

**ME/6733/18: ANTICIPATED ACQUISITION BY NIELSEN OF EBIQUITY PLC's  
ADVERTISING INTELLIGENCE DIVISION**

**Nielsen and Ebiquity's Joint Response to Provisional Findings Report, dated 31  
October 2018**

**1 Executive Summary**

1.1 The Parties appreciate the balanced and considered approach the CMA has taken to the evidence provided by them and third parties. The Parties welcome and support the CMA's provisional conclusions in its Provisional Findings Report (**PFR**)<sup>1</sup> that:

- (a) the Merger is not expected to result in an SLC, either in the supply of UK Deep Dive AdIntel products, or in the supply of International AdIntel products to UK customers; and
- (b) the Merger is not expected to result in input foreclosure in the supply of UK AdIntel data post-Merger.

1.2 In this Response, the Parties:

- (a) reiterate their view as to the appropriate counterfactual;
- (b) respond to four pieces of customer evidence:
  - (i) [X] – whose (anomalous) view of the extent of substitutability between the Parties' products is impacted by the fact that the ad spend data it receives is the same from Ebiquity and Nielsen because they both source it from the industry body;
  - (ii) [X] – which has specific ad creative Ad Intel requirements which cannot be fulfilled by Nielsen;
  - (iii) [X] – which received [REDACTED]; and
  - (iv) [X] – which claims to have had difficulty obtaining a quote from Nielsen, but where Nielsen has no record of ever having been asked by [X] to provide a quote. Furthermore, there is no evidence to suggest that Nielsen would not be willing to supply them post-merger; and
- (c) address historic references to Nielsen in Ebiquity internal documents.

**2 Market Definition**

*UK Deep Dive*

2.1 The Parties agree with the CMA's provisional conclusion that employing the SSNIP test for the purposes of defining the relevant market is of limited use in the present case and welcome the CMA's decision to focus instead on a broader qualitative

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<sup>1</sup> Unless otherwise indicated, references to specific paragraphs are to paragraphs of the PFR.

assessment of the degree of functional substitutability between the Parties' products as a more meaningful approach.

- 2.2 To this end, the Parties agree with the CMA's provisional findings that:
- (a) their respective "*UK Deep Dive products differ significantly*" (para 5.45) such that "*they are best suited to different tasks*" (para 5.79); and
  - (b) the functional differences between those products "*may mean that the Parties' different products principally appeal to different customer types*" (para 5.50) such that "*the mix of customer types varies significantly between the two products*".

*Differences in the Parties' ad spend data – [§<] evidence*

- 2.3 The CMA states that "*It is unclear to what extent the resulting spend data differ between the Parties' products.*"<sup>2</sup> and refers to [§<] statement "*that the spend data in AdDynamix and Portfolio UK are substantially similar*"<sup>3</sup>.
- 2.4 As explained at the Main Parties' Hearing and in the Parties' Response to the Annotated Issues Statement, [§<] spend data on outdoor advertising is the same because both Parties purchase the data from the same third party supplier, namely the industry body; this also explains [§<] misconceived perception of substitutability of the Parties' products. The Parties welcome that the CMA appears to acknowledge that this is an anomaly (para 7.43(b)) and should not be relied upon more generally when considering the Parties' respective spend data. The Parties reiterate that – other than in relation to outdoor advertising – their respective spend data is produced using two different methodologies and as a result, is substantially different.<sup>4</sup>

*International*

- 2.5 The Parties agree with the CMA's provisional finding that their International products are significantly differentiated.
- 2.6 However, the Parties disagree with the CMA's assessment that Ebiquity's internal documents support the view that it considers Nielsen as a direct competitor<sup>5</sup>. To this end, the Parties reiterate that any references to Nielsen in Ebiquity's internal documents are in the context of competition in the broader AdIntel space – where the Parties compete for their customers' wider marketing budget spend together with a plethora of other companies that offer research and/or analytical services providers – and do not support the conclusion that the Parties' products exert direct competitive pressure on each other, such that the customers would view them as functional substitutes.
- 2.7 Moreover, Ebiquity's 2014 report, identified at para 5.101, does not lend support to the conclusion that "*Ebiquity considers Nielsen as a potential substitute to its International product for some customers*"<sup>6</sup>. As explained during the Main Parties' Hearing, Ebiquity had underestimated the substantial difference between the Parties' respective

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<sup>2</sup> Para 5.37.

<sup>3</sup> *Ibid.*

<sup>4</sup> Main Parties' Hearing Transcript, pages 154-155.

<sup>5</sup> Para 5.105.

<sup>6</sup> Para 5.100.

products in terms of front end, output and methods of data collection.<sup>7</sup> Ebiquity's historic view of Nielsen's service in 2014 was, not surprisingly, flawed and cannot be taken to represent an informed and accurate view of substitutability between the Parties' products. This is all the more so given the age of the document, which, in combination with the dynamic nature of the advertising industry, means that it is no longer relevant.

### 3 Counterfactual

3.1 The Parties agree with the CMA's provisional finding that Ebiquity would not continue to offer its UK Deep Dive product in its current form.

3.2 However, they disagree with the CMA's provisional finding that Ebiquity would be likely to continue to offer both products. Rather, if the Merger were not to proceed, [REDACTED].

3.3 As regards the CMA's observation that "*the Parties appear to have changed their views during the CMA's inquiry*"<sup>8</sup> as to the appropriate counterfactual, the Parties would note that this change of views is explained by the need to adapt to the new commercial reality, in particular, [REDACTED].

### 4 Assessment of horizontal effects

#### *UK Deep Dive*

4.1 The Parties agree with the CMA that they "*impose very limited constraint on each other*" and that "*the Parties' closeness of competition is unlikely to increase in the foreseeable future*", leading to the conclusion that "*the Merger is not likely to lead to an SLC in the supply of UK Deep Dive AdIntel products*".<sup>9</sup>

4.2 However, the Parties disagree with the CMA's statement 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.*"<sup>10</sup>

4.3 The Parties have not identified any switch that has not stemmed from a change in customer needs or request for features and/or functionalities that one of the Parties is unable to offer. We discuss below the specific customers which the CMA suggests may constitute competitive switches or evidence of a competitive constraint.

[REDACTED]

4.4 [REDACTED] evidence to the CMA is 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.*"<sup>11</sup>

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<sup>7</sup> Hearing Transcript p.22 lines 10-17.

<sup>8</sup> Para 6.19.

<sup>9</sup> Paras 7.81 and 7.83.

<sup>10</sup> Para 7.37

<sup>11</sup> Para 7.57.

4.5 In the Parties' view, the fact that AdDynamix did not and could not (without substantial additional investment) fulfil [X] specific needs in terms of both product functionality and service levels must necessarily lead to the conclusion that [X] did not regard AdDynamix as a functional substitute to Portfolio UK, in light of its specific needs, with the implication that [X] decision to terminate AdDynamix and subscribe to Portfolio UK cannot be viewed as a competitive switch (i.e. a switch between functionally substitute products which can be contested by either party).

