants in the advertising industry (some of which are the Parties' customers) and industry trends that have affected their clients' purchasing requirements.

Advertising intelligence

3.2 AdIntel is the tracking of advertising and related media activity. AdIntel suppliers, including the Parties, track certain information about adverts placed in a wide variety of media including TV, radio, newspapers and magazines (collectively referred to as 'print'), outdoor advertising (principally in the form of billboards), cinema and online. The information gathered and any analysis based upon it (such as the identification of trends) is amalgamated into a database, which is made available to customers via an online user-interface (**UI**).

3.3 Both Ebiquity and Nielsen collect and distribute AdIntel. AdIntel can have a variety of components including estimates of the amount an advertiser has spent on media; information as to which media categories (TV, Press, direct mail, outdoor, online etc) have been used; which particular titles or media brands were chosen within a category; when it was spent; the identities of the advertising and media agencies engaged to create the advertising content and then plan and buy the media chosen; and the content of the advertising (messaging and treatment).

3.4 Further, this information may vary in its industry focus (eg covering all sectors or focussing on a few) or its geographic coverage (eg national or international). In addition, its scope may vary by medium, monitoring fewer or more media (eg excluding regional press or cinema or monitoring fewer media brands within a category), in the speed and timing with which it is delivered to the customer or the distribution channel or format chosen for the service (eg customised reports and analysis, access to a database etc). The product may also be tailored to the needs of the client through a combination of optional modules and/or a-la-carte coverage of particular advertisers or sectors.

- 3.5 Ebiquty produces two UK AdIntel products. *Portfolio UK* provides a detailed analysis (**Deep Dive**) of UK advertising, capturing detailed data about the content of the advert, such as the strapline and the dialogue of the advert typed to text. *Portfolio International* provides a cross-country view of advertising but with less in-depth data than is available in the Portfolio UK product.
- 3.6 Nielsen produces two UK AdIntel products. *AdDynamix* provides a Deep Dive of the spending on advertising (referred to as ad spend data) and the associated placement of that advertising. The data in AdDynamix is sufficiently granular that it can create reports that show how much advertising spending was undertaken in particular sectors, in particular titles or stations and by particular advertisers. *Nielsen Global AdView (NGA)* is an international product that allows for a cross country analysis of ad spend data.¹¹
- 3.7 Nielsen has around [X] Deep Dive customers as Ebiquty (compared with [X] in the first half of 2018), and generates roughly [X] as much revenue (£[X] compared with £[X]).
- 3.8 Nielsen has [X] UK based customers of its International product, generating [X] in revenue in the first half of 2018 compared whereas Ebiquty has [X] International product customers generating [X] in revenue in the first half of 2018.
- 3.9 Advertising industry participants include:
- (a) *Advertisers*, who wish to communicate with their chosen audience. These may include for example brand owners wishing to promote their goods, including through retailers; retailers themselves; service providers; employers seeking to hire staff; and governments promoting, for instance, healthier lifestyles. Advertisers will be particularly interested in the activities of their competitors: what messages they are sending to which audiences and how much they are spending on their campaigns;
 - (b) *Creative agencies*, who supply the creative input to advertising campaigns, including the messaging and treatments proposed, and procure or provide the physical production of artwork and video required. Like advertisers, creative agencies will have an interest in the messaging and treatment being deployed by their clients' competitors;

¹¹ Throughout these provisional findings we refer to products offering a cross country view as **International product**.

- (c) *Media agencies*, who plan and buy the media space where advertisements will be placed.¹² Media agencies will be primarily interested in the amount their clients' competitors are spending, where and when. They will in particular wish to estimate their clients' 'share of voice': what proportion of the relevant market sector's advertising expenditure their client accounts for;
- (d) *Full service agencies*, who carry out both of the functions performed by creative agencies and media agencies;
- (e) *Media owners*, whose job is to sell their advertising space/airtime (sometimes referred to as 'inventory') to media agencies. Media owners will wish to ensure that they achieve at least an equivalent share of advertisers' budgets as do their competitors (sometimes referred to as 'share of wallet'). Media owners may also be 'advertisers' when they promote their own products and services;
- (f) *Media auditors*, who, on behalf of advertisers, analyse how media agencies have deployed their clients' budgets, including whether they have done so efficiently and in line with their contractual obligations to the client;
- (g) *Other agencies*, who provide a wide range of services to industry participants including market and customer surveys (including advertising effectiveness research and brand tracking).

Industry trends

3.10 The advertising industry has experienced very significant changes in the last twenty years. Advertisers increasingly focus on obtaining return on investment insights for their campaigns rather than simply purchasing AdIntel data and this has meant that a number of analytical and consultancy services now compete for a share of the advertisers' marketing budget. These businesses include Forte Research, GC Metrics and Phoenix Marketing International amongst others.¹³ In addition, there has also been a huge growth in the use by advertisers of digital advertising. Thomson Intermedia entered as a provider of AdIntel by tracking adverts in newspapers and magazines (print).¹⁴

¹² Until the 1980s, advertising agencies tended to provide both creative and media buying services. However, it became clear that there were potential advantages in buying media separately, especially if the media buying activities of several agencies could be consolidated since this would give them more bargaining power with media owners. Zenith Media, the first media agency of its kind, was created from the media buying departments of Saatchi & Saatchi, BSB Dorland and KHBB, and began operations on 30 October 1988.

¹³ A directory of businesses offering advertising research and other advertising and marketing related services can be found at: <https://www.greenbook.org/market-research-firms/advertising-research>

¹⁴ See paragraph 1.5 in Appendix B.

At that time, print accounted for a much larger share of total advertising expenditure (circa 50%) than it does today (less than 10%).

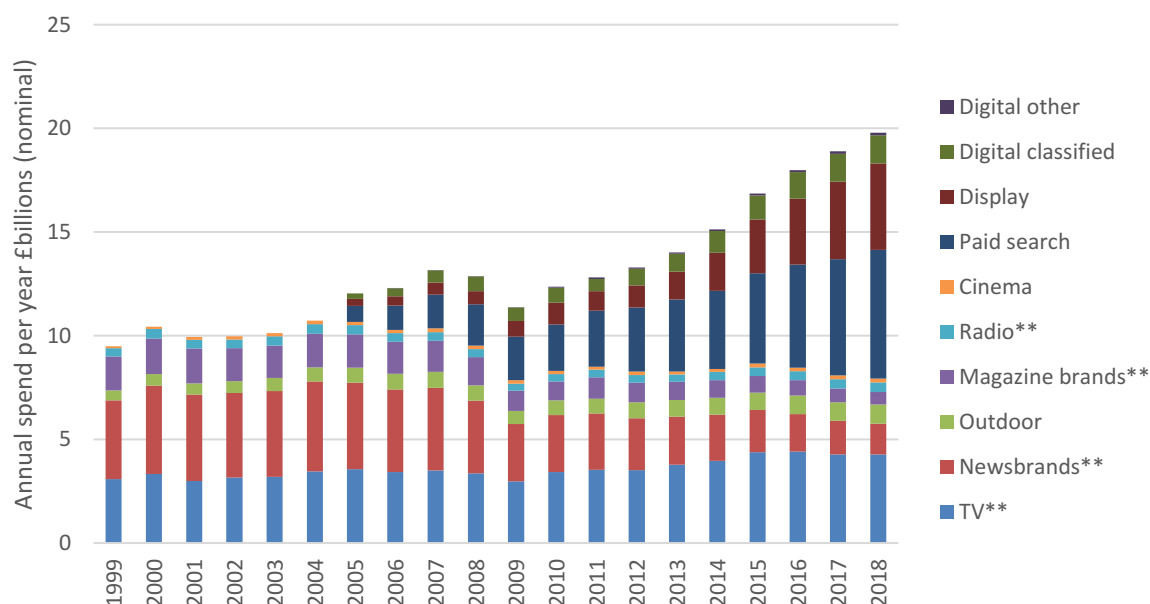
- 3.11 The widespread adoption of ‘always on’ broadband internet in the UK from around 2002 onwards led to a significant growth in online audiences and therefore the opportunity for advertisers to reach those audiences.
- 3.12 Two online businesses, in particular, have been successful in attracting online advertising revenue: Google with its search offering (AdWords) and, from its launch in 2006, Facebook. These businesses were able to offer advertisers alternative ways of promoting their products and services by giving them prominence in their search results and/or linking ads to particular search terms, in the case of Google, or serving advertisements to advertisers’ target audiences based on their online activity in the case of Facebook and YouTube (which is owned by Google).
- 3.13 The launch of Apple’s iPhone in 2007 introduced the smartphone, a new category of portable computer. This development, which enabled users to access online media anywhere, over a relatively short period of time became for many the main way they accessed the Internet.¹⁵
- 3.14 The growth in online audiences was accompanied by a decline in the readership of print media, which in turn led advertisers to focus their media expenditure more on digital and less on print. It also prompted ‘print’ brands to move online providing digital offerings. The consequences of these developments have been significant for suppliers of AdIntel and we discuss them in more depth at paragraphs 3.18 – 3.22.
- 3.15 Advertising expenditure on TV held relatively steady throughout the period, which also saw a growth in the number of digitally broadcast commercial TV channels which would need to be monitored by AdIntel providers in order to offer a comprehensive service.
- 3.16 To quantify these changes accurately it is necessary to combine and adjust information from a variety of sources.¹⁶

¹⁵ [Ofcom Communications Market Report](#), 2 August 2018. For example, figures 4.2 (page 53) and 5.2 (page 67).

¹⁶ First, it is necessary to strip out from that spend information for newspaper and magazine brands the revenues the owners of these titles now derive from their online offerings, which, we understand, were double counted within industry body statistics. Second, prior year figures would have to be restated for some relevant measure of inflation. The only attempt we are aware of to make such adjustments has been made recently by Ofcom for their 2018 Communication report, however, its reanalysis of industry body spend information only goes back six years to 2011.

3.17 Figure 3.1 sets out the best picture we have of the overall trends in, and current shares of, the main advertising media. It clearly shows the growing importance of four categories of internet advertising (search, display,¹⁷ digital classifieds and digital other) as well as the contemporaneous decline in newsbrands.

Figure 3.1: UK ad spend by advertising media 1999 to 2016 (outturn) and 2017 and 2018 (forecast) – nominal prices



Source: Statista, a statistics portal, based on spend information surveyed by GroupM. GroupM, a media agency owned by WPP, in turn rely on a survey information collected by the IAB (Internet Advertising Bureau, the trade body for digital advertising in the UK) in conjunction with PwC, a consultancy firm for digital spend information and the AA (Advertising Association, the trade body for UK advertising agency firms). We have been provided a copy of the spend information extracted from Statista for this graph by Ebiquity.

Note: Categories marked with a *** contain a varying mix of mix of spend in traditional (eg print) and digitally-enabled formats. Note: Because spend is nominal terms and not real terms and doesn't take account of the fact that some advertising in what were traditional media is now digitally enabled, this graph underplays the strength of the shift to digitally enabled forms of advertising.

Monitoring digital advertising

3.18 Digital advertising is not a media channel per se but rather a reference to a specific technology. However, digital advertising often coincides with forms of new media such as search engines and social media platforms so the term 'digital' is often used as a proxy for these new forms of media and the internet more generally. However, digital adverts are also found in the online versions of traditional media, such as magazines, newspapers and broadcast television is also digital. In this context, references to digital adverts can be taken as meaning mobile and desktop internet advertising.

¹⁷ Digital search advertising refers to advertising connected with internet search engines. Digital display advertising is similar to advertising that might appear in a magazine or on a billboard but which appears online.

- 3.19 Digital adverts may appear on a website much as display advertising would in a newspaper or magazine: available to all readers/visitors in an identical form; on a social media website such as Facebook behind a login; or they may be used to bring products or services to the attention of consumers by giving them prominence in a list of search results served to a user of search engines such as Google.
- 3.20 Digital advertising, however, also differs from traditional advertising in that the advertising served up to a visitor to a website may depend on the web activity/browsing history of that individual. Advertisers are thus able to serve highly targeted adverts to consumers offering goods or services that they know are relevant to that consumer at a time when they may be considering a purchase.
- 3.21 For AdIntel services like those provided by Ebiquity and Nielsen this has meant that instead of simply monitoring advertising messages sent to large numbers of consumers at the same time on 'mass' media they now have to develop ways of capturing targeted advertising. This has proved a challenge for all of the traditional AdIntel providers and a number of digital-only monitoring businesses have emerged to compete in this field.¹⁸
- 3.22 This inability to offer a fully cross-media view is a more significant challenge for the UK than for other countries covering digital and traditional AdIntel, as the UK spends more on digital advertising than any other EU country.¹⁹

4. The transaction and the relevant merger situation

Transaction

- 4.1 On 13 February 2018, Nielsen and Ebiquity agreed²⁰ to transfer (i) Ebiquity's AdIntel division's UK business via a share-sale, and (ii) related [REDACTED] In order to enable the share-sale in UK, Ebiquity carved out its AdIntel division and transferred it into a NewCo incorporated on 24 January 2018 under the name Advertising Intelligence Limited. [REDACTED].
- 4.2 The Merger is conditional upon clearance by the CMA.

¹⁸ See the discussion at paragraphs 5.73 for further detail.

¹⁹ Advertising in a digital age, House of Lords Select Committee on Communications, 11 April 2018, paragraph 18 and figure 2 page 11.

²⁰ On 13 February 2018 Ebiquity Associated Limited and Nielsen Media Research Limited entered into [REDACTED]; also on 13 February 2018 [REDACTED]; also on 13 February 2018, [REDACTED].

Rationale

- 4.3 Nielsen submitted that the rationale for the Merger was ‘to broaden the scope and depth of its AdIntel products and to improve and increase product functionality, while achieving cost savings and synergies from the merger, thereby enhancing value and attracting a wider customer base.’
- 4.4 Nielsen’s internal documents reflect this rationale.
- (a) Internal documents state as strategic rationale for the Merger that it broadens and complements Nielsen’s position in the UK, Germany, Australia and the U.S. They also refer to Ebiquity’s AdIntel customers being mostly advertisers, which complemented Nielsen’s media agency and media owner focused client base.
- (b) Ebiquity’s AdIntel digital solution is also referenced as part of the rationale, internal documents state that [REDACTED].
- (c) Nielsen’s internal documents further note future operational efficiencies as [REDACTED].
- 4.5 Nielsen’s internal documents further refer to a financial rationale for the Merger stating, in particular, cost savings and synergies. Context for Nielsen’s rationale and details of its business and products can be found in section 2.
- 4.6 Ebiquity’s rationale for the sale of its AdIntel division and the events leading up to the sale are set out in Appendix B Financial Analysis.

The relevant merger situation

- 4.7 Under section 36 of the Act and pursuant to our terms of reference, we are required to decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.²¹ A relevant merger situation would be created if
- (a) two or more enterprises would have ceased to be distinct;²² and
- (b) one (or both) of the following conditions is (or are) satisfied:

²¹ Section 33(1)(a) of the Act.

²² According to s. 26(1) of the Act, any two enterprises cease to be distinct enterprises if they are brought under common ownership or common control.

- (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test);²³
- (ii) the merger creates or enhances a share of supply of 25% or more in respect of goods or services of any description which are supplied in the UK, or in a substantial part of the UK (the share of supply test).²⁴

Enterprises ceasing to be distinct

- 4.8 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. ‘Business’ is defined as ‘including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied other than free of charge’.²⁵
- 4.9 On the basis that both Nielsen and Ebiquity’s AdIntel division are incorporated entities and supply AdIntel service, and therefore businesses for the purposes of the Act, we are satisfied that the activities carried on by Nielsen and Ebiquity’s AdIntel division are ‘enterprises’ for the purposes of the Act.
- 4.10 On the basis that Ebiquity’s AdIntel division is being transferred in its entirety as explained in paragraph 4.1 above, we are also satisfied that there are arrangements in progress or in contemplation which, if carried into effect, will result in Nielsen and Ebiquity’s AdIntel division ceasing to be distinct.

Turnover and share of supply tests

- 4.11 As noted in paragraph 4.7(b)(i) above, the turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 4.12 The UK turnover of the Ebiquity AdIntel business was £[REDACTED] in the 2017 financial year. We are therefore satisfied that the turnover test is not met and we need to consider the share of supply test.
- 4.13 As regards the share of supply test, we consider that the UK supply of each of the Deep Dive products and International products constitutes a suitable categorisation for jurisdictional purposes. Given the indicative share of supply in the area of Deep Dive products of [90% -100%] (increment [30% - 40%]), and a joint share of supply of [50%-60%] in International products (increment

²³ Section 23(1)(b) of the Act.

²⁴ Section 23(3) of the Act.

²⁵ Section 129(1) and (3) of the Act.

[0%-10%]), the Parties would together supply at least 25% of the goods or services.²⁶ Therefore, we are satisfied that the share of supply test is met.

- 4.14 For these reasons, we provisionally find that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. The jurisdictional test of the Act is therefore met.

5. Market Definition

Introduction

- 5.1 The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of a merger. The relevant market (or markets) is the market in which the merger may give rise to an SLC and contains the products and/or services that are the most significant competitive alternatives available to the customers of the merged companies. Market definition is a useful analytical tool but it is not an end in itself and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis in a mechanistic way. The CMA may, for example, in its competitive assessment also take into account constraints outside the relevant market (or markets).²⁷
- 5.2 Particularly in the context of a merger between products that are highly differentiated and appeal to different groups of customers, there is a close relationship between the question of market definition and the assessment of closeness of competition between the Parties. Given this overlap, we have also taken account of the evidence set out in this section as part of our subsequent assessment of competitive effects.
- 5.3 We note that in many merger assessments it is standard practice to employ the hypothetical monopolist or 'SSNIP' test. This test, which attempts to test whether a hypothetical monopolist of a product could profitably raise prices by more than 5%, is of limited use in a market where prices are individualised and whereby marginal customers (ie those most likely to switch in response to a 5% price increase) do not protect those non-marginal customers (ie those that would not switch). The evidence we received indicates that the prices of the Parties' UK Deep Dive products are individualised for each of their customers (see paragraph 5.43). For this reason, we do not use the test in our assessment of the Merger. Instead, we have focused on a broader qualitative

²⁶ As required by s. 23(3) of the Act.

²⁷ CMA's Merger Assessment Guidelines, paragraphs 5.2.1 and 5.2.2.

assessment of the degree of functional substitutability between the Parties' products.

- 5.4 Each Party produces two AdIntel products; a UK Deep Dive product and an International product.²⁸ We begin by considering whether the UK Deep Dive products and International products are part of the same market before moving on to examine the degree of competitive constraint imposed between the two UK Deep Dive products and, separately, the two International products. We also consider the role played by specialist digital AdIntel products. We then examine the geographic markets for the various products.
- 5.5 Finally, we note that,
- (a) in order to develop International products, suppliers of AdIntel products buy AdIntel data (both ad spend and ad creative content) from AdIntel suppliers operating in other geographic markets. We have considered the upstream supply of UK AdIntel data to suppliers of International products as a separate market. This is for the purposes of assessing the vertical theory of harm as set out in Section 9.
 - (b) UK Deep Dive AdIntel products can be used as inputs in a range of industries including, for example, media auditing and the provision of news and insight reports for retail financial services clients. We have not found it necessary to formally define these as separate downstream markets, but have considered the impact of the merger on these different categories of customers as part of our competitive assessment in Section 7 below.

The Parties' submissions

- 5.6 The Parties submitted that Deep Dive and International AdIntel products are not in the same market. They further submitted that their respective Deep Dive products are not demand side substitutes. According to the Parties, Nielsen's AdDynamix product is a post-advertising campaign analysis tool whose data supports media investment planning,²⁹ whereas Ebiquity's AdIntel division's Portfolio UK is an advertising creative planning tool, used to plan creative advertising strategy and tactics.³⁰

²⁸ See paragraphs 3.5 and 3.6.

²⁹ We understand this to refer to long-term, strategic decisions about how much to invest in advertising and on which media channels.

³⁰ We understand this to refer to long-term decisions on advertising messages, and to short-term decisions on how to respond to competitors' messages and promotions.

5.7 The Parties further submitted that because of these differences the products were used by different customer types for largely different purposes. AdDynamix was used by media agencies (and to a lesser degree advertisers) to optimise media investment strategy for their clients and to provide media owners with AdIntel to specify their commercial marketing strategy. In contrast, Portfolio UK was used mostly by advertisers and creative agencies. According to the Parties, the product differentiation is so significant that AdDynamix cannot be used for the creative strategy (ie long term) and tactical (ie short term) planning that they argue is the principal use of the Portfolio UK product.

5.8 Finally, the Parties submitted that each of their International products operated in a separate market as they were not functional substitutes.³¹ While both products had in common that they contained data from multiple countries, they were not considered by the Parties to be interchangeable. The Parties argued that the data each product contained was largely different. Furthermore, the products had different characteristics and fulfilled different customer demands.

(a) Ebiquity's Portfolio International was used by advertisers looking to track and compare competitors' advertising in different jurisdictions over time and across countries to inform their creative strategies. The Parties emphasised that Portfolio International was updated much more frequently than Nielsen's NGA.³² Portfolio International also focuses on tracking an advert's creative content, providing its users with the ability to search and compare harmonised attributes and descriptions. [REDACTED]³³ [REDACTED].

(b) Nielsen's NGA was used by advertisers for cross-border strategic media investment decision-making, and by agencies on behalf of their advertiser clients. It was a database of historical media-investment planning data that contained [REDACTED] and that was harmonised across multiple jurisdictions and was updated [REDACTED].

5.9 Accordingly, the Parties submitted that there are four relevant product markets:

(a) the supply of UK Deep Dive post-advertising campaign analysis tools;

(b) the supply of UK Deep Dive ad creative planning tools;

³¹ Parties' [Response to the CMA's Issues Statement](#), 13 August 2018, paragraph 2.5.

³² [REDACTED]% of Portfolio UK's content is updated daily and the remainder on a monthly basis.

³³ The Parties submitted that [REDACTED] customers currently subscribe to ad spend data as part of their Portfolio International subscription.

(c) the supply of International cross-border strategic media investment decision-making tools to UK customers; and

(d) the supply of International ad creative planning tools to UK customers.

5.10 The Parties noted that the geographic scope of the markets for the supply of international AdIntel may be wider than the UK.

Evidence on whether Deep Dive and International products are in separate markets

5.11 We considered first whether the Parties' UK Deep Dive and their International products should be included in the same market or should constitute two separate markets. In making this assessment we considered the degree of substitutability between Deep Dive and International AdIntel, based on evidence including: the nature of the Parties' products, evidence from the Parties' internal documents and the views expressed by the Parties' customers and by other AdIntel suppliers.

5.12 A brief description of the UK Deep Dive and International products offered by the Parties can be found at paragraphs 3.5 and 3.6. This shows that there are important differences between the two sets of products which are likely to significantly limit the degree to which customers could use them as substitutes. In particular:

(a) International AdIntel products provide consistent information across a number of different countries, whereas Deep Dive products only provide information on one country (in this case, the UK).

(b) Deep Dive products offer significantly greater coverage and granularity of information compared with International products.

(c) Information provided in Deep Dive products is typically updated more regularly. As a result, it can be used to track market developments on close to a 'real time' basis.

5.13 We looked at the Parties' internal documents and how they describe the competitive landscapes within which the Parties' products are offered. [redacted] little can be found in Nielsen's internal documents specific to Deep Dive and International AdIntel, documents from Ebiquity typically discuss Deep Dive and International AdIntel separately. Ebiquity's Intel Business Plan 2018 represents the competitive landscape for UK Deep Dive and International AdIntel in two separate charts, including different sets of competing suppliers. In particular, Kantar and Global Ad Source are indicated as competitors in relation to International AdIntel, but not for UK Deep Dive.

5.14 This view is consistent with what we were told by Kantar and Global Ad Source, both of whom see themselves as competing with (one of) the Parties in the supply of International AdIntel to UK customers, but not in the supply of UK Deep Dive products.

(a) Global Ad Source provides UK data as part of its International product, but does not provide a UK Deep Dive product. Global Ad Source stated that most of its customers were global businesses which tended to be interested in more than one country and therefore Global Ad Source was not a player in the provision of single country data.

(b) Kantar provides an International product and told us that it competed strongly with the Parties in the supply of the International product globally. It observed that it was a competitor to Nielsen but added the caveat that it did not see Ebiquity competing closely for sales of ad spend data and that creative agencies tended to prefer Ebiquity's product. [REDACTED].³⁴

5.15 We also considered the views expressed by the Parties' customers on the substitutability between International and Deep Dive AdIntel products. All but one of the customers we spoke to expressed the view that collecting local advertising data from each country and then using that data as an alternative for an International AdIntel product was not feasible, as it would require substantial investment and time. Another option would be for UK Deep Dive customers to migrate onto the International service/platform. Only two of Ebiquity's customers [REDACTED] did so between 2010 and 2018. More detail on customer views is included in Appendix C.

5.16 Finally, we considered evidence of switching behaviour. Between 2010 and the first half of 2018, Ebiquity recorded [REDACTED] of customers who unsubscribed from its UK Deep Dive product to purchase only its International product. [REDACTED] were recorded by Nielsen during the same period.

5.17 Based on the different characteristics of the Parties' UK Deep Dive and International AdIntel products (paragraph 5.12), the different set of competing suppliers for the two types of products (paragraphs 5.13 and 5.14), and customer evidence pointing towards a lack of demand substitutability between International AdIntel and Deep Dive products (paragraphs 5.15 and 5.16), we provisionally conclude that International AdIntel products and UK Deep Dive AdIntel products belong to separate product markets.

³⁴ Kantar recently launched a new AdIntel digital-only product focussed on search advertising with the long-term expectation of gaining customers in the UK. However, it does not consider that either of the Parties' UK Deep Dive products is a substitute for Kantar's digital product.

Evidence on whether there are separate product markets within UK Deep Dive

- 5.18 As we provisionally found the UK Deep Dive and International AdIntel products to be in separate markets, we conducted our assessment of these products separately. We turn first to an assessment of the market(s) in which the Parties UK Deep Dive AdIntel products are sold.
- 5.19 As noted in paragraph 5.9, the Parties argued that there are two separate Deep Dive product markets: the supply of UK Deep Dive post-advertising campaign analysis tools and the supply of UK Deep Dive ad creative planning tools.
- 5.20 To inform our analysis we considered:
- (a) evidence on the characteristics of the Parties' products;
 - (b) evidence on the customer base and pattern of sales for the two products;
 - (c) evidence from the Parties' internal documents; and
 - (d) the Parties' customers' views.
- 5.21 We also considered separately the role played by digital advertising intelligence.

UK Deep Dive product characteristics and scope

- 5.22 We assessed in some detail the characteristics and scope of the Parties' respective Deep Dive products. We considered that this formed an important starting point both for our market definition and for our subsequent assessment of the competitive effects of the Merger.
- 5.23 Despite significant differences, it is possible to identify some similarities between the Nielsen UK Deep Dive product (AdDynamix) and the Ebiquity UK Deep Dive product (Portfolio UK).
- 5.24 For example, the process of creating the products is similar between the Parties. The process is essentially manual and both Parties employ large teams of staff to capture and analyse adverts. Some technology is used, for example to help identify advertising breaks in television broadcasts. The capture of digital adverts is particularly technology intensive, requiring software that needs regular updating. To this extent the personnel and technology requirements of both businesses are similar.
- 5.25 To make their products, the Parties identify a range of print titles, radio and TV stations and other sources (cinema, outdoor display, direct mail, door-drop

and online media) from which they will collect adverts. Further decisions are made about which adverts in each title or on each station will be sampled. The sampled adverts are then analysed and meta-data about certain characteristics of the adverts is generated. The combined meta data about the adverts forms a database which is loaded into a software system with a UI that allows customers to access the data. Finally, customers are offered access to the data via the UI under a range of packages that provide access to different components of the database for different prices.

5.26 We considered the degree of similarity between the Parties' products across each of the following dimensions:

- (a) Coverage of the products – including the range and variety of media channels covered and the specific adverts sampled from each title or station;
- (b) The analysis performed on and the meta-data applied to each advert;
- (c) The UI provided to their customers and the range of features in that UI; and
- (d) The database access packages they sold.

The coverage of the UK Deep Dive products

5.27 The Parties collect data on differing print titles and radio and TV stations, as shown in Table 5.1.

Table 5.1 Print title and broadcast station coverage

	<i>Newspapers / magazines</i>	<i>TV</i>	<i>Radio</i>	<i>Internet</i>
Titles / Stations in AdDynamix	[✂]	[✂]	[✂]	[✂]
Titles / Stations in portfolio UK	[✂]	[✂]	[✂]	[✂]
Titles / Stations in both products	[✂]	[✂]	[✂]	[✂]

Source: Nielsen Ebiquity, [✂]

5.28 Overlap is greatest in relation to TV stations, with coverage for magazines, radio and internet being such that [✂].

5.29 Coverage of cinema and outdoor advertising is identical between the Parties as they buy in their advert coverage from the same third parties. Some customers pointed to the differing coverage between media channels as a relevant point of difference between the products, with some actively seeking out the provider with the widest coverage of particular sectors. This was

particularly the case in relation to print coverage, where Nielsen’s broad coverage of national titles, including a wide range of magazines, and Ebiquity’s coverage of regional newspapers were seen by some customers as important differences.³⁵

- 5.30 The adverts sampled from each title or station also vary between the products. Nielsen monitors all of the adverts in each of the titles and stations it monitors. Ebiquity only monitors certain adverts (for particular automotive clients) in regional newspapers.
- 5.31 The effect of monitoring different titles and, to a lesser extent, different adverts within those titles is that the source adverts for each product only overlap in [redacted] per cent of cases. We consider, however, that for some customers this may not necessarily make the two products significantly different, as long as the samples used by the Parties are both representative of the UK advertising landscape.

The meta-data of the UK Deep Dive products

- 5.32 The analysis performed on each advert and the meta-data generated also differs between the Parties. The Parties pointed to this as one of the most important differences between the products.

Table 5.2 Unique meta-data in the Parties’ products

<i>Media</i>	<i>Variables tracked by Nielsen</i>	<i>Variables tracked by Ebiquity</i>	<i>Variables common to both Parties</i>
TV	[redacted]	[redacted]	[redacted]
Press	[redacted]	[redacted]	[redacted]
Digital	[redacted]	[redacted]	[redacted]
Radio	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]

Source: Parties’ analysis

- 5.33 Table 5.2 sets out the number of variables that each Party monitors for each advert. The variables monitored vary by sector. On average, [redacted] of the variables are common between the Parties’ products; however, a substantial proportion of the variables tracked in each sector (in each case at least [redacted] and in some cases more than [redacted]) are unique to each party.
- 5.34 The nature of the unique variables is also of importance to our assessment. The tables at Appendix D set out the specific variables monitored for each of the four main media types (TV, print, radio, digital) by each of the Parties

³⁵ Appendix C Evidence from Parties’ AdIntel Customers, paragraph 59(a) and also [redacted].

including both the creative variables monitored (that is, those variables that relate to the positioning and content of the advert) and the spend variables (that is, those that relate to the rate card price for that advert and the estimated amount actually spent on it).³⁶

- 5.35 An examination of these differences reveals that, with regard to creative variables, AdDynamix's [redacted] variables tend to be in relation to the positioning of the advert, such as the number of pages covered by the advert, its positioning in a TV commercial break or its positioning on a webpage – all of which are [redacted] to Nielsen. [redacted], Portfolio UK's [redacted] variables tended to relate to the content of the advert, such as the dialogue in a TV advert, the advert slogan in print adverts or the number of frames in animated digital adverts – all of which are [redacted] to Ebiquity.
- 5.36 In relation to spend data, both Parties' products offer rate card data for print media. However, as rate card data often differs from the true amount spent both Parties also offer an alternative measure of ad spend. In Nielsen's case this is discounted rate card data. However, the Parties submitted that their discounted rate card data were based on different methodologies. In particular, the discounted data in AdDynamix was based upon a methodology that [redacted] The methodology did not attempt to [redacted] The alternative ad spend measure in Portfolio UK was different in that it provided average spend data and was based on aggregated spend data received from Ebiquity's media auditing division.
- 5.37 It is unclear to what extent the resulting spend data differ between the Parties' products. The Parties submitted that the figures generated by [redacted]. However, we also received data from one customer of the Parties that considered that the spend data in AdDynamix and Portfolio UK was substantially similar. A second customer told us that comparisons of the accuracy of the data could vary depending on the exact test performed.

The user interfaces

- 5.38 The variables monitored by the Parties are combined into a database that is made available to customers through a software platform with a customer UI. The Parties' platforms have certain similarities in their core functions but also differences with respect to their look and intuitiveness.
- 5.39 Both the AdDynamix UI and the Portfolio UK UI allow their users to configure reports by selecting the media type, data range, information type and other

³⁶ See, for example, Parties' [Response to the CMA's Issues Statement](#), 13 August 2018, paragraph 2.4.

variables they are interested in. These reports can run as ad hoc reports or be saved and run repeatedly, automatically updating with new data as it becomes available. Both platforms also offer the customer the opportunity to integrate a data feed with their own systems.

- 5.40 On the other hand, the UIs differ in their design and some customers expressed a preference for one over the other, typically citing either the ease or intuitiveness with which the various functions can be used.³⁷

The UK Deep Dive data packages sold by Parties

- 5.41 Both Parties sell their UK Deep Dive data as products that can be customised to some degree.³⁸ Nielsen sells AdDynamix as a basic product that includes access to data about all media channels with optional 'premium' data modules available for each media channel. Nielsen also, from time to time, will prepare bespoke reports for clients, although this activity has been [REDACTED], the most recent example being a piece of brand monitoring work undertaken for the [REDACTED].
- 5.42 Ebiquity sells Portfolio UK on an a-la-carte basis; data on each media channel is sold separately and customers can choose to take only those media channels in which they have an interest. Ebiquity also offers premium data modules for its digital channel. In addition to this, customers purchasing the data relating to coverage of automotive adverts in the regional press must specify the brands they wish to be monitored and receive a product tailored to those brands. Ebiquity also offers a range of ancillary options which are based on the standard Deep Dive product, for example, a Vehicle Finance Report, which focuses on adverts for vehicle financing deals. Further to this suite of options, Ebiquity offers some bespoke reporting to clients either as ad hoc pieces of work or as ongoing individualised subscription services. These contracts can be substantial in size such as the contract with [REDACTED].
- 5.43 The prices of the Parties' UK Deep Dive products are individualised for each of their customers as set out in the following. [REDACTED]. [REDACTED] Nielsen told us that the starting point for the price of its UK Deep Dive product [REDACTED] both for customers on annual subscriptions (the majority of Nielsen's customers) and those who purchased data on an ad hoc basis. This assumed customers required access to [REDACTED] Nielsen then [REDACTED] However, that price would [REDACTED].

³⁷ See for an example Appendix C 52.

³⁸ See Table 15 in Appendix F.

5.44 The products can be sold as subscriptions [redacted] or as data reports that can be bought on an ad hoc basis.³⁹

Our provisional view on product differentiation

5.45 On the basis of the Parties' submissions, the customer evidence and from our own direct assessment of the products we found that although it is also possible to identify certain similarities, Nielsen's and Ebiquity's UK Deep Dive products differ significantly. As well as the differences in the products themselves, some customers pointed to differences in service quality between Nielsen and Ebiquity, in particular indicating that Ebiquity's service standards are better.⁴⁰

5.46 Product differentiation on its own, however, even when significant, as in this case, does not of itself prove the existence of separate markets for the differentiated products. Differentiated products can still be sold on the same market and impose some degree of competitive constraint upon each other.

Evidence on the customer base for the UK Deep Dive products

5.47 As discussed at paragraph 3.9, it is possible to segment the overall customers for Deep Dive products into different types of customers.

5.48 Table 5.3 indicates the proportions of Deep Dive customers and revenues accounted for by these different customer types. It shows that Ebiquity's main customer type is advertisers [redacted], while Nielsen's largest customer type is media owners [redacted].

Table 5.3 The Parties' UK Deep Dive customer base by customer type

	<i>Nielsen</i>		<i>Ebiquity</i>	
	<i>% revenues</i>	<i>% customers</i>	<i>% revenues</i>	<i>% customers</i>
Advertisers	[redacted]	[redacted]	[redacted]	[redacted]
Creative agencies	[redacted]	[redacted]	[redacted]	[redacted]
Full service agencies	[redacted]	[redacted]	[redacted]	[redacted]
Media agencies	[redacted]	[redacted]	[redacted]	[redacted]
Other agencies	[redacted]	[redacted]	[redacted]	[redacted]
Media owners	[redacted]	[redacted]	[redacted]	[redacted]
Other	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]

Base: Customers with revenues in H1 2018
Source: CMA analysis

³⁹ See Table 13 in Appendix F.

⁴⁰ Appendix C, paragraph 65(c).

- 5.49 The majority [X] of Ebiquity's UK Deep Dive revenues are derived from three customer types: advertisers (by far the largest at [X]), media owners and creative agencies; they generate relatively little from media agencies and full service agencies. The same proportion (ie) of [X] Nielsen's revenues are derived from advertisers, media owners (the largest at [X]), media agencies and full-service agencies; they derive relatively little from creative agencies.
- 5.50 The data shows that creative agencies that purchase AdIntel tend to purchase from Ebiquity whereas media agencies (and full service agencies carrying media agency activities) tend to purchase from Nielsen. Advertisers are more likely to use Ebiquity's product and media owners are more likely to use Nielsen's product. This indicates that the functional differences between the products described above may mean that the Parties' different products principally appeal to different customer types. However, it is also clear that there are no hard and fast divisions; at least some customers of every type can be found using either of the Parties' UK Deep Dive product.

Evidence from the Parties' internal documents

5.51 The functional similarities and differences between the Parties' UK Deep Dive products are reflected in their internal documents and marketing material. The documents provide a view of how the Parties consider their UK Deep Dive product serves each of the four main customer types: advertisers; media owners; media agencies; and creative agencies.

5.52 With respect to advertisers, one of Ebiquity's internal documents states that for Portfolio UK,

[X] corporates (advertisers) [from] key sectors include[ing] technology, automotive and FMCG (Fast-Moving Consumer Goods) [use Ebiquity's products] daily to answer key questions about competitors' communications messaging, strategies and spend, and monitor own brand regulation and compliance.

5.53 Nielsen's internal documents reveal that AdDynamix has a different focus for advertisers indicating that they can use the AdDynamix product to:

- (i) improve your competitor awareness, which includes the following activities:
 - (a) Benchmark competitor spend across all traditional and digital media;
 - (b) track marketing trends of products through their life cycles;

- (c) calculate the impact of changes in media mix strategy;
 - (d) Analyse market share to improve your brand targeting;
 - (e) Gauge levels of media saturation in any distribution channel or market sector;
 - (f) review the order and positioning of creatives in print media;
 - (g) Research innovative techniques used by admired brands in any market
- (ii) drive marketing efficiency; which includes the following activities:
- (a) Optimise marketing spend by evaluating the effectiveness of your media buying or planning;
 - (b) make essential business decisions based on completely impartial unbiased data;
 - (c) Justify your media budget to maintain a competitive media presence;
 - (d) Review the best campaigns when considering a new agency
- (iii) refine your brand positioning, which includes the following activities:
- (a) appraise your promotions against those of your rivals;
 - (b) Assess the harmony of your cross-media brand activity;
 - (c) develop the right media blend and creative emphasis for your brands;
 - (d) maintain competitive and consistent pricing promotion and distribution strategies for products and target markets.

5.54 These internal documents show that, with respect to advertiser clients, Nielsen's emphasis is on the application of the ad spend data to a variety of tasks. However, for some of the tasks the spend data would be combined with data about the content of the advert, particularly those tasks listed under (iii) above. The Ebiquity internal documents indicate that the emphasis is on tasks that require access to the creative content of the advert but that there are also some tasks that would be accomplished with spend data. To this extent, we find this evidence is supportive of the view that there is a different focus on the tasks that can be accomplished with each product but that both products make use of both spend and creative data and that there is some overlap in the tasks that can be accomplished with each product, in particular (iii)(a) and (d).

5.55 The same documents also discuss the uses of the Parties' UK Deep Dive products to advertising agencies. Ebiquity's documents explain that advertising, media and research agencies use the Portfolio UK product. For example, one document states:

daily to inform ad-tracking, brand health monitoring and pitch activity. [...] Many use the platform on behalf of their clients to identify new campaigns and alert clients to their competitors' activity and strategies.

5.56 One of Nielsen's documents sets out that media agencies can use the product to:

- (i) Build solid media plans and strategies for your clients; [which includes the following activities]:
 - (a) Track the media activity of a client and its competitors in detail;
 - (b) Compare campaigns by different criteria, including where advertising is placed; the creative used; the campaign frequency;
 - (c) Identify how markets have been targeted, with what, and by whom;
 - (d) Assess the most active sectors and advertisers;
 - (e) Ensure clients gain share of voice and justify their advertising budgets;

- (f) Vouch the final position, format and content of your clients' print ads;
- (g) Review the planning effectiveness of a campaign and benchmark the results
- (ii) Improve your commercial and operational effectiveness [which includes the following activities]:
 - (a) Gain an in depth understanding of the media history of prospects for new business pitches;
 - (b) Oversee market activity with authority to negotiate the best possible prices;
 - (c) Audit your internal processes unobtrusively;
 - (d) Stream-line workflows with a single powerful system.

5.57 These documents emphasise the role of spend data and advert positioning data (which is much richer in AdDynamix) in the AdDynamix product and the role of creative data in the Ebiquity product. There is no mention of tasks that might require creative data in the discussion of AdDynamix (except perhaps (i)(a)) and there is no reference to tasks requiring spend data in the discussion of Portfolio UK. This evidence strongly indicates that the two products are designed for different uses within the advertising agency customer segment.

5.58 We have also considered what the documents say about the usefulness of the products to media owners. The Ebiquity documents state that media owners can use the product. The document cited above states:

daily to understand which brands are advertising in which media channels [and] looking to gain insight into competitors' revenue strategies and new business targets.

5.59 One of Nielsen's documents says that media owners can use the product to:

- (i) Measure and improve performance, [which includes the following activities]:
 - (a) Contact buyers and planners using unique agency attribution detail;
 - (b) Improve call targeting efficiency so staff make effective use of their selling time;

- (c) Simplify and enhance your internal key performance indicator analysis;
 - (d) Understand your prospects' brands to ensure you are talking to a receptive audience;
 - (e) Ensure clients' creative executions complement the surrounding editorial or programming content
- (ii) Enrich your market knowledge, [which includes the following activities]:
- (a) Identify advertiser and agency media buying patterns in different sectors;
 - (b) View media mix strategies and ensure your media has traction;
 - (c) Track defective advertisers and their loyalty to other media;
 - (d) Be alert to new advertisers and media across the entire marketplace;
 - (e) Gain an in-depth understanding of the media history of prospects for new business pitches;
 - (f) Assess the impact of online growth on other media;
 - (g) Keep abreast of innovative creative techniques across all media.

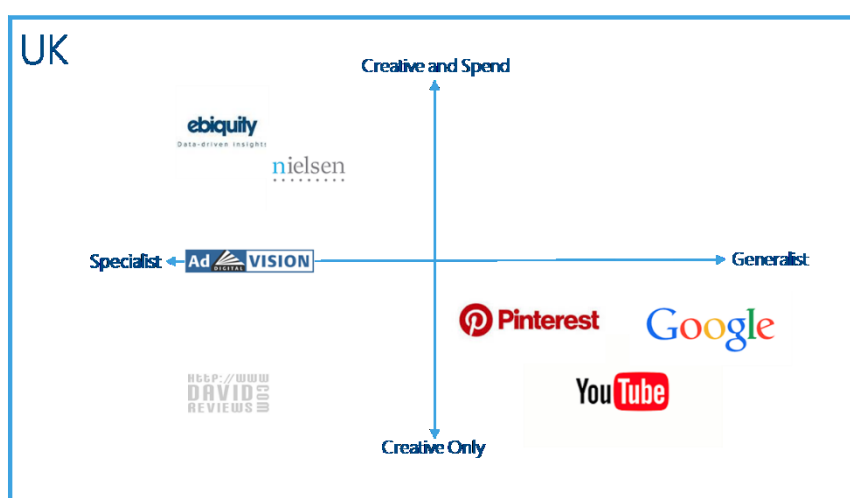
5.60 These documents emphasise for AdDynamix tasks which require the spend data, agency attribution and whole of market view aspects of the product. In that context, we note that Portfolio UK has only recently introduced agency attribution as a feature. Nevertheless, there is some potential overlap between the Portfolio UK enabled task of understanding [X] and the AdDynamix facilitated task of identifying [X]. We also note that some of the AdDynamix related tasks such as (i)(e) and (ii)(g) rely on using creative data (or at least access to the underlying advert).

5.61 Looking at this evidence in the round, we take the view that the products are marketed by both Parties at three customer types: advertisers; media owners; and media agencies and that in addition Ebiquity markets its product towards creative agencies (although we note that this does not inform us as to how much effort the Parties put in to selling to each of these customer types). The

evidence tells us that the products are principally designed and marketed for different uses, even by the same customer types. However, with respect to advertisers and media owners there appears to be some overlap in the tasks to which the products can be put.

- 5.62 As well as considering how they viewed their own UK Deep Dive products, we also examined the Parties' internal documents in relation to how they view each other's UK Deep Dive products. We found little evidence in Nielsen's internal documents to support the view that Nielsen views its AdDynamix product as competing closely with Portfolio UK. Few Nielsen documents mention Ebiquity or Portfolio UK (examples are reported in Appendix E).
- 5.63 Ebiquity's documents mention Nielsen more frequently and, when they do, they tend to indicate that Ebiquity views AdDynamix as a competitor to Portfolio UK. Compared to Nielsen, Ebiquity submitted a larger volume of documents dealing with competition in the UK.
- 5.64 One recent document, an Intel Business Plan for 2018 and dating from November 2017, presents a quadrant diagram which is reproduced below.

Figure 5.1: Slide entitled, 'Ebiquity Market Position – Competitive Landscape'



Source: Parties' submission

- 5.65 The diagram indicates that Ebiquity saw itself and Nielsen as the only specialist suppliers of UK Deep Dive AdIntel that contained both creative and spend data.⁴¹
- 5.66 A further Ebiquity document produced in May 2016 describes Nielsen as, 'one of our major competitors in advertising monitoring, captures and monitors

⁴¹ We note that earlier versions of the chart produced in 2016 put Ebiquity and Nielsen in different quadrants with Nielsen categorised as a generalist supplier and Ebiquity as a specialist.

almost exactly the same data as we do for our Deep Dive services in the UK and Germany'. Although this statement is somewhat at odds with the analysis discussed above (see paragraphs 5.51 to 5.61), which indicates that there are substantial differences in the data collected and analysed by the Parties for their respective Deep Dive products, we consider it further indicates that Ebiquity saw Nielsen as operating in the same market. While other internal documents suggest that the competitive constraint imposed by Nielsen may not be strong (see paragraph 7.30), they still indicate Nielsen as a competitor.

5.67 When taken together, the Parties' marketing materials (set out at paragraphs 5.51 to 5.61) and their strategy documents (set out at paragraphs 5.62 to 5.66) lead us to a provisional conclusion that Nielsen and Ebiquity overlap to some degree in the functions and uses of their products, and this is also reflected in their own competitive assessments of each other.

Evidence from customers

5.68 We received information from 33 customers of the Parties' UK Deep Dive products. The views expressed by these customers indicate a wide range of opinion regarding whether and how closely the Parties' UK Deep Dive products compete.

5.69 Approximately half of these customers expressed a view that indicated some degree of functional substitutability between the Parties' products. In particular, views seem to vary widely between customer types (but we note they can also vary within customer types):

(a) The Parties' products appear to be closer functional substitutes for advertisers interested in monitoring their competitors, for customers using spend data as an input to other products, and possibly for some media agencies.

(b) Advertisers interested in monitoring their own dealer or retailer networks only use Ebiquity's product and are typically not aware of alternatives.

(c) Media owners appear to mostly prefer Nielsen's data; the same is the case for some media agencies.

5.70 We consider that this indicates that, although the products are not substitutes for many customers, for some customers and for some uses the UK Deep Dive products may be functional substitutes.

Evidence regarding separate markets for individual media channels including digital

- 5.71 We have considered whether the provision of AdIntel about each individual media channel might constitute a separate market. For traditional media, we provisionally conclude that this is not the case. Customers tend not to take AdIntel for individual media channels – Nielsen’s product contains all channels as standard and most Ebiquity customers we spoke to wanted coverage of more than one media channel. We have found no evidence in the Parties’ internal documents to support the view that they see individual media channels as separate markets.
- 5.72 We have also considered whether the supply of digital AdIntel is a separate market given the very different technical challenges of supplying this product and the different set of firms that supply digital AdIntel compared to those supplying AdIntel for traditional media.
- 5.73 The technical challenges of tracking targeted adverts are considerable because the type of advert served can differ dependent on who is viewing. There are also many different forms that digital adverts can take. This complexity has resulted in a number of digital advert tracking specialists entering the supply of digital AdIntel such as Pathmatics, MOAT, Zulu5 and AdClarity. Not all of these digital specialists are providing the same service; some specialise in search engine advertising, others in digital display or online video. Nielsen has partnered with [redacted] to make it consistent with Nielsen’s taxonomies, which it then combines with its traditional media AdIntel. Ebiquity has developed its own digital AdIntel capability.
- 5.74 The supply side evidence indicates that digital AdIntel is a fundamental component of a Deep Dive product. First, digital AdIntel is bundled with the Nielsen AdDynamix product. It is also offered as one of Ebiquity’s data modules; neither party has attempted to do without it, despite the relative difficulties of collecting it. Second, a whole of sector view, which is central to many of the functions that Nielsen promotes AdDynamix for, requires at least some coverage of digital advertising.
- 5.75 We also note that digital advertising now accounts for approximately 45% of all advertising spend by revenue; some customers of traditional AdIntel told us that data on digital AdIntel is an important part of the overall AdIntel picture and they were exploring ways to monitor it.
- 5.76 There is also some evidence from Ebiquity’s own internal analysis that indicates that free digital products like YouTube are competitors to its creative

services data,⁴² implying that there is an overlap between the types of creative adverts available on digital media and the adverts carried by traditional channels.

- 5.77 Notwithstanding this, we do not view the digital specialist AdIntel providers as competing closely with multichannel AdIntel products sold by the Parties. Some of the digital specialists we spoke to indicated that they did not compete directly with the Parties. Another said it competed with the Parties only over the digital element of AdIntel. In addition, it was clear that in most cases specialist digital products and the Parties' products were more likely to be viewed as complements rather than substitutes, with some customers explaining that they supplemented the data they received from the Parties with data on digital AdIntel from other sources.
- 5.78 For these reasons, we provisionally conclude that the supply of UK Deep Dive AdIntel includes digital coverage but that specialist digital only providers are not part of that market. This is principally because the customers of UK Deep Dive AdIntel mostly need a multi-media view of the market that includes traditional media as well as digital media. However, we recognise that there can nevertheless be a competitive constraint imposed by digital specialists on the Parties and we take that into account in our competitive assessment.

Provisional conclusion on the supply of UK Deep Dive AdIntel

- 5.79 The evidence set out above shows that the Parties' UK Deep Dive products are significantly differentiated (see paragraph 5.45). That differentiation covers a wide range of differences but can be summarised as a focus on spend data and advert positioning data in the AdDynamix product and a focus on creative data in Portfolio UK. Those product differences mean that the products are best suited to different tasks. This is reflected in the customer base for each product, as the mix of customer types varies substantially between the two products (see paragraphs 5.48 to 5.50).
- 5.80 Nevertheless, there is some degree of overlap in the information provided by the two products and, consequently, in the tasks that advertisers, advertising agencies and media owners might use the products to undertake, as seen in paragraphs 5.51 and 5.61). Both businesses have customers of each customer type (see paragraph 5.50) and, as seen in paragraph 5.69, several customers indicated the products as functional substitutes. In addition, the degree of differentiation between the Parties' products is largely a result of

⁴² See Appendix E for further detail.

their historical strategies rather than of fundamental differences in the media they are covering.

- 5.81 Having provisionally concluded that International AdIntel products are not in the same market as UK Deep Dive products (see paragraph 5.17), and that specialist digital only providers operate in a separate market (see paragraph 5.78), we provisionally conclude that the relevant market is no wider than the supply of UK Deep Dive AdIntel products. For the purpose of the competitive assessment, we have treated the Parties' UK Deep Dive products as part of the same market and have considered the evidence on the significant degree of differentiation between the products as part of our competitive assessment.

Evidence on whether there are separate product markets within International AdIntel

- 5.82 As we have done in our assessment of the Parties' Deep Dive products, we have assessed whether the Parties' International products are part of the same product market or are each part of a separate market.
- 5.83 As noted in paragraph 5.9, the Parties argued that there are two separate international product markets: the supply of international post-advertising campaign analysis tools, and the supply of international ad creative planning tools.
- 5.84 In order to assess the relevant market(s) for the Parties' International products, we considered evidence on:
- (a) The nature of the Parties' products;
 - (b) The Parties' customers' views;
 - (c) Views of other AdIntel suppliers;
 - (d) The Parties' internal documents; and
 - (e) The Parties' customer base for International products.

Nature of the Parties' International products

- 5.85 Similar to the UK Deep Dive products described above (paragraphs 5.47 and 5.48), the Parties' International products service various customer types with information about adverts. As with the UK Deep Dive products, the Parties cover all traditional media channels, but with a lesser breadth of coverage in each country than that found in the respective UK Deep Dive products. The

Parties' International products also offer less granular information than their UK Deep Dive counterparts.

- 5.86 We found that both Parties offer customers a harmonised data set (ie data that is categorised across a consistent set of [redacted]) for multiple countries. Both International products are highly customised, with the customers choosing which countries they would like included. The Parties also offer to [redacted] the data to standards specified by the customer. Most of the Parties' customers purchase the products as subscriptions.⁴³
- 5.87 The process of producing the International products differs between the Parties more than does the process for producing UK Deep Dive products. In particular, we found that:
- (a) Both Parties base their International products on data collected for Deep Dive products (and in Ebiquity's case also from countries monitored by its in-house teams).⁴⁴ For countries where the Parties do not have their own Deep Dive operations (or in the case of Ebiquity, in-house monitoring) they source the raw data from third-party providers.
 - (b) The data available in Ebiquity's International product, Portfolio International, is harmonised from the outset across countries, enabling its users to access AdIntel on competitors soon after it has appeared in the media. Ebiquity is therefore capable of offering daily updates for parts of its database. In cases where Ebiquity sources data from third parties (which it does for 40% to 50%) there is a delay of up to one month, with the remaining 50%-60% updated daily.
 - (c) Nielsen's International product is based on [redacted] Deep Dive database for each territory, [redacted].
- 5.88 The differentiation in terms of ad creative data and ad spend data that can be found in the Parties' UK Deep Dive products (see paragraph 5.79) is also a feature of their International products. Portfolio International is focused on providing insights into the creative content of an advert and includes ad spend data only upon specific request by a customer. Where such data is requested, Ebiquity uses its in-house data and supplements it with third-party ad spend data for countries in which it does not collect such data in-house. Nielsen's NGA focusses on providing spend data information and includes [redacted] creative

⁴³ See Tables 14 and 16 in Appendix F.

⁴⁴ Ebiquity also directly collects some information from countries where it does not have a Deep Dive operation.

information [REDACTED]. Portfolio International also includes translations of the advertisement, [REDACTED].

Evidence from customers

- 5.89 Evidence from customers indicates that the Parties' International products are significantly differentiated and that most customers do not see them as alternatives. Among the [REDACTED] customers we contacted, three indicated they considered the Parties' products were, at least in part, functional substitutes.⁴⁵ The degree of substitutability may vary between different customer types.
- 5.90 All the advertisers and creative agencies we contacted said that they required access to creative data. Seven out of eight of these customers use Ebiquity's Portfolio International. Ebiquity told us that one of the important features of Portfolio International was that the adverts could be searched (for example by strapline) and that this was an important point of distinction from NGA. However, in some cases customers told us that they did not use the search function in the Ebiquity product. Therefore, their needs may possibly also be satisfied by the more limited creative information provided by Nielsen.
- 5.91 Of the five advertiser customers contacted, four indicated Nielsen's International data was not a substitute for Ebiquity's Portfolio International, either because Nielsen's product did not satisfy their requirements, or because they were unfamiliar with any alternative. We treat a lack of familiarity with a product as an indication that it is less likely to be a substitute. We spoke to one advertiser currently using Nielsen's data who had recently switched away from Ebiquity. This change in provider was, however, motivated by a change in the advertiser's needs, which now includes access to spend data.
- 5.92 All the creative agencies we spoke with use Ebiquity's product to monitor their clients' competitors' advertising across several countries. This information is used to prepare competitive reviews, and as a source of competitive creative intelligence to help develop advertisement campaigns. We have also been told that the data can be used as stimulus material for creative teams. To do so, the creative agencies look at copies of the adverts and also need the capability to search for a specific competitor, brand, country, media and time period. One creative agency told us that the more advanced functions offered by Ebiquity's Portfolio International platform, such as language translations, more detailed metadata or the ability to search for specific keywords, was

⁴⁵ One of the 12 customers contacted [REDACTED] subscribes to Ebiquity's Portfolio International product [REDACTED]

rarely used. Therefore, we consider that their needs may possibly also be satisfied by the more limited creative information provided by Nielsen.

(a) The three media agencies we contacted which use International AdIntel ([REDACTED]) were mainly interested in ad spend data. While none of them considered the Parties' spend data as substitutes for each other, they did not use the same provider. This reflects their differing requirements.

5.93 We consider this evidence points toward some degree of functional substitutability between the Parties' International AdIntel products but that the products may be closer substitutes for some customer types than for others.

Views of other AdIntel suppliers

5.94 We spoke to companies that the Parties submitted were active in the provision of AdIntel products in the UK and competed to varying degrees with the Parties' products. Regarding the Parties' International products two suppliers, [REDACTED], offer similar products.

5.95 Kantar provides an International product focused on the supply of ad spend data. It offers bespoke harmonisation. This means that when customers need data across countries, Kantar will map these disparate data sets and taxonomies into one single set. If it does not self-supply data for a country, it sources data from third parties [REDACTED]. While Kantar saw itself as competing with NGA at a global level it did not perceive Ebiquity's Portfolio International as a competing product.

5.96 Global Ad Source provides a database with harmonised creative data.⁴⁶ In contrast to Nielsen, Ebiquity and Kantar, Global Ad Source has no data gathering operation but buys in all the data from third parties and harmonises it so that company names are consistent across countries. Its offering includes UK data which it sources from AdVision, an ad monitoring service headquartered in Germany.⁴⁷ Global Ad Source viewed Ebiquity as its main competitor, and considered its product to overlap with Ebiquity's Portfolio International, although it does not provide ad spend data. Global Ad Source did not consider itself as competing with Nielsen, given its lack of spend data.

5.97 Overall, we consider that the evidence from other International AdIntel providers is consistent with the Parties' view that there is significant

⁴⁶ Global Ad Source provides the date the advert was seen, the brand, the company, the station (in case of TV), the product, the time it was aired, and the country. The result is accompanied by two attachments: a thumbnail (snapshot image) and a link to a high resolution digital file of the actual advert. [REDACTED].

⁴⁷ AdVision is a German company mostly active in the sales of Deep Dive AdIntel product relative to the German advertisement market its presence in the UK market is limited to the sale of UK data to Global Ad Source.

differentiation between products focused on ad spend data and those focused on creative content.

Evidence from the Parties' internal documents

5.98 We analysed the Parties' internal documents, to assess whether the Parties' view Nielsen's NGA and Ebiquity's Portfolio International as being supplied on the same or separate product markets.

5.99 Nielsen's internal documents indicate that Nielsen considers the International products to be complementary:

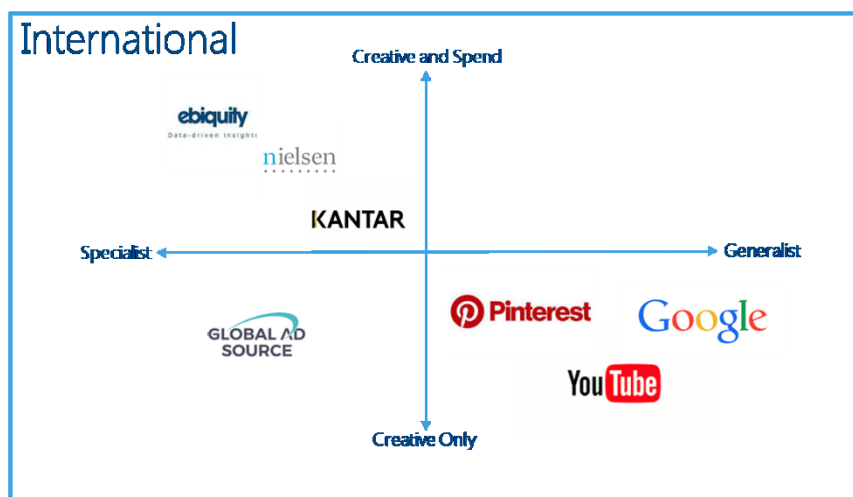
The International Portfolio platform is able to link creative and spend information across 92 countries on TV, Digital and Print Creatives... all harmonized to a single global taxonomy with occurrence data. The Solution is complementary to our Nielsen Global Adview Service to combine the sources from our local market capturing and offer our detailed ad spend information together with the creatives service of Bloom to Advertiser.

5.100 Ebiquity's internal documents, [REDACTED] indicate that Ebiquity considers Nielsen as a potential substitute to its International product for some customers.

5.101 For example, an [REDACTED] report produced for Ebiquity in June 2014 highlights the similarities and differences between the headline-level features of the International products of Ebiquity, Nielsen, Kantar and Global Ad Source. The only difference to Nielsen identified at this level of detail was that Ebiquity offered a customisable interface. In terms of features, the products are shown as being very similar. We note that the document says very little about the data generated and the depth and breadth of that data available.

5.102 Ebiquity's internal documents also lend support to the view that Ebiquity sees itself as competing with Kantar and Global Ad Source. A business plan dating from November 2017 containing a diagram entitled 'Ebiquity Market Position - Competitive Landscape' (reproduced below) depicts Ebiquity as a 'specialist' provider of creative and spend data AdIntel in competition with the other specialists offering creative and spend data (Nielsen and Kantar) as well as with a specialist that offered only creative data (Global Ad Source).

Figure 5.2 Slide entitled, 'Ebiquity Market Position – Competitive Landscape'



Source: Parties' submission .

Evidence on the customer base for the International products

5.103 The Parties' customer data shows that Nielsen has [redacted] UK headquartered customers for its International product, [redacted] [redacted] Ebiquity has a total of [redacted] customers, [redacted] are advertisers and the remainder creative agencies, media agencies, media owners and other agencies and customers.

Provisional conclusion on the supply of AdIntel

5.104 The evidence from customers and from the Parties' customer data is consistent with the Parties' claim that their International products are significantly differentiated and used in most cases for different purposes. It is evident from Nielsen's internal documents that it perceives Ebiquity's product as a complement rather than a substitute. Similarly, other AdIntel suppliers see themselves either as competing with Nielsen (Kantar) or with Ebiquity (Global Ad Source) but not with both.

5.105 However, the functionality of the products is such that they overlap for some customers. In addition, we consider that the demand for creative data information expressed by some of Ebiquity's clients may well be met by the limited information available in Nielsen's product, but that those Ebiquity clients were unaware of the Nielsen product. We also consider that both products can to some degree be customised to customers' specifications, which may allow these bespoke offerings to overlap more closely than the standard offering and which we consider is demonstrated by Ebiquity adding spend data for some of its clients. Ebiquity's internal documents also support the view that it considers Nielsen as a competitor even allowing for the differences between the products.

5.106 Having provisionally concluded that UK Deep Dive AdIntel products are not in the same market as International AdIntel products (see paragraph 5.17), we provisionally conclude that the relevant market is no wider than the supply of International AdIntel products. For the purpose of the competitive assessment, we have treated the Parties' International AdIntel products as part of the same market, which also includes Kantar's and Global Ad Source's International products and have considered the significant degree of differentiation between the products as part of our competitive assessment.

Geographic market definition

5.107 We have also considered the geographic scope of the relevant product markets defined above.

Supply of UK Deep Dive AdIntel

5.108 The Parties submitted that their Deep Dive AdIntel products competed on a UK-wide basis.

5.109 We considered evidence received from the Parties' customers, the Parties' submissions and from third-party suppliers of AdIntel.

5.110 On the demand side, the nature of a UK Deep Dive product, with its in-depth information on the UK advertising landscape, is such that it is unlikely to be of use to companies not operating in the UK or to non-UK divisions of multinational companies. This is confirmed by the analysis of the Parties' customer bases. We have received from the Parties the list of all the customers purchasing their UK Deep Dive products between 2010 and 2018. The data shows that the Parties' customer bases are overwhelmingly composed of UK businesses or of UK divisions of multinational businesses. Moreover, none of the Parties' UK Deep Dive customers we spoke to indicated that the decision on the choice of UK Deep Dive product was made by divisions outside of the UK.

5.111 On the supply side, the Parties have not identified any suppliers of UK multi-channel Deep Dive products covering traditional media other than themselves. Furthermore, third-party AdIntel providers, not currently active in the supply of UK Deep Dive products, told us that a UK presence was important to compete in the supply of UK Deep Dive AdIntel.

(a) AdVision, which currently monitors a limited number of UK media channels from Germany as an input to other third-party suppliers' International AdIntel products, told us that its location outside of the UK was the reason why AdVision was not able to cover UK advertisement

information at a regional level. We understand this to be an essential component of a UK Deep Dive product.

- (b) Similarly, Kantar told us that, to compete with the Parties in the supply of UK Deep Dive AdIntel, it was important to have a strong national presence.

5.112 Based on this evidence we provisionally conclude that the geographic scope of the relevant market for Deep Dive products is the UK.

Supply of International AdIntel

5.113 The Parties submitted that their International AdIntel products compete on at least a UK-wide basis, and may be part of a wider global market.

5.114 We considered whether the geographic scope of the market for International AdIntel products is limited to the UK or wider. We based our assessment on evidence received from the Parties, the Parties' customers and from third-party suppliers of International AdIntel products.

5.115 On the demand side,⁴⁸ the Parties' sales data shows that, for both Ebiquity and Nielsen, most of the revenues from International AdIntel products which include UK data are generated from customers located outside of the UK.

- (a) Ebiquity's total revenues in 2017 from International AdIntel products including UK data were £[REDACTED].⁴⁹ In the same year, Ebiquity's revenues from International AdIntel products sold to UK headquartered companies were £[REDACTED].

- (b) Nielsen's total revenues in 2017 from International AdIntel products including UK data were £[REDACTED]⁵⁰ of these, those generated from sales to UK headquartered companies were [REDACTED] £.[REDACTED]

5.116 We also received qualitative evidence indicating that the choice of the International AdIntel product to be used by the UK division of a company may be made at the head office level outside the UK. For example, [REDACTED] has recently switched from Portfolio International to NGA following a decision (made by [REDACTED] US office) to purchase ad spend and creative data on the same platform.

⁴⁸ We note the small sample size in relation to customer data. Currently, Nielsen [REDACTED] International AdIntel customers in the UK and we have only surveyed ten customers across the Parties' combined customer bases.

⁴⁹ This excludes revenue from [REDACTED].

⁵⁰ Revenues converted from euro to pound sterling with exchange rate of 29 December 2017.

5.117 On the supply side, there is evidence to indicate that non-UK suppliers can compete for UK customers. Global Ad Source, a Canadian based AdIntel supplier, told us that, despite some limits to the extent to which it could sell its product to UK customers, Global Ad Source could market its International AdIntel product out of Canada relatively easily. We also note that the UK data Global Ad Source used in its International product is collected from Germany by AdVision. Kantar, another provider of International AdIntel, pointed out that what matters to a client when choosing an International AdIntel product was what data it provided and which countries it covered. As International AdIntel providers commonly sell each other data for countries they do not directly cover, we consider that a supplier's ability to compete for UK customers does not depend on it having data collection operations in the UK.

5.118 Taken in the round, the evidence received so far and discussed above shows that, both on the demand and on the supply side, the market(s) for International AdIntel products is wider than the UK. This is also the case if we only consider the provision of International AdIntel products that include some UK data. We therefore provisionally conclude that the geographic scope of the market(s) is wider than the UK. We note, however, that the precise definition of the geographic scope of the market does not affect the results of our competitive assessment.

6. Counterfactual

6.1 To assess the effects of the Merger on competition, we need to consider what would have been the competitive situation in the absence of the Merger. This is called the 'counterfactual'.⁵¹ It provides a benchmark against which the expected effects of the Merger can be assessed. The CMA may examine several possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual.⁵² The CMA will typically incorporate into the counterfactual only those scenarios that appear likely on the basis of the facts available to it and which can be foreseen.⁵³

6.2 In establishing the most likely counterfactual, we have considered the following possible counterfactual situations, namely whether in the absence of the Merger:

(a) Ebiquity's AdIntel division would have been sold to a third party;

⁵¹ CMA's *Merger Assessment Guidelines*, paragraph 4.3.1.

⁵² CMA's *Merger Assessment Guidelines*, paragraph 4.3.6.

⁵³ CMA's *Merger Assessment Guidelines*, paragraph 4.3.6.

(b) Ebiquity would have closed down its UK Ebiquity Deep Dive business.

Would Ebiquity's AdIntel business have been sold to a third party?

Parties' submissions

6.3 Ebiquity explained that as [REDACTED].

Our assessment

6.4 The chronology of the sales process (set out in detail at paragraphs 1.59 to 1.91 of Appendix B) can be summarised as follows.

6.5 [REDACTED] Ebiquity appointed [REDACTED], to advise on the sale of the Ebiquity's AdIntel division. [REDACTED].

6.6 [REDACTED].

6.7 [REDACTED].⁵⁴ [REDACTED]. The Merger was announced on 13 February 2018.

6.8 [REDACTED]⁵⁵ [REDACTED]⁵⁶ [REDACTED].

6.9 [REDACTED].

6.10 On the basis of the above evidence, we provisionally conclude that absent the Merger, Ebiquity would not have sold its AdIntel business to a third party and it would be likely to have retained it under its ownership.

Would Ebiquity have closed down its UK Deep Dive business?

Overview of 'exiting firm test'

6.11 One of the situations in which the CMA may consider a counterfactual different from the prevailing conditions of competition (or the pre-merger situation) is the 'exiting firm' scenario. In forming a view on an exiting firm scenario, the CMA will consider:

(a) whether the firm would have exited (through failure or otherwise); and, if so

⁵⁴ For more information see Appendix B, paragraph 1.72

⁵⁵ [REDACTED] See Appendix B, paragraphs 1.60 to 1.61.

⁵⁶ See Appendix B, paragraph 1.63.

- (b) whether there would have been an alternative purchaser for the firm or its assets to the acquirer under consideration; and
- (c) what would have happened to the sales of the firm in the event of its exit.⁵⁷

6.12 The exiting firm scenario is most commonly considered when one of the firms is said to be failing financially. However, exit may also be for other reasons, for example because the selling firm's corporate strategy has changed. When considering any exiting firm argument, the CMA will be particularly interested in evidence that has not been prepared in contemplation of the merger.⁵⁸

Parties' submissions

6.13 The Parties have not argued that absent the Merger Ebiquity's AdIntel business would have exited the market due to financial failure.

6.14 Nonetheless, if the Merger were not to complete, Ebiquity told us it intended to:

(a) [REDACTED]⁵⁹

(b) [REDACTED]; and

(c) [REDACTED].

Ebiquity explained the basis for its position as set out in the following paragraphs.

6.15 Ebiquity told us that its AdIntel business [REDACTED] for the following reasons:

(a) AdIntel services were now 'nice to have' rather than 'must have' services, which competed for marketing budgets with firms providing Marketing ROI/effectiveness consultancy services. In consequence, the market was shifting away from Ebiquity's AdIntel products towards ROI/effectiveness services.

(b) While traditional media monitoring remained a core service requirement for its customer base, the high fixed cost and infrastructure needed to

⁵⁷ CMA's *Merger Assessment Guidelines*, paragraphs 4.3.8 and 4.3.9.

⁵⁸ *Ibid*, paragraph 4.3.9.

⁵⁹ Ebiquity told us [REDACTED]

maintain this service placed it at a competitive disadvantage to digital-only players.

(c) Technological challenges and the significant level of ongoing investment required to monitor new forms of digital advertising (and particularly targeted advertising, the monitoring of which was demanded by customers), meant that it was [REDACTED]⁶⁰

6.16 Ebiquity also noted that despite investing [REDACTED] a year since 2014 on IT development in its AdIntel business, [REDACTED].⁶¹

6.17 Ebiquity explained that recently it had, for the first time since 2015⁶² sought to isolate the financial performance of its Deep Dive and International products that comprised its UK AdIntel business. This exercise had involved separating out the respective contributions the two products made to Ebiquity's profits. It also involved attributing a variety of costs to the respective products which, although incurred by the provision of the products, hitherto had not been reflected within their cost base.

6.18 According to Ebiquity this analysis had revealed that Ebiquity's UK Deep Dive business [REDACTED].

Our assessment

6.19 None of the internal documents submitted by the Parties showed that the closure of either Ebiquity's UK Deep Dive business or its overall AdIntel business would have occurred in the foreseeable future should the Merger not complete. We also note that the Parties appear to have changed their views during the CMA's inquiry. In their Phase 1 submission the Parties submitted that the appropriate counterfactual was the status quo. In contrast, in their response to the Counterfactual working paper in this inquiry the Parties submitted that the correct counterfactual was that [REDACTED] The most recent internal document dealing with the future options for the Ebiquity's AdIntel business is dated 3 September 2018. As we discuss in more detail in Appendix B (see paragraphs 1.102 to 1.106) the paper set out three options for the AdIntel business: [REDACTED].

6.20 The paper [REDACTED].

⁶⁰ Ibid paragraph 3.9

⁶¹ Ibid paragraphs 3.9-3.12

⁶² In 2015 reporting for Ebiquity's UK Deep Dive business had been combined with that for its UK International business.

- 6.21 While we carefully considered Ebiquity's submissions regarding the Board discussion of 3 September 2018, as noted in paragraph 6.12, we are particularly interested in evidence that has not been prepared in contemplation of the Merger, or during and for the purpose of the Merger inquiry.
- 6.22 Accordingly, we have conducted our own analysis of the costs and revenue trends underlying Ebiquity's view that the UK Deep Dive AdIntel business [REDACTED].
- 6.23 Appendix B sets out at paragraphs 1.108 to 1.128 a detailed assessment of the financial performance of Ebiquity's UK AdIntel business. To summarise the analysis:
- (a) Customer numbers [REDACTED] between 2013 and 2017 (Deep Dive customer numbers [REDACTED] and UK International customer numbers [REDACTED]).
 - (b) Renewal rates for both products are typically [REDACTED].⁶³
 - (c) [REDACTED].
 - (d) Gross profits for both the UK Deep Dive and UK International products were positive throughout the period 2012 to 2017 [REDACTED].
 - (e) [REDACTED].
- 6.24 We have also analysed at paragraphs 1.138 – 1.145 of Appendix B Ebiquity's claim that [REDACTED].
- 6.25 Our provisional conclusion is therefore that [REDACTED], Ebiquity's AdIntel division remains a business generating operating profits as a whole.
- 6.26 We have also set out the breakdown of costs that Ebiquity provided us in relation to its UK Deep Dive product, in particular reviewing the nature of the costs which comprise overheads within its analysis. As we set out in Appendix B at paragraphs 1.113 – 1.114 Ebiquity told us that it did not have established cost attribution methodologies for cost items as indirect staff, IT and property costs. To establish a figure for overheads, they had had to use proxy methodologies such as head count (to allocate costs across its products) and also to apply the analysis for the latest year to the entire period in order to arrive at the cost figures they had supplied to us.

⁶³ By value renewal rates are typically around [REDACTED] percentage points better.

- 6.27 We note that proxy methods for cost attribution, such as head count or turnover, are prone to wide margins of error and that these calculations were undertaken for the purposes of our inquiry rather than in the normal course of business. We also note that there are some discrepancies in the figures that Ebiquity has given us.⁶⁴ Accordingly, we have placed limited weight on the precise costs estimated – and by extension the precise profit margins – that Ebiquity has given us.
- 6.28 We note also that the evidence on the counterfactual has been mixed and the Parties changed their position during the course of the inquiry. The evidence [redacted] indicates that [redacted] and that Ebiquity’s UK Deep Dive business has been sustained throughout this period. Ebiquity has only been able to estimate its fixed costs using an imprecise method, and only for a single year, and there also appear to be some discrepancies in its calculations.
- 6.29 We consider, based on the evidence set out above, that trading conditions for Ebiquity’s AdIntel business generally and its UK Deep Dive business in particular are [redacted]. We also consider that the long-term prognosis for Ebiquity’s UK Deep Dive business is unclear, and [redacted]. However, we provisionally conclude that for the foreseeable future, Ebiquity would be likely to continue providing its UK Deep Dive product [redacted] Given the multitude of possibilities for the UK Deep Dive business, ranging from [redacted] to [redacted],⁶⁵ we consider that it is not possible to predict with any certainty what decisions Ebiquity will make with respect to the supply of its UK Deep Dive product. Accordingly, the first limb of the exiting firm test is not met.
- 6.30 As set out in the CMA’s Merger Assessment Guidelines and outlined in paragraph 6.11, since the first limb of the exiting firm test is not met, we have not considered the remaining limbs of the test.

Provisional conclusion on the counterfactual

- 6.31 Our provisional conclusion is that, absent the Merger, Ebiquity would be likely to retain its AdIntel business under its ownership. We find that it would be likely to continue to offer both products; the UK Deep Dive product and the International product, and we adopt this as our counterfactual.
- 6.32 Moreover, we acknowledge that it is likely that the UK Deep Dive product would not continue to be offered in its current form, but it has not been possible for us to form a sufficiently firm view on the way or extent to which the UK Deep Dive business would differ in the foreseeable future absent the

⁶⁴ See paragraph 1.132 in Appendix B.

⁶⁵ We explored some of these possibilities with Ebiquity. See paragraphs 1.153 to 1.178 of Appendix B.

Merger. We have nonetheless considered the Parties' submissions on the future prospects of the UK Deep Dive business in our assessment of the competitive effects of the Merger.

7. Assessment of the horizontal effects of the Merger in the supply of UK Deep Dive AdIntel products

7.1 We considered whether the Merger would result in a substantial lessening of competition as a result of horizontal unilateral effects in a market that is no wider than the supply of UK Deep Dive products. In doing so, we assessed whether the Merger would reduce rivalry, therefore providing the incentive for the Parties to increase the price of their products or otherwise reduce their quality, or resulting in a reduced incentive for the Parties to innovate and improve their current product offering.

7.2 We have therefore considered:

- (a) The closeness of competition between the Parties, in particular whether the Parties are close alternative suppliers 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;
- (b) The competitive constraint from other AdIntel suppliers and the extent to which other suppliers are alternatives for the Parties' customers.

Parties' submission

7.3 The Parties submitted that customers (across all types) would not be adversely impacted (whether in terms of the price they paid, the service levels they experienced and/or the evolving features of AdDynamix/Portfolio UK) by the Merger. This is because the Parties' respective UK Deep Dive AdIntel products were not viewed as substitutes for all customers across all types.

7.4 Furthermore, the Parties stated that Nielsen's pricing of AdDynamix, its service levels and its innovation strategies were not influenced by Ebiquity. Likewise, Ebiquity's pricing of Portfolio UK, its service levels and its innovations were not influenced by Nielsen [X].

7.5 The Parties submitted that they did not exert any material competitive pressure on each other, but rather were constrained by:

- (c) their respective customers' limited and shrinking marketing budgets and the 'nice to have' nature of both Parties' AdIntel products; and

(d) the fact that a large number of other analytics/research services/products were also competing for the same customers' shrinking marketing spend.

7.6 The Parties submitted that their customers had considerable bargaining power and this would not in any way be reduced by Nielsen's acquisition of Ebiquity's AdIntel division.

Our approach to the assessment of closeness of competition between the Parties

7.7 In assessing the closeness of competition between the Parties and the potential impacts of the Merger, the following features of the Parties' pricing strategies, the Parties' products and the wider advertising industry were taken into account:

(a) The Parties' UK Deep Dive products are significantly differentiated (see paragraphs 5.22 to 5.44);

(b) The Parties' customer bases include different types of customers, with specific customer needs (see paragraphs 5.48 to 5.50);

(c) The prices of the Parties' UK Deep Dive products are individualised, as described at paragraph 5.43; and

(d) The advertising industry has experienced a rapid growth in the importance of new media types using digital platforms; this has led to changes in the way advertising information is collected and to the emergence of AdIntel providers specialising in these new media, as explained in paragraphs 3.10 to 3.22).

7.8 As discussed in the Market Definition section (see paragraphs 5.22 to 5.44), the Parties' UK Deep Dive products are significantly differentiated and, especially in the case of Ebiquity, can be customised to address specific customer needs. Competition between providers of differentiated products is not limited to pricing, but can potentially extend to the choice of products' features and quality levels. It is therefore important, when assessing competition between the Parties, to consider not only whether their prices are constrained by each other's activities, but also whether their products are developed or improved in response to competitive pressure from the other Party.

7.9 Secondly, it has also been noted in paragraphs 5.48 to 5.50 that the Parties both serve different types of customers, with significant variation in their needs and in the way they use the Parties' products. When considering competition between the Parties, we have therefore found it important to look

at the extent to which the Parties' products are able to address different customer needs.

- 7.10 Finally, any assessment of competition between the Parties, both current and future, must take into account the wider industry background. As discussed in paragraph 5.75, digital advertising now accounts for approximately 45% of all advertising spend by revenue and this share is growing over time. Customers of traditional AdIntel told us that data on digital AdIntel is no less important than traditional AdIntel. The technical challenges of tracking targeted adverts are considerable because which advert is served can differ depending on who is viewing it. This complexity has resulted in a number of digital advert tracking specialists entering the supply of digital AdIntel.
- 7.11 The Parties track digital advertising as part of their multi-channel Deep Dive products, in the case of Nielsen partly through [REDACTED]. However, [REDACTED] their customers told us that there are significant limitations on the ability of the Parties to provide accurate information on digital advertising. Given the growth of digital advertising, the ability to monitor it is likely to become increasingly important for many of the Parties' Deep Dive customers. This will require constant investments to respond to the rapid pace of innovation in digital media, in a competitive landscape increasingly crowded with specialist providers.
- 7.12 In order to inform our competitive assessment, we used the following sources of evidence:
- (a) Evidence on the Parties' customer bases and on price proposals;
 - (b) Evidence on the Parties' revenues per customer;
 - (c) Evidence on competition in the Parties' internal documents;
 - (d) Evidence on customer switching;
 - (e) Direct evidence of competitive interaction;
 - (f) Evidence from customers on substitutability between the Parties' products; and
 - (g) Evidence on the prospect of future competition between the Parties.

Evidence on the Parties' customer bases

- 7.13 As shown in Table 5.3 in the Market Definition section, the compositions of the Parties' customer bases are substantially different. While both Parties have some sales across all customer types, more than [REDACTED] of Ebiquity's

customers, accounting for more than [X]% of its revenues, are advertisers. Another numerically important customer type for Ebiquity are creative agencies ([X]% of customers), although they account for a relatively low share of revenues. In contrast, the majority of Nielsen’s revenues are generated from media owners, media agencies and full service agencies, which collectively account for approximately [X]% of Nielsen’s revenues and almost [X]% of its customer base.

7.14 The Parties’ internal documents recognise the difference in their respective customer bases. A Nielsen document considering the rationale for the Merger notes Ebiquity’s ‘advertiser-heavy customer base, complementary to that of Nielsen’s AdIntel clientele primarily comprised of media agencies/ media owners’. Similarly, Ebiquity observes in one internal document that ‘within the customer group of media agencies and media owners Ebiquity is rarely considered’.

7.15 A static picture of the Parties’ customer bases, however, provides only limited information. The differences in the Parties’ customer bases reflect the fact that they historically targeted different types of customers. The data, however, does not provide much information on the Parties’ current strategies, as any change in the characteristics of the customers targeted by the Parties would take time to have a visible impact on the composition of their overall customer bases. To assess whether the Parties continue to target largely separate customer types, we looked at three further pieces of evidence: i) how the composition of the Parties’ customer bases has changed in the last nine years, ii) what types of customers the Parties won in that period, and iii) to which customers the Parties submit proposals.

7.16 The following table reproduces Table 5.3 using data for 2010.

Table 7.1 Parties’ Deep Dive customer base by shares of revenues and customers in 2010

	<i>Nielsen</i>		<i>Ebiquity</i>	
	<i>% revenues</i>	<i>% customers</i>	<i>% revenues</i>	<i>% customers</i>
Advertisers	[X]	[X]	[X]	[X]
Creative agencies	[X]	[X]	[X]	[X]
Media agencies	[X]	[X]	[X]	[X]
Full service agencies	[X]	[X]	[X]	[X]
Other agencies	[X]	[X]	[X]	[X]
Media owners	[X]	[X]	[X]	[X]
Other customers	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

Base: customers with revenues in 2010
Source: CMA analysis

7.17 The Parties’ shares of customers and revenues across the different customer types were very similar in 2010 and in the first half of 2018, indicating that the

Parties' focus has not changed in recent years and that the Parties have not become more similar in terms of the composition of their customer bases. The small differences in the shares of advertisers and media owners do not appear significant enough to indicate a substantial change in the Parties' focus. This is confirmed by the data on the types of customers won by the Parties in the same period.

Table 7.2 Shares by customer type of the customers won by the Parties

	<i>Nielsen</i>		<i>Ebiquity</i>	
	<i>2011-2018</i>	<i>2016-2018</i>	<i>2011-2018</i>	<i>2016-2018</i>
Advertisers	[X]	[X]	[X]	[X]
Creative agencies	[X]	[X]	[X]	[X]
Media agencies	[X]	[X]	[X]	[X]
Full service agencies	[X]	[X]	[X]	[X]
Other agencies	[X]	[X]	[X]	[X]
Media owners	[X]	[X]	[X]	[X]
Other customers	[X]	[X]	[X]	[X]
<i>Total customers won</i>	[X]	[X]	[X]	[X]

Source: CMA analysis

7.18 Table 7.2 shows that, even in most recent years, advertisers and creative agencies constitute the majority (around [X] %) of the customers won by Ebiquity. The greater proportion of media owners and media agencies among the customers won by Nielsen than among those won by Ebiquity is indicative of Nielsen continuing to have a greater focus on these types of customers. The data does not show any trend to the Parties becoming more similar in terms of the types of customers they are able to attract.

7.19 Finally, the evidence on the Parties' price proposals further supports the view that Nielsen and Ebiquity continue largely to target different types of customers. The Parties' analysis of price proposals shows that each Party pursued customers that were not a customer of the other Party. To illustrate, the Parties submitted that [X]% of customers that received a price proposal from Nielsen were not an Ebiquity customer. Similarly, [X]% of customers that received a price proposal from Ebiquity were not a Nielsen customer.

7.20 We carried out further analysis of the Parties' price proposals to assess which types of customers each Party was submitting proposals to. In particular, we looked at the number of proposals submitted by each Party to customers purchasing from the other Party at the time the pricing proposal was put forward.

7.21 The Parties provided data on the proposals they submitted to new or existing customers. The datasets cover the period Q2 2017 to Q1 2018 for Nielsen and Q1 2015 to Q4 2017 for Ebiquity. We note that the datasets on which this analysis is based were populated by the Parties' sales teams. Their accuracy,

therefore, depends on whether the sales people recorded all the opportunities that they acted upon or were invited to act upon. We consider that some opportunities are likely not to have been recorded. However, we see no reason why the likelihood of being recorded should differ between new customers and the other Party's customers.

7.22 Table 7.3 and Table 7.4 below show our estimates of the total number of unique customers to whom the Parties submitted a price proposal for their UK Deep Dive products.⁶⁶ Full details of our methodology are in Appendix F.

Table 7.3 Nielsen's price proposals (Q2 2017 to Q1 2018)

		Q2 2017 -Q1 2018	
Nielsen's price proposal to Ebiquity's customers	Bids in progress		[X]
	Bids lost		[X]
	Bids won		[X]
	Total		[X]
Nielsen's price proposals to existing customers	Bids in progress		[X]
	Bids lost		[X]
	Bids won		[X]
	Total		[X]
Nielsen's price proposal to new customers	Bids in progress		[X]
	Bids lost		[X]
	Bids won		[X]
	Total		[X]

Source: CMA analysis

Table 7.4 Ebiquity's price proposals (2015 to 2017)

		2015	2016	2017
Ebiquity's price proposal to Nielsen's customers	Bids lost	[X]	[X]	[X]
	Bids won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Ebiquity's price proposals to existing customers	Bids lost	[X]	[X]	[X]
	Bids won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Ebiquity's price proposal to new customers	Bids lost	[X]	[X]	[X]
	Bids won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]

Source: CMA analysis

7.23 The fact that the Parties submit most of their proposals to existing customers is unsurprising since this includes renewals of existing contracts. More interesting is the fact that the remaining bids are largely submitted to customers of neither Party (ie new customers), rather than to customers of the other Party (ie customers that were buying from the other Party at the time of the proposal or a short time before it).⁶⁷ In particular, the data indicates that for its UK Deep Dive product Ebiquity submitted [X] proposals captured in the salesforce data to Nielsen's customers in each year between 2015 and 2017, and [X], indicating it was not seen by Nielsen's customers as a good

⁶⁶ It is possible that, in some cases, the same customer appears twice, within two different categories. This is because, for example, one Party might have submitted a winning price quotation at the beginning of the year and a renewal quote at the end of the same year.

⁶⁷ More detail on our approach to identifying customers can be found in Appendix F.

substitute for the Nielsen Deep Dive product. Moreover, the data does not indicate an increase in the number of Nielsen’s customers being targeted by Ebiquity during the period. This shows that the Parties are continuing to target largely different customer types.

Evidence on the Parties’ revenues per customer

7.24 Significant differences in the amount customers spend on the Parties’ products can be seen as evidence that their products are different and not close substitutes.

7.25 Since, as discussed in paragraph 3.9 different types of customers have different needs and, as a result, buy different amounts and types of data, any comparison between the Parties has to be made separately for each customer type. The following table shows the 25th, 50th and 75th percentiles of the distribution of revenues per customer in 2017 for each Party and each customer type.

Table 7.5 Revenues per customer in 2017 (000 £)

<i>Customer type</i>	<i>Ebiquity</i>			<i>Nielsen</i>		
	<i>p25</i>	<i>p50</i>	<i>p75</i>	<i>p25</i>	<i>p50</i>	<i>p75</i>
Advertisers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Creative agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Full service agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media owners	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other customers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Base: customer with revenues in 2017
Source: CMA analysis

7.26 While there is a certain overlap between the distributions for the two Parties, it can be noted from Table 7.5 that:

- (a) While [REDACTED]% of Nielsen’s advertiser customers spend less than £[REDACTED] per year, most of Ebiquity’s advertiser customers spend in excess of £[REDACTED] per year.
- (b) [REDACTED] Nielsen’s media owner customers spend less than £[REDACTED] per year, while [REDACTED] of Ebiquity’s media owner customers spend above £[REDACTED] per year, and most of them significantly more than that.
- (c) Media agencies typically spend significantly [REDACTED] per year with Ebiquity than with Nielsen.

7.27 These results are consistent with the view that, in relation to many of their customers, the Parties are selling significantly different products, which are priced at different pricing points compared to the other Party.

Evidence on competition in the Parties' internal documents

- 7.28 As set out in our assessment of the relevant product market for the Parties' UK Deep Dive products (see paragraphs 5.51 to 5.67), we have also analysed the Parties internal documents.
- 7.29 [REDACTED] The due diligence documents created in relation to the anticipated acquisition of Ebiquity's AdIntel division indicate that Nielsen saw Ebiquity's business as complementary to its own:
- '[REDACTED]'
- 7.30 There are more documents from Ebiquity discussing competition and they refer to Nielsen as a major competitor. For example, one document from May 2016 describes Nielsen as 'one of our major competitors in advertising monitoring, captures and monitors almost exactly the same data as we do for our 'Deep Dive' services in the UK and Germany'. Similarly, Ebiquity's Intel Business Plan 2018, when describing the competitive landscape in UK Deep Dive, indicates Nielsen as Ebiquity's closest competitor.
- 7.31 At the same time, some of Ebiquity's documents indicate that the competitive constraint imposed by Nielsen is weak. In particular, in a presentation produced by [REDACTED] for Ebiquity in June 2014 as part of a market intelligence strategy workshop, it is noted [REDACTED] In a more recent document from July 2017, Ebiquity notes that 'Nielsen continues to offer poor customer service and low competitive pressure in Australia and the UK'. Further examples of Ebiquity acknowledging limited competition are included in Appendix E.

Evidence on customer switching and multi-sourcing

- 7.32 The limited degree of competition between the Parties is further confirmed by the very small number of customers switching between them, both in absolute terms and in comparison to the number of customers ceasing to buy any UK Deep Dive product.
- 7.33 Between 2010 and the first half of 2018, the Parties collectively served [REDACTED] customers. These are the customers from which at least one of the Parties generated revenue at some point in that period.
- 7.34 Of these customers, we consider that around [REDACTED] switched between the Parties ([REDACTED] from Ebiquity to Nielsen and [REDACTED] from Nielsen to Ebiquity). [REDACTED] of these switching customers were identified as switching customers by the Parties' economic advisors, based on the information provided by the Parties themselves. Two of these fifteen told us that they had switched between the Parties. The other eight were identified as possible switchers by observing

their purchasing behaviour in the Parties' sales data.⁶⁸ Table 7.6 shows the number and type of customers switching for each year between 2010 and 2018. Full details of our methodology are in Appendix F.

Table 7.6 Number of customers switching between the Parties between 2010 and 2018

Customer type	2010	2011	2012	2013	2014	2015	2016	2017	2018
Advertisers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media Owners	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Creative agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Full service agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis

7.35 The table shows that switching has been reasonably constant, and very low, across the period. There is no evidence of switching having become more frequent in recent years. Moreover, the identified switching customers do not belong to any specific customer type, although the number of media owners is higher compared to other customer types.

7.36 The Parties recognised only [REDACTED] of these episodes as cases in which a customer switched between the two Parties. For the other [REDACTED] cases, the Parties submitted that the customers were not genuinely contestable, generally for one of the following reasons:

- (a) Some customers decided to buy the other Party's product as a result of a significant change in their underlying needs. This would be the case, for example, if a creative agency dropped Ebiquity's product in favour of Nielsen's product as a result of growing its media agency business.
- (b) Some customers' needs were more aligned with one of the Parties' products. For example, customers with specific needs for creative information were seen by the Parties as more aligned with Ebiquity's product.

7.37 We consider that, while in some cases customers may have experienced significant changes in their needs, the majority of the [REDACTED] possible switches are likely to be actual switches, ie episodes in which a customer made a conscious choice between the Parties' products based on a comparison of their respective features and prices. Additional details on the Parties'

⁶⁸ The CMA estimated the number of customers switching by looking at the customers which (i) used Nielsen's UK Deep Dive product for at least two consecutive years; (ii) used Ebiquity's UK Deep Dive product for at least two consecutive years; and (iii) used the Parties' products in consecutive periods, with an overlap of at most 1 year.

submissions in relation to each individual customer switch and on our views are included in Table 22 in Appendix F. However, even if all the [X] customers we identified were genuine switches, this would constitute a very small number compared to the [X] customers lost by either of the Parties during the same period.⁶⁹

7.38 Moreover, switches are also very few compared to the number of customers lost and won by each Party during the period. The Parties' sales data shows significant customer churn, in the context of an overall declining trend in the Parties' customer volumes. Between 2011 and 2017, Nielsen lost each year between [X] and [X] customers and won between [X] and [X]. In the same period, Ebiquity lost each year between [X] and [X] customers, winning between [X] and [X].⁷⁰ Overall, the number of the Parties' UK Deep Dive customers declined significantly: Nielsen went from [X] customers in 2010 to [X] in the first half of 2018; Ebiquity's customers declined from [X] in 2010 to [X] in the first half of 2018. It is therefore evident that switches to or from the other Party represented a small proportion of customers lost or won over the period. The most significant trend the Parties face is not customers switching between providers of UK Deep Dive, but customers ceasing to purchase any UK Deep Dive product. This is consistent with what we see in the negotiation emails between the Parties and their customers (see paragraph 7.42), which show that what constrains the Parties' prices is likely to be more often the threat of customers exiting the market, rather than the threat of switching to the other Party.

7.39 Compared with the number of switchers between the two Parties, we also note that a larger number of customers appear to multi-source, using both products simultaneously. We identified [X] Deep Dive overlapping customers – that is, customers showing revenues streams for both Parties simultaneously or sequentially between 2010 and 2018. Of these, [X] customers used both Nielsen and Ebiquity Deep Dive products simultaneously for at least two consecutive years. This may be due either to the products being used as complements, or to them being used to address different needs, potentially by different parts of the same organisation. Table 7.7 shows the distribution of these multi-sourcing customers by customer type.

⁶⁹ If we exclude the customers whose contract is classified as 'ad hoc' in the Parties' data, the total number of customers lost is [X].

⁷⁰ For more detailed analysis, see Appendix F.

Table 7.7 Total number of Deep Dive customers multi sourcing by customer type, 2010-2018⁷¹

<i>Customer type</i>	<i>Number of customers multi sourcing</i>	<i>Number of customers overlapping</i>
Advertisers	[REDACTED]	[REDACTED]
Media Owners	[REDACTED]	[REDACTED]
Media agencies	[REDACTED]	[REDACTED]
Creative agencies	[REDACTED]	[REDACTED]
Full service agencies	[REDACTED]	[REDACTED]
Other agencies	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]

Base: overlapping customers between 2010 and 2018
 Source: CMA analysis

7.40 The fact that more customers multi-source than switch between providers indicates that for at least some groups of customers the Parties’ products are viewed as serving different purposes rather than as substitutes.

Direct evidence of competitive interaction

7.41 Low rates of switching between the Parties do not necessarily imply an absence of competitive pressure. The Parties could still be imposing a competitive constraint on each other if the threat of customer switching was constraining the Parties’ pricing behaviour or if the Parties developed their respective products or improved their service in response to the other Party’s actions. However, we found little evidence of this being the case.

7.42 We reviewed the emails related to the negotiations between the Parties and 22 of their UK Deep Dive customers (12 for Ebiquity, 10 for Nielsen) during the last three years. In none of them did we find evidence of the customers threatening to switch, or referring to the other Party, as a strategy to negotiate a better price. [REDACTED]⁷² When the customers did negotiate over prices, no mention was made of any alternative supplier. Appendix G provides more details on our analysis. While we are conscious that the number of customers included in our analysis is low, we consider that, should customers commonly exploit rivalry between the Parties to obtain better terms, we would have found some evidence of it in the emails we reviewed.

7.43 Among the 33 customers we talked to during the investigation, only two provided evidence showing that they had managed to obtain improved offers from one of the Parties by benchmarking the price against the other Party’s offering.

⁷¹ The multi sourcing customers are: [REDACTED].

⁷² [REDACTED]

- (a) [REDACTED], which switched in 2018 from Ebiquity to Nielsen, told us that it had been able to get a significantly lower price from Nielsen by benchmarking it against what it had paid to Ebiquity. [REDACTED] managed to have Nielsen match its current Ebiquity price. Nielsen, however, contested this interpretation, telling us that [REDACTED] had been charged, [REDACTED] and that the reduction in price was due to a narrowing of the scope of the data requested by the customer.
- (b) [REDACTED] which switched in 2018 from Nielsen to Ebiquity, was advised by Nielsen that it was [REDACTED] and was quoted a new annual subscription fee of £[REDACTED]. [REDACTED] advised Nielsen that it would be exploring Ebiquity's product and it was able to negotiate the price [REDACTED], before deciding to move to Ebiquity. However, [REDACTED] may not be representative of the Parties' wider customer base, as the degree of substitutability between the Parties' products is probably greater for [REDACTED] than for other customers, as we discuss at paragraph 7.65, below.

7.44 Nielsen submitted two examples of recent price increases to its UK Deep Dive product, neither of which led to the customer switching away from Nielsen or referring to Ebiquity in the course of the negotiations. [REDACTED].[REDACTED].

7.45 In relation to non-price competition, Nielsen told us that its product innovations were driven in particular by a need to ensure that its UK Deep Dive product remained 'relevant' and were not affected by competitive pressure from Ebiquity.⁷³ Consistently with Nielsen's submission, none of the internal documents we received from it indicated that innovations to Nielsen's UK Deep Dive products were motivated by the need to respond to Ebiquity or to another competitor.

7.46 In the case of Ebiquity, we received evidence of one recent innovation in part motivated by a plan to compete more closely with Nielsen. [REDACTED] We note that Ebiquity submitted this project had been undertake [REDACTED].

7.47 The new functionality was taken to the market in a pilot version in the last quarter of 2017 and fully launched in the first quarter of 2018. Since then, however, Ebiquity has not been able to attract any new media agency or media owner.⁷⁴ We note that the project's implementation took place when the Merger was already in contemplation. As a result, Ebiquity may not have had an incentive to market aggressively to Nielsen's customers. Moreover, it is

⁷³ Parties' [Response to the CMA's Issues Statement](#), 13 August 2018, paragraph 4.4(a).

⁷⁴ With the exception of [REDACTED], which told us that it did not consider the new media attribution functionality important.

possible that the full impact of the new functionality may need more time to be realised.

7.48 Nevertheless, the evidence we received from media owners and media agencies indicates that there are greater differences between the Parties' products than perceived by Ebiquity at the time of the launch of [X]. Among the media owners who told us that Ebiquity was not a valid alternative to Nielsen, the most commonly mentioned reason was Ebiquity's more limited coverage (in terms of number of publications). Agency attribution was mentioned by two media owners as an issue. In particular, one of them [X] stressed that it was useful to have media attribution also for historical data, something that Ebiquity was not providing. Finally, several media owners and media agencies mentioned the fact that Nielsen's spend data was considered a common 'currency' in the industry, making it less attractive to switch to a different UK Deep Dive provider (Nielsen's 'currency' status is further discussed in paragraphs 7.62 to 7.64, below).

Evidence from customers on substitutability between the Parties' products

7.49 Customer views on the substitutability between the Parties' products are another source of evidence on the closeness of competition between the Parties. To elicit these views, customers contacted through telephone interview during our Phase 2 investigation were asked:

- (a) What they would have done if they could no longer use the AdIntel product they were currently using;⁷⁵
- (b) Whether they were familiar with other products and, if so, to explain their similarities and differences and what it would take to switch; and
- (c) Thinking of the answers to the previous two questions, to say whether the other product(s) they had identified was(were) a near identical substitute, close substitute, partial substitute or limited substitute to the one they were currently using.

7.50 Customers responding to the Phase 1 questionnaire were asked to what extent they considered Nielsen's and Ebiquity's Deep Dive AdIntel services to be alternatives which fulfilled their business needs (close, close to some extent, or not close at all) and to provide an explanation.

⁷⁵ We did not ask customers what they would do in response to a SSNIP, as responses to such question typically do not provide sufficiently robust information unless the customer sample is large.

- 7.51 When considering the customers' responses to these questions, it is important to interpret the evidence taking into account how we selected the customers to contact and comparing customers' statements with their observed behaviour.
- 7.52 We selected customers to be contacted aiming to reach a sample of the Parties' customers who would:
- (a) Be broadly representative of the different types of customers (advertisers, media owners, media agencies and creative agencies);
 - (b) Potentially be in a position to provide useful information about the differences/similarities between the Parties' products, for example as a result of having used both Parties' products, having been approached by both Parties, having decided to purchase a Deep Dive product recently or having recently stopped purchasing one of the Parties' products; and
 - (c) Account for a significant fraction of the Parties' Deep Dive and International revenues in the UK.
- 7.53 As a result, the customers contacted were not a statistically representative sample of the Parties' customer bases. This is because we oversampled customers which had dealings with both Parties and, in the case of customers not included in our original list of targets but contacted subsequently, we focused on customers who had expressed concerns about the Merger in response to the Phase 2 screening questionnaire. We would therefore expect the customers that we contacted to be more likely to view the Parties' UK Deep Dive products as substitutes than the Parties' customer base as a whole.
- 7.54 In the course of our calls, it became evident that the Parties' customers could be broadly segmented into the following categories, according to the main use they made of a UK Deep Dive product:
- (a) Advertisers using the Parties' products mainly to monitor competitors' advertising;
 - (b) Advertisers using the products mainly to monitor dealers' or retailers' compliance with their brand policy;
 - (c) Media owners, interested in their 'share of wallet' and in generating leads;
 - (d) Media agencies, typically interested in monitoring their clients' competitors' advertising activities and spend;

- (e) Creative agencies, using the products to monitor their clients' competitors' creative treatments and as creative stimulus material; and
- (f) Other customers, with specific individual needs.

7.55 We managed to collect information from UK Deep Dive customers in each of these categories, with the exception of creative agencies (which, however, account for a small proportion of the Parties' Deep Dive revenues, as shown in Table 7.1, above). The following paragraphs summarise the views they expressed on the substitutability between the Parties' products.

Advertisers

7.56 None of the four advertisers we talked to who were using the UK Deep Dive product to monitor dealers' or retailers' compliance considered the Parties' products as substitutes. All these customers used (or had used) Ebiquity's product and were not familiar with alternatives.

7.57 Among the 10 customers we received information from,⁷⁶ who were mainly interested in monitoring competitors' advertising, views varied significantly between customers of Nielsen and of Ebiquity:

- (a) The two customers which purchased both Parties' products saw them as similar, but not as substitutes. The fact that they use both products shows that they do not consider them as substitutes.⁷⁷
- (b) The four Nielsen AdDynamix users we contacted were not familiar with (or in some cases even aware of) Ebiquity's product.⁷⁸
- (c) The four users of Ebiquity's Portfolio UK tended to see Nielsen's AdDynamix as a substitute, although somewhat inferior product. However, in three cases substitutability was indicated as quite limited, or the customers' views were based on a limited knowledge of Nielsen's product.
 - (i) [REDACTED] considered Nielsen's AdDynamix as a generic tool that would not necessarily meet its business requirements.

⁷⁶ We contacted two further customers. However, one did not use the Deep Dive product directly, but through its media agency; another, which purchased both a Deep Dive and an International AdIntel product, only referred in the phone interview to the International product.

⁷⁷ While [REDACTED] told us that the core service provided by the Parties was the same, the fact that it subscribed to both products clearly indicate that they were not treated as substitutes.

⁷⁸ [REDACTED].

- (ii) [REDACTED] told us that the Parties' products were alternatives to each other; however, it had not actively reviewed or looked at suppliers other than Ebiquity, so its knowledge of Nielsen's product was likely limited.
- (iii) [REDACTED] engaged in an initial conversation with Nielsen after ending its contract with Ebiquity in 2017; however, it found Nielsen's product to be of poorer quality than Ebiquity's. Moreover, Nielsen told us that the initial conversation it had with the [REDACTED].
- (iv) The fourth customer in this group, [REDACTED], told us that it had undertaken a review of AdIntel purchasing 3-4 years ago, switching as a result from Nielsen to Ebiquity. On that occasion, Nielsen's and Ebiquity's products were those that it reviewed most closely. [REDACTED] considered that there were only minor differences in the cost of the products. [REDACTED] The Parties argued that this cannot be considered a competitive switch, noting that [REDACTED] [REDACTED] We consider that [REDACTED] does see the Parties products as substitutes, although it has a preference for some of the product features of Ebiquity's Portfolio UK.

Media agencies and media owners

- 7.58 Evidence from media owners and media agencies was mixed. Among the eight media owners we heard from, three expressed the view that the Parties' products were substitutes; one of them ([REDACTED]) had recently switched from Nielsen to Ebiquity. Of the six media agencies we contacted, three indicated the Parties' products as substitutes; one of them ([REDACTED]) had recently switched from Ebiquity to Nielsen.
- 7.59 We attached importance to our findings that, overall, media owners and media agencies overwhelmingly choose Nielsen's Deep Dive product. In the first half of 2018, Nielsen had [REDACTED] media agency customers, which generated more than £[REDACTED] in revenues; Ebiquity, on the other hand, had [REDACTED] media agency customers, for a combined revenue of approximately £[REDACTED]. Similarly, Nielsen supplied [REDACTED] media owners, generating more than £[REDACTED] in revenues, while Ebiquity had only [REDACTED] such customers, for an overall revenue of around £[REDACTED].
- 7.60 Two reasons can explain the apparent discrepancy between the proportion of customers contacted seeing the Parties' products as substitutes and the evidence on their purchasing behaviour.
- 7.61 First, as discussed in paragraphs 7.51 to 7.53, the sample of customers we talked to is not representative of the Parties' customer bases. In particular, three of the customers who saw the Parties' products as substitutes were contacted either because they had switched between the Parties ([REDACTED]) or

because they had expressed a concern with the Merger in response to our Phase 2 screening questionnaire ([REDACTED]).

7.62 Second, while the Parties' products are seen by some media agencies and media owners as functional substitutes, this may not necessarily translate into a willingness to switch from Nielsen to Ebiquity in response to a price increase. This is because, as several customers told us, Nielsen's spend data is considered the 'common currency' among media owners and media agencies.

(a) [REDACTED], despite viewing the Parties' products as substitutes, told us that the fact that Nielsen's data was widely used in the advertising industry was important. According to [REDACTED], it would be difficult for a client to switch agency if both agencies were not using the same historical data, as data from different sources can be difficult to compare or merge.

(b) Similar considerations were made by some media owners. [REDACTED] told us that the reason it was using Nielsen's AdDynamix in addition to Ebiquity's [REDACTED] was that AdDynamix was the preferred product for spend data in the media industry, so [REDACTED] felt it needed to use it for spend data. Similarly, [REDACTED], a customer of Nielsen which thought Ebiquity could also meet its business needs, told us it was important to use ad spend data considered reputable by media agencies, as it would be difficult to deal with media agencies if the data used was significantly different from what the agencies used.

7.63 The 'currency' status of Nielsen's ad spend data in the UK is referred to in some of the documents submitted by the Parties. Nielsen presents AdDynamix as 'the industry standard' [REDACTED]. Such status is recognised by Ebiquity in an internal document discussing [REDACTED] where it notes that 'Nielsen is the established provider of media spend data in the UK market. They are considered to be the 'currency' in the market by media agencies, media owners, trade bodies and trade journalists. This position has been established over a long period of time, and pre-dates the inception of Thomson Intermedia (the founding business in Ebiquity) in 1998.'

7.64 While we recognise that not all media agencies and media owners shared these views, the fact that Nielsen's spend data is widely considered the 'currency' is likely to make switching to a different provider less attractive.

7.65 There is nevertheless evidence of some customers in this category switching between the Parties. In particular, [REDACTED] recently switched from Nielsen to Ebiquity following a proposed price increase. [REDACTED] is an out-of-home advertising company and, as such, is mainly interested in spend data related

to billboards. This data is [X]. As a result, unlike for other media types, Nielsen does not benefit from a unique ‘currency’ status with respect to out-of-home spend data, which may make it easier for a media owner like [X] to switch to Ebiquity.

Other customers

- 7.66 The four other customers we interviewed used the Parties’ AdIntel data as an input to the products or services they provide to their own clients and all considered the Parties’ products as functional substitutes.
- (a) [X] currently purchases ad spend and creative data from Nielsen, using it for its media auditing business. In 2017, it spent £[X] for this data. [X], however, considered it unlikely that Ebiquity would supply it the data, as Ebiquity and [X] compete for the supply of media auditing services. In the case of [X], therefore, the Merger does not lead to a reduction of choice.⁷⁹
- (b) [X], which buys ad spend and creative data from Ebiquity, uses it as an input to a subscription service which it plans to launch soon and that will provide a measure of [X]. It spent £[X] for this data in the first half of 2018. [X] had never approached Nielsen for this data, as it believed Nielsen to supply a service similar to its own. [X] The case of [X] is further analysed in Section 9.
- (c) [X] uses Ebiquity’s ad spend data as an input to its monthly reports for the retail financial services industry. In 2017, it spent £[X]. [X] had not considered purchasing the data from Nielsen as it sees itself as competing with Nielsen in the supply of these reports. The case of [X] is analysed in Section 9.
- (d) [X] is a business information platform for marketing companies. It purchases from Ebiquity spend data on the UK’s top 2,000 brands, broken down by month and media type. The value of its contract in 2017 was £[X]. The data is made available to [X] own clients. [X] considered Nielsen to be the only alternative to Ebiquity for UK spend data. It had contracted with Ebiquity given the difficulty of obtaining a quote from Nielsen. The difficulty experienced by [X] in dealing with Nielsen may reflect a reluctance from Nielsen to supply the data [X] needs. Based on the information in the CMA’s Working Papers, Nielsen told us that post-Merger it will need to review the terms under which [X] distributes the

⁷⁹ Ebiquity’s media auditing business is not part of the AdIntel division being sold to Nielsen. The Merger, therefore, does not give rise to foreclosure concerns in relation to [X].

data to its customers, to ensure they are compliant with Nielsen's own terms and conditions concerning the use and distribution of data. We consider that, as a result, post-Merger [X] may be left without a supplier of AdIntel data, at least on the terms it is currently receiving it. We have taken this into account in reaching our provisional conclusion.

Assessment of current competition between the Parties

7.67 The evidence discussed above indicates that the Parties impose very little competitive constraint on each other for the following reasons:

- (a) The Parties target largely different customer bases and rarely submit proposals to each other's customers.
- (b) Sales data shows a very low number of customers switching between the Parties in the period 2010-2018, both in absolute terms and compared to the much larger number of customers leaving the market in the same period.
- (c) Direct evidence of competitive interaction between the Parties is limited. Negotiation emails between the Parties and their customers show no evidence of threats of switching being used by customers as a bargaining strategy. The Parties' internal documents show no evidence of the other Party being considered when setting prices and very limited evidence of competition between the Parties having an impact on product innovation. The main constraint appears to come from the threat of customers exiting the market.⁸⁰
- (d) The Parties do mention each other as competitors in their internal documents; however, some documents show that the competitive constraint the Parties impose on each other is considered by the Parties themselves to be weak.
- (e) While some of the customers we contacted during the investigation told us that the Parties' UK Deep Dive products were to a certain extent functional substitutes, in many cases either these views were based on a limited knowledge of the substitute product (i.e. the product that the customer did not currently use) or there were reasons to believe that functional substitutability may not translate into price substitutability (i.e. customers' willingness to switch between the Parties in response to a price increase).

⁸⁰ See paragraph 7.38.

- 7.68 Nevertheless, the evidence indicates that, for some customers, the Parties' products are substitutes. Given that, as discussed in paragraph 5.43, prices are individualised, we consider it is possible that the Parties might be able to raise prices to these customers post-Merger. We also acknowledge that several of the customers we contacted expressed a concern with the Merger.⁸¹
- 7.69 Given the limited number of customers we contacted and the large variations in customer needs, it is difficult to precisely estimate the size of the customer type that could be negatively affected by the Merger.
- (a) The customers that we have contacted, who have expressed a concern with the Merger, and for which the Parties' products are (at least to a certain degree) substitutes accounted for 6% of the Parties' combined Deep Dive revenues in 2017. As discussed above, however, in several cases the views expressed by customers reflected the possible functional substitutability of the Parties' products, rather than price substitutability.
- (b) Advertisers using Ebiquity's Portfolio UK to monitor their competitors were the customer type who most frequently saw the Parties' products as substitutes. This overall group (including customers we did not contact) would account for 12% of the Parties' combined Deep Dive revenues in 2017.⁸² However, based on the observations at paragraph 7.57(c), we believe that many of these customers do not see the Parties' products as sufficiently close substitutes to be willing to switch between the two.
- 7.70 Looking at the evidence in the round, we consider that the strength of substitutability is only sufficient to act as a competitive constraint in a very small number of cases.

Evidence on the prospect of future competition between the Parties

- 7.71 As well as looking at the current extent of competition between the Parties, given the pace of change in the advertising industry, we also considered whether there were factors indicating that rivalry would increase or decrease over the foreseeable future. The Merger could raise competition concerns if competition were likely to have become closer in the foreseeable future absent the Merger. However, the evidence on declining demand for traditional

⁸¹ Concerns were expressed by 14 of the 33 UK Deep Dive customers we received information from. It should be noted, however, that among the additional 22 customers who responded to our Phase 2 screening questionnaire, 21 did not express a concern.

⁸² This was estimated excluding advertisers in the automotive industry, as they are more likely to use AdIntel products to monitor their dealers.

media AdIntel,⁸³ on the Parties' product developments, and on the recent performance of Ebiquity's AdIntel business shows that this is unlikely to be the case.

7.72 As observed in paragraph 7.45, we have not seen evidence showing that, in recent years, Nielsen had introduced innovations to its UK Deep Dive products in response to competition from Ebiquity, or has aimed at competing more closely with Ebiquity. Given the richness of Ebiquity's creative information and the customised nature of some of the services Ebiquity provides to its AdIntel customers, in order to compete more closely with Ebiquity, Nielsen would have to undertake significant investments. [REDACTED]. In the current context of the structural decline of demand for traditional media AdIntel in the UK (see paragraph 7.38), such investments are likely to become even less attractive in the future.

7.73 The evidence we have seen shows that Ebiquity is unlikely to start competing more closely with Nielsen. We note that, Ebiquity set out to compete with Nielsen from the outset, aiming to 'become the standard currency of media spend in the UK'⁸⁴ but has failed to do so. As seen in paragraph 7.46, Ebiquity tried to compete more strongly for media owners and media agencies by introducing media agency attribution in its spend data ([REDACTED]). That attempt, however, has so far proved unsuccessful, as Ebiquity has not managed to attract new customers in those categories. This indicates, as explained in paragraph 7.47, that making Ebiquity's product more similar to Nielsen would require much greater effort and is likely to be costlier than Ebiquity envisaged at the time of the launch of [REDACTED].

7.74 We think it is unlikely that Ebiquity would make the investments necessary to become a stronger competitor to Nielsen in the foreseeable future. As discussed in Appendix B, [REDACTED], Ebiquity's non-AdIntel businesses have been growing and have maintained much healthier profit margins.⁸⁵ Ebiquity's CEO informed us that the difference between the performance of Ebiquity's AdIntel and non-AdIntel businesses [REDACTED].

⁸³ See paragraph 7.38.

⁸⁴ [Thomson Intermedia plc Annual Report for the 15 months ended April 2007](#), page 9.

⁸⁵ Revenues for Ebiquity's largest segment, Media (before June 2018 called Media Value Measurement), accounting for 59% of its total revenues in 2017, grew 9% and delivered an underlying operating margin of 27% in 2017. In contrast, revenues for Ebiquity's Intel segment (before June 2018 called Market Intelligence), which almost exclusively comprised Ebiquity's AdIntel division accounting for 26% of total revenues, fell by 1% and delivered an underlying profit margin of 14%. (CMA analysis based on [Ebiquity's Annual Report 2017](#), page 67.) A worsening picture as far as the Intel segment is concerned is portrayed in Ebiquity's unaudited [Interim Results presentation for the 6 months ended June 2018](#). See slides 10 and 30. Here revenues for the half year grew by 5% for the Media segment but fell 13% for the Intel segment with underlying profit margin for the latter shown at 5%.

7.75 There also appears to be a degree of reluctance within the wider Ebiquity business to engage more directly with media agencies and media owners, the two customer types that constitute the bulk of Nielsen's customer base. This is related to the impact this could have on Ebiquity's non-AdIntel business. Over 75% of Ebiquity's business is in consulting; in particular, an important part of that business relates to media auditing, the process of scrutinising the efficiency with which an agency is spending its client's media budget and whether it is meeting its contractual commitments to the client. As stressed by Ebiquity's CEO, in the context of that business, independence from media agencies and media owners 'is absolutely crucial. [...] [✂]'. As Ebiquity's consulting business has a much greater profitability than its AdIntel business (see paragraph 7.74), this risk would significantly reduce Ebiquity's willingness to heavily promote its AdIntel products to media agencies and media owners.

Competitive constraint from other AdIntel suppliers and from products outside the relevant market

7.76 There are no other suppliers of multi-channel UK Deep Dive, and we consider that this is unlikely to change in the foreseeable future. None of the digital specialist suppliers we contacted expressed the intention to start supplying AdIntel products covering traditional media (these suppliers' plans and their views on the barriers to entry into the supply of UK Deep Dive AdIntel products are discussed in Appendix H).

7.77 We considered the extent of the constraint imposed by specialist digital-only providers, which, as discussed in paragraph 5.78, we have provisionally considered as not being part of the relevant market.

(a) Ebiquity's internal documents, discussed in greater detail in Appendix E, show that Ebiquity sees some digital specialists as competitors. However, until at least August 2017, Ebiquity had not come across these digital specialists often enough to feel the need to have a better understanding of their offering. An internal document states that Ebiquity 'need[s] to increase [its] share in the online advertising arena to stay competitive also in cross-media advertising'. This indicates that it is important for Ebiquity to have accurate digital AdIntel for their cross-media product. Ebiquity goes on to say that investing in digital data 'offers us [Ebiquity] a chance to get ahead of competition in a field that is most relevant to our clients'. Investing in digital AdIntel seems therefore to be at least partially motivated by keeping ahead of the competition.

(b) While, in principle, specialist digital-only providers could impose a direct constraint on the digital modules of the Parties' UK Deep Dive products,

we have not received evidence from the Parties' current customers of cases in which digital AdIntel was sourced from a third-party supplier, although some customers did monitor digital advertising in house. There is also limited evidence of customers switching from a multi-channel AdIntel product to a digital-only product, although the negotiation emails we analysed between Ebiquity and its customers show at least one case in which a customer ([X]) terminated its subscription to Ebiquity's Portfolio UK product in favour of a digital-only product offered by a digital specialist supplier.

- (c) The digital specialists we spoke to indicated that they did not compete directly with the Parties or they did not see their own AdIntel products as substitutes to those supplied by the Parties (see Appendix H).

7.78 Taken in the round, the evidence indicates that the competitive constraint imposed by specialist digital-only providers on the Parties' UK Deep Dive AdIntel products is not significant.

7.79 The Parties have also submitted that they compete for the same customers' budget with a variety of other advertising research and analysis products. According to the Parties, many customers view the purchase of AdIntel products and of other advertising research products as alternative ways of increasing the effectiveness of their advertising. The increasing availability of sophisticated analysis products therefore increases the constraints on the budgets available for AdIntel products. While we have not received direct evidence of this, the Parties' submission is consistent with the evidence of the ongoing decline in the number of customers for their Deep Dive products.

Provisional conclusion on the supply of Deep Dive

7.80 As discussed in paragraph 7.67 above:

- (a) The Parties target largely different customer bases and rarely submit proposals to each other's customers.
- (b) Sales data shows a very low number of customers switching between the Parties, both in absolute terms and relative to the overall churn of customers for each Party's product.
- (c) Direct evidence of competitive interaction between the Parties is limited.
- (d) The Parties' internal documents indicate that the competitive constraint the Parties impose on each other is weak.

- 7.81 For these reasons, we have provisionally found that the Parties impose very little competitive constraint on each other. Moreover, as discussed in paragraphs 7.72 to 7.75, the Parties' closeness of competition is unlikely to increase in the foreseeable future and Ebiquity may become a weaker competitor.
- 7.82 As discussed in paragraphs 7.68 and 7.69, we note that there is likely to be some loss of competition as a result of the Merger for a small number of customers who are currently buying the UK Deep Dive AdIntel products from one of the Parties. However, given the very limited constraint the Parties impose on each other pre-merger, we provisionally consider that the lessening of competition resulting from the Merger is unlikely to be substantial.
- 7.83 We therefore provisionally conclude that the Merger is not likely to lead to an SLC in the supply of UK Deep Dive AdIntel products.

8. Assessment of the horizontal effects of the Merger in the supply of International AdIntel products

- 8.1 We now turn to a consideration of the unilateral horizontal competitive effects of the Merger on the supply of the Parties' International AdIntel products. We consider the closeness of competition between the Parties' International AdIntel products and also any competitive constraint that may be imposed by other suppliers.

The Parties' submission

- 8.2 The Parties submitted that the evidence gathered during the Phase 2 process demonstrates that the Parties' respective AdIntel products do not exert any material competitive constraint on each other.
- 8.3 The Parties further explained that Nielsen's NGA data is used by advertisers for cross-border strategic media investment decision-making purposes as well as by agencies on behalf of their advertiser clients. In contrast, the Parties said Portfolio International was used by advertisers looking to track and compare competitors' advertising in different jurisdictions to inform their ad creative strategies. As such, they were different products, targeting different customers and operating in separate markets.
- 8.4 The Parties stated that the Merger would not give rise to an SLC for International AdIntel products either in terms of increased prices, or reduced service, quality or innovation. They observed that Ebiquity had lost [X] customers in the period 2015 to 2017, none of which had switched to Nielsen;

the main competitors to Ebiquity were Kantar and Global Ad Source. They also submitted that creative agencies supplied their own International creative AdIntel to their clients by gathering adverts from various countries. The Parties further observed that Nielsen had lost [X] customers in the period 2014 to 2017, none of which had switched to Ebiquity; Nielsen's biggest rival was Kantar.

- 8.5 The Parties also submitted that neither Party was going to enter each other's market. [X] and Nielsen would have to invest substantially [X].

Evidence on the closeness of competition between the Parties

- 8.6 In assessing the horizontal competitive effects, we have considered:

- (a) The features of the products;
- (b) The customer base and price proposal data for each of the products;
- (c) The Parties' internal documents;
- (d) Evidence of customer switching;
- (e) Direct evidence of competitive interaction from negotiations;
- (f) Evidence from customers.

International AdIntel product features

- 8.7 As with their UK Deep Dive products, there is significant degree of differentiation between the Parties' International products. Although both products contain spend data and creative data, the differences in the types of meta-data that are present in their UK Deep Dive products⁸⁶ are also present in their International products. There are also differences in the way the two products harmonise international data into a consistent single dataset.

- 8.8 There is a high level of customisation in each of the products. Ebiquity have explained that, in effect, every International customer takes a customised product because they specify the industry sectors that they want covered and Ebiquity builds the product to order. Nielsen has a similar approach, and has explained that its International customers can ask for features to be added which Nielsen then considers, taking into account [X].

⁸⁶ See the discussion in the market definition section for further detail on these differences.

8.9 Reflecting the highly bespoke nature of the two products, the pricing for the International AdIntel products is also individualised. As we have noted in the discussion of UK Deep Dive products, individualised pricing means that customers who are currently able to substitute between the Parties (to the extent they exist) could face targeted increases in price or reductions in quality, reliability or service following the Merger.

Evidence on the Parties' customer bases and price proposals

8.10 As Table 8.1 shows, both Parties principally sell their International AdIntel products to advertisers, in particular multinational companies. [REDACTED] Nielsen's NGA customers are advertisers and Ebiquity generates nearly two-thirds of its Portfolio International revenues from advertisers.

Table 8.1 Parties' International product UK customer base by shares of revenues and customers

	Nielsen		Ebiquity	
	% revenues	% customers	% revenues	% customers
Advertisers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Creative agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Full service agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other agencies	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Media owners	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Base: UK based customers with revenues in H1 2018
Source: CMA analysis

8.11 Nielsen has only [REDACTED] current NGA customers headquartered in the UK,⁸⁷ whereas Ebiquity serves [REDACTED] Portfolio International customers. The respective H1 revenues were [REDACTED] for NGA and [REDACTED] for Portfolio International.

8.12 We have also considered which customers have been targeted by price proposals from each of the Parties. Looking at Nielsen's price proposals, the Parties submitted that [REDACTED]% of Nielsen's price proposals were targeted to customers [REDACTED]. For Ebiquity, [REDACTED].

8.13 As for Deep Dive, we carried out further analysis to identify the number of proposals submitted by each Party to customers purchasing from the other Party at the time the pricing proposal was submitted. Tables 8.2 and 8.3 show our estimates of the total number of unique customers to whom the Parties

⁸⁷ We note that there are some other Nielsen AdIntel customers headquartered outside the UK who use the international product to provide AdIntel on the UK.

submitted a price proposal for their International products between 2015 and 2017. Full details of our methodology are in Appendix F.

Table 8.2 Total number of unique International customers to whom Nielsen submitted one or more price proposals (2015 to 2017)

		2015	2016	2017
Nielsen's price proposal to Ebiquity's customers	In progress	[X]	[X]	[X]
	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Nielsen's price proposals to existing customers	In progress	[X]	[X]	[X]
	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Nielsen's price proposal to new customers	In progress	[X]	[X]	[X]
	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Total	[X]	[X]	[X]

Base: Nielsen's price proposals (2015 to 2017)

Note1: the total number of price proposals includes both competitive and non-competitive price quotations (ie ad-hoc projects and renewals).

Note2: we note that there are [X] Nielsen's customers who appear in the price proposals dataset but do not show any revenue. As a consequence, these customers might have not been captured by our analysis or been misclassified.

Source: CMA analysis

Table 8.3 Total number of unique International customers to whom Ebiquity submitted one or more price proposals (2015 to 2017)

		2015	2016	2017
Ebiquity's price proposal to Nielsen's customers	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Ebiquity's price proposals to existing customers	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]
Ebiquity's price proposal to new customers	Lost	[X]	[X]	[X]
	Won	[X]	[X]	[X]
	Renewals lost	[X]	[X]	[X]
	Total	[X]	[X]	[X]

Base: Ebiquity's price proposals (2015 to 2017)

Note1: the total number of price proposals includes both competitive and non-competitive price quotations (ie ad-hoc projects and renewals)

Note2: we note that there are [X] Nielsen's customers who appear in the price proposals dataset but do not show any revenue. As a consequence, these customers might have not been captured by our analysis or been misclassified.

Source: CMA analysis

8.14 The Tables show that Nielsen has made [X] bids to Ebiquity customers over the past three years, compared with [X] pricing proposals in total. According to the pricing data, Ebiquity made [X] bids to existing Nielsen customers in the past three years. This indicates that there is very limited overlap between the Parties' potential customer bases.

Evidence on competition from the Parties' internal documents

8.15 We have reviewed the Parties' internal documents for information regarding how they view the competitive landscape for their International products.

8.16 Nielsen's internal documents make no direct reference to competition faced by their International product (NGA). Ebiquity's documents make more

references to competition. In particular, a document (see Figure 5.2 and the discussion at paragraph 5.102) from November 2017 includes a chart entitled 'International' which depicts Nielsen and Kantar as 'specialists' offering both creative and spend data, Global Ad Source as a specialist offering only creative data and Pinterest, Google and YouTube as generalists providing only creative content. The implication is that all of these businesses compete but there is no discussion of the closeness of competition.

Evidence on customer switching

- 8.17 Based on the Parties' sales data for their International products, we identified only [REDACTED] examples of customers that purchased both NGA and Portfolio International between 2010 and July 2018 (albeit not necessarily simultaneously). The Parties' analysis of overlapping customers also only identifies these two examples. Full details of our methodology and results are in Appendix F. We are conscious, however, that the data provided by the Parties has some limitations, and we have identified through our calls two additional overlapping customers.
- 8.18 In most of the cases identified, customers simultaneously bought the two Parties' products, indicating that they did not consider them to be substitutes. Only in one case did a customer ([REDACTED]) switch from Ebiquity to Nielsen. This, however, was a result of a change of the customer's needs, which now included spend data. In any event, the degree of switching between the Parties' International products is very low, both in absolute terms and compared with the [REDACTED] customers lost by either of the Parties during the same period.⁸⁸

Direct evidence of competitive interaction

- 8.19 We examined the correspondence between the Parties and their customers for a sample of 16 customers of International AdIntel products (eight customers of Ebiquity and eight of Nielsen).
- 8.20 The correspondence between Ebiquity and its customers reveals some customers negotiating over price and others accepting price increases. In none of the cases we reviewed was there any evidence of customers benchmarking the product against rival products or threatening to switch to a rival product.

⁸⁸ If we exclude the customers whose contract is classified as 'ad hoc' in the Parties' data, the total number of customers lost is [REDACTED].

- 8.21 A similar picture emerges from Nielsen's correspondence. Half of the customers in our sample did not negotiate. Of the four that did negotiate, only one appears to have used other suppliers as a bargaining point. Specifically, the customer ([X]) acting on behalf of [X]) described the price increase proposed by Nielsen as, [X] , and added that, '[For your information] we have received the [X] proposal and for the same scope their [X] [...] This is not low but acceptable, and I urge you to consider this before submitting your revised proposal.'
- 8.22 Even allowing for the small sample size, this correspondence does not indicate a high degree of price benchmarking or outright threats to switch but shows that nevertheless there may be some direct competitive pressure.

Evidence from customers on the substitutability between the Parties' products

- 8.23 We spoke to ten customers of the Parties' International AdIntel products. Five of these were advertisers, four were advertising agencies (two creative agencies, one media agency and one full service agency) and one was a business involved in the production of digital advertising analysis. Full details of our interviews with these businesses are presented in Appendix C; the key observations are summarised here.
- 8.24 The advertisers (all of whom used Ebiquity either currently or in the past) explained that they use the data in a variety of different ways. Some used it for tracking ad spend and computing share of voice alongside monitoring competitors adverts or tracking global brand health. Others only monitored the creative content of adverts but all needed access to the adverts in the service. Three of the five advertisers used both spend data and creative data, two taking this data from Ebiquity and one from Nielsen.
- 8.25 Despite these purchasing patterns, four of the five advertisers told us that they did not see NGA as a substitute for Portfolio International, explaining either that it did not meet their requirements or that they were unfamiliar with it. The one advertiser that saw the Parties' products as substitutes, [X], had recently switched to Nielsen's NGA after several years using Portfolio International. [X] needed both ad spend and creative data and explained that an advantage of the Nielsen product was that it linked ad spend data to creative data but that it had to trade off these advantages against the slower updating of the Nielsen product; Portfolio International was updated daily but NGA's updates could take up to a month in some cases.
- 8.26 We spoke with three creative agencies, all of whom purchased Portfolio International. These businesses had a clear need for creative data (in particular the underlying advert) and the ability to search a catalogue of

current and historical adverts in a systematic way. They did not need ad spend data of any type.

- 8.27 Two of the agencies did not have any familiarity with NGA and had not reviewed alternative options to Portfolio International. When prompted, some said that they would probably use search engines to identify relevant creative material if they could not use Portfolio International, but observed that this was a poor alternative. One of the agencies had explored the Nielsen product but decided not to use it given the superior features in the Ebiquity product. They did not describe NGA as a substitute for Ebiquity.
- 8.28 The two media agencies we spoke to were predominantly interested in ad spend data. One, [REDACTED], used both Portfolio International and Nielsen, the other, [REDACTED], had previously used Kantar. Neither saw NGA and Portfolio International as substitutes; [REDACTED] considered them to be complementary products whereas [REDACTED] said that Portfolio International's data was not accurate enough to meet its requirements.
- 8.29 In our assessment, the evidence from customers shows a competitive landscape in which the degree of competitive interaction between the Parties' International AdIntel products is weak.

Assessment of current competition between the Parties

- 8.30 The evidence discussed above indicates that the competitive constraint between the Parties is weak for the following reasons:
- (a) We are aware of only one clear example of a customer switching between the two Parties' products in the last eight years.
 - (b) We found no evidence in either Parties' internal documents that they saw each other as a strong competitive constraint.
 - (c) The evidence from negotiation emails shows only one example of an attempt by a customer to negotiate on price with reference to the other Party.
 - (d) The bidding data shows only [REDACTED] bids (out of a total of [REDACTED]) by Nielsen to win Ebiquity customers over a period of three years. Ebiquity [REDACTED] Nielsen customers in the same period.
- 8.31 There is evidence that some customers view the Parties as functional substitutes (see also the discussion in market definition at paragraphs 5.89 to 5.93). However, we do not see this as strong evidence of price substitutability, ie of the willingness of customers to switch in response to a price increase;

only two businesses indicated they thought the products were to some extent substitutable ([REDACTED]).

- 8.32 Looking at the evidence in the round, we consider that the limited substitutability between the Parties' International AdIntel products is unlikely to act as a competitive constraint except for few cases.

Evidence on likely future competitive constraints

- 8.33 Even if current competition between the Parties is limited, a merger could still raise concerns if competition were likely to become closer in the future.
- 8.34 We do not consider it likely that Nielsen will attempt to make its International product a stronger competitive constraint on Portfolio International. The customer base of Portfolio International [REDACTED]⁸⁹ and we therefore consider that it is unlikely that Nielsen would divert investment resources towards trying to focus its offering more closely on Portfolio International customers who do not currently view NGA as a substitute. Similarly, the customer base for NGA [REDACTED] and we therefore consider that Ebiquity is unlikely to try to adapt its product to be more similar to Nielsen's.
- 8.35 For these reasons, we provisionally conclude that the Parties are not likely to be more significant competitors in the future.

Competitive constraint from other AdIntel suppliers and from products outside the relevant market

- 8.36 We spoke to both Kantar and Global Ad Source in order to better understand the references to them as competitors made by both customers and the Parties.
- 8.37 Kantar sells an International AdIntel product that covers all media channels and a wide range of countries – including the UK. Global sales were approximately [REDACTED] but UK sales represented only about [REDACTED]. Kantar principally sold its International product to advertisers and media agencies and all of its customers purchase the ad spend and creative data that it provides.
- 8.38 Kantar considered it competed with Nielsen's NGA product. Kantar observed that data harmonisation was a key feature of an International product [REDACTED]. Kantar was not particularly [REDACTED].

⁸⁹ For further detail, see Appendix F.

- 8.39 The competitive constraint imposed by Kantar on Nielsen is supported by the information received from one customer ([REDACTED]), who characterised Nielsen's and Kantar's products as close substitutes. [REDACTED] told us that the raw data tends to be the same for Nielsen's and Kantar's products. The key differences are in the way the two firms estimate spend data and harmonise it across countries, the customer service quality, and the price. Ultimately, the most cost-effective product will be chosen.
- 8.40 Global Ad Source is a Canadian International AdIntel supplier. Its product focuses on creative data (it does not include spend data) and covers a wide range of countries including the UK. It supplies its product principally to creative agency and advertiser clients in 14 countries, including one customer in the UK. It explained that its lack of ad spend data [REDACTED] [REDACTED].
- 8.41 Global Ad Source viewed Ebiquity's Portfolio International product as its main competitor given the overlap in the supply of creative data. Global Ad Source noted that, unlike Portfolio International, its product did not contain ad spend data but that it did track social media adverts which Portfolio International did not. We view it as significant that Global Ad Source had won [REDACTED] customers from Ebiquity. It did not consider itself to be a competitor to Nielsen.
- 8.42 The evidence provided by Kantar and Global Ad Source, in addition to further supporting the distinction between the supply of creative data and ad spend data, indicates that each of the Parties faces some competitive constraint from other suppliers of International AdIntel products. In particular, Nielsen appears to be constrained by Kantar, while Ebiquity faces competition from Global Ad Source. We recognise, however, that the evidence we have received does not allow us to assess the current strength of these constraints.
- 8.43 We also considered the strength of the constraint imposed on the Parties' International AdIntel products by standalone digital products. The evidence discussed at paragraph 7.77 in relation to UK Deep Dive is also relevant to the Parties' International products:
- (a) Ebiquity's internal documents discussed at paragraph 7.77, which show digital-only specialists being considered as competitors but show limited constraint, do not refer specifically to Deep Dive or International products. As such, the evidence equally applies to both types of products. [REDACTED] (see Appendix E for detail).
 - (b) We have not received evidence from the Parties' current customers of cases in which digital AdIntel was sourced from a third-party supplier, although some customers did monitor digital advertising in house, nor of

customers switching from a multi-channel International AdIntel product to a digital-only product.

- (c) The digital specialists we spoke to indicated that they did not compete directly with the Parties and did not see their own AdIntel products as substitutes to those supplied by the Parties (see Appendix H).

8.44 Overall, the evidence indicates that the competitive constraint imposed by digital AdIntel products on multi-media International AdIntel products is not significant.

Provisional conclusion on the supply of International AdIntel products in the UK

8.45 As discussed in paragraph 8.30 above:

- (a) We are aware of only one example of a customer switching between the two Parties' products in the last eight years.
- (b) We found no evidence in either Parties' internal documents that they saw each other as a strong competitive constraint.
- (c) We found only one example of an attempt by a customer to negotiate on price with reference to the other Party.
- (d) Very few bids were submitted by either Party to the other Party's customers between 2015 and 2017.

8.46 Looking at the evidence in the round, we consider that the Parties do not impose a significant competitive constraint on each other. We have also provisionally found in paragraph 8.35 that the Parties are unlikely to become stronger competitors towards each other in the future. Finally, we have received some evidence indicating a degree of competitive constraint on the Parties from other AdIntel suppliers (see paragraph 8.42).

8.47 For these reasons, we provisionally conclude that the Merger is not likely to lead to an SLC in the supply of International AdIntel products to UK customers.

9. Assessment of the vertical effects of the merger

Introduction and overview

- 9.1 Both Nielsen and Ebiquity sell UK AdIntel data to third parties that use it as an input for their own products. Some of these third parties may then compete against the Parties with these products.
- 9.2 This section assesses whether, as a result of the Merger, the Parties would have the ability and incentive to foreclose any downstream competitor by refusing to supply UK AdIntel data (total foreclosure) or by supplying it at increased price or with a lower level of quality (partial foreclosure).
- 9.3 The CMA assesses vertical foreclosure theories of harm following an ability-incentive-effect framework, in which an SLC is found if the following four conditions are satisfied:
- (a) After the merger, the Parties will have the ability to foreclose downstream rivals. This is likely to be the case if limited alternative suppliers exist, and if the input is essential for the downstream competitor or accounts for a significant fraction of its costs.
 - (b) After the merger, the Parties have the incentive to foreclose downstream competitors. Such incentive exists if, as a result of the foreclosure strategy, the competitor's downstream sales recaptured by the Parties are sufficient to compensate for the loss of upstream profits. If the Parties also buy AdIntel data from the foreclosed competitor, the competitor's ability to retaliate by in turn refusing to supply the Parties must be taken into account.
 - (c) Foreclosure will lead to a substantial lessening of competition in the downstream market, as a result of the foreclosed competitors becoming less competitive or having to exit the market. This would be the case if, pre-merger, those competitors exert a significant competitive pressure on the Parties.
 - (d) Either ability, incentive or effect are a result of the merger.
- 9.4 We have assessed the possibility of the Parties foreclosing Kantar, which uses their AdIntel data as an input to its own International AdIntel product. This section also briefly discusses the information we received from (i) [REDACTED], a firm using Ebiquity's data as an input to monthly report for the retail financial services industry and (ii) [REDACTED], a firm using Ebiquity's data as an input to produce a [REDACTED] product.

Input foreclosure – Kantar

- 9.5 Kantar has been indicated by the Parties as a competitor to both Nielsen and Ebiquity for the supply of International AdIntel products.
- 9.6 Both Nielsen and Ebiquity supply Kantar with AdIntel data relating to the UK and other national markets. In 2017, Ebiquity and Nielsen generated revenues of £[redacted] and around £[redacted] respectively from International AdIntel sales to Kantar including data on the UK. The data is used by Kantar to supply its International AdIntel customers.
- 9.7 The Parties have submitted a list of other third-party companies using their AdIntel data as an input to other AdIntel products. However, Kantar appears to be the only one competing downstream with the Parties in the UK. Kantar is therefore the only company that the Parties might have an incentive to foreclose and whose foreclosure could have an impact on competition in the supply of AdIntel products in the UK. We have therefore assessed the Parties' ability and incentive to foreclose Kantar.

Ability

- 9.8 We considered the evidence from the Parties and Kantar regarding the ability of the Parties to foreclose Kantar. All other things being equal:
- (a) The larger the value of data that Kantar buys from the Parties and the more important it is for its customers, the greater the Parties' ability to weaken Kantar's competitiveness as a provider of International AdIntel products by refusing to supply the data or supplying it at higher cost or with lower quality;
 - (b) The Parties' ability to foreclose Kantar increases the more difficult it is for Kantar to find alternative suppliers for the data it currently purchases from the Parties.
- 9.9 In 2017, Nielsen provided Kantar with AdIntel data covering several countries, including the UK, for a total value of around £[redacted]. The value of UK data provided by Nielsen was around £[redacted]. In 2017, Kantar also bought International AdIntel data from Ebiquity for a value of £[redacted]. The value of UK data provided by Ebiquity was £[redacted].
- 9.10 Kantar told us that it currently supplies Nielsen data to [redacted] of its International customers, [redacted] while [redacted] of its International customers receive Ebiquity data. [redacted].

- 9.11 According to Nielsen, although other suppliers exist in some of the markets in which Kantar buys-in data from Nielsen, [REDACTED], they are not viewed as real alternative suppliers, because they do not offer comparable data in terms of extent of coverage. Kantar also told us that there were no other significant suppliers.
- 9.12 Based on the evidence above, we provisionally conclude that:
- (a) the Parties are, for Kantar, the only possible suppliers of AdIntel data in the UK.
 - (b) in the UK, Nielsen's and Ebiquity's data are substitutable to a certain extent.
 - (c) UK data is an important input for Kantar's International AdIntel product.
- 9.13 Therefore, it is likely that the Merger will give the Parties the ability to foreclose Kantar by refusing to supply UK AdIntel data, or supplying it at higher cost, with the result of reducing Kantar's competitiveness in the downstream market for International AdIntel products.

Incentive

- 9.14 We therefore assessed whether the Parties would have an incentive to foreclose Kantar. In particular, we considered the Parties' bargaining position vis a vis Kantar, and the likelihood of recapturing downstream sales that Kantar would lose in case of foreclosure:
- (a) Kantar not only buys AdIntel data from the Parties, but also sells data to the Parties. This might place it in a strong bargaining position to resist the Parties' attempted foreclosure and to retaliate by refusing to supply its own data. The strength of Kantar's position depends on the volume and importance of the data sold to the Parties and on the availability of alternative suppliers.
 - (b) Should the Parties foreclose Kantar, the latter would lose some of the sales of its International AdIntel product. The Parties would have an incentive to foreclose only if they could recapture a sufficient fraction of the sales lost by Kantar to compensate for the lost revenues on the sales to Kantar (and for the further losses caused by Kantar's retaliatory actions). The proportion of recaptured downstream sales depends on the closeness of downstream competition between Kantar and the Parties or, more specifically, on the degree to which Kantar's customers see the Parties' products as substitutes to Kantar's.

- 9.15 In 2017, Nielsen bought AdIntel data from Kantar [redacted] worth [redacted]. This is a significantly higher value than the data Nielsen sold to Kantar in the same period.
- 9.16 Nielsen submitted that it prefers to source data from suppliers that are considered to supply 'industry standard' data, unless the customer specifically requests Nielsen to work with local suppliers. Kantar is considered the industry standard in the countries where Nielsen buys data from it and, even in countries where local providers exist, they do not offer data comparable to Kantar, in that their coverage is not as extensive. Accordingly, Nielsen does not view any such suppliers as real alternatives to Kantar.
- 9.17 Nielsen told us that, if it did not buy data from Kantar, [redacted].
- 9.18 In 2017, Ebiquity bought AdIntel data from Kantar with a total value of [redacted]. This is of a higher value than the data Ebiquity sold to Kantar in the same period. According to Ebiquity, only the data from China could be sourced from an alternative supplier (Meihua) with similar coverage to Kantar. In all other countries, alternative suppliers either do not exist or have limited coverage. In India, Nielsen might be an alternative supplier (it has a JV with Kantar).
- 9.19 [redacted][redacted].
- 9.20 [redacted]
- 9.21 Overall, the evidence above shows that:
- (a) the Parties collectively buy [redacted] data from Kantar than they sell to Kantar [redacted].⁹⁰
 - (b) there does not appear to be an alternative to Kantar's data in most of the countries for which Kantar supplies data to the Parties.
 - (c) [redacted].
- 9.22 Taken together, we consider that this indicates that Kantar is likely to be in a strong bargaining position, allowing it to respond to any attempted foreclosure from the Parties. While we have not tried to estimate the downstream sales that the Parties may be able to recapture if Kantar were foreclosed (which depend on the closeness of competition between Kantar and the Parties), we consider that any increased downstream sales would be unlikely to compensate for the loss of upstream revenues and the losses caused by

⁹⁰ The £[redacted] figure is obtained from the totals in 9.15 and 9.18, applying a conversion ratio of 0.9 pounds per euro.

Kantar's retaliatory actions. As a result, we provisionally find that the Parties would not have an incentive to foreclose Kantar.

Provisional conclusion on Kantar vertical theory of harm

9.23 We provisionally conclude that post-Merger, while the Parties may have the ability to foreclose Kantar by withdrawing the supply of UK AdIntel data or by charging higher prices for it, they are unlikely to have the incentive to do so. The Merger, therefore, is not likely to lead to an SLC as a result of the foreclosure of Kantar.

Input foreclosure – [REDACTED]

9.24 We received a submission from [REDACTED] about the possibility of the merged entity ceasing to supply it with AdIntel data. The evidence we have seen, however, does not corroborate the possibility of foreclosure.

9.25 [REDACTED] produces weekly, monthly and one-off reports for the retail financial services industry with a focus on three distinct product areas: [REDACTED]. As part of its monthly reports, [REDACTED] assesses the messages contained in the new adverts published in the UK in relation to these product areas. In order to provide this service, [REDACTED] receives ad creative data (ie copies of the adverts) from Ebiquity.

9.26 [REDACTED] told us that, in relation to financial services customers, itself and Nielsen were the two leading providers of news and insight. [REDACTED] considered itself to compete with Nielsen for the supply of the monthly financial institution reports and it told us that no other companies provided a similar service.

9.27 Additional information received from [REDACTED], however, leads us to provisionally conclude that it is unlikely that the merged entity would have an ability to foreclose it:

- (a) [REDACTED] told us that 90% or more of the advertising creative information in the reports derives from [REDACTED]'s own monitoring of branch advertising, direct mail, social media, outdoor advertising, etc.
- (b) Moreover, [REDACTED] identified an alternative provider from which it could obtain creative information for print media.
- (c) In addition, a significant proportion of the information included in these reports is not related to advertising. Our analysis of the examples of reports sent to us by [REDACTED] confirms that the content related to the media

types for which [REDACTED] has not identified an alternative provider (TV and radio) is a small part of the overall reports.⁹¹

9.28 Based on this information, we provisionally conclude that the Parties are unlikely to have the ability to foreclose [REDACTED]. Accordingly, we have not considered it necessary to undertake a full analysis of input foreclosure in relation to [REDACTED].

Input foreclosure – [REDACTED]

9.29 We received a submission from an Ebiquity client, [REDACTED] that Nielsen may have both the ability and incentive to foreclose it after the Merger. [REDACTED].

9.30 Nielsen explained that it had sold its TV brand effectiveness service and that it therefore no longer competed with [REDACTED].

9.31 Therefore, because Nielsen no longer competes with [REDACTED] in a downstream market we provisionally conclude that Nielsen is unlikely to have the incentive to foreclose [REDACTED].

9.32 Overall, we provisionally conclude that the Merger is not likely to lead to an SLC as a result of input foreclosure in the supply of UK AdIntel data post-Merger.⁹²

10. Provisional conclusion on the SLC test

10.1 We provisionally conclude that the Merger may not be expected to result in an SLC in (i) the supply of UK Deep Dive AdIntel products and (ii) the supply of International AdIntel products to UK customers. We also provisionally conclude that the Merger may not be expected to result in input foreclosure in the supply of UK AdIntel data post-Merger.

⁹¹ We also note that, only 48% clients receive its monthly reports, which are the only ones among [REDACTED]'s reports to include advertising information.

⁹² In the interval following the inquiry group's provisional conclusion and the publication of this report we were contacted again with further evidence by [REDACTED]. We intend to consider this additional evidence before we make our final decision.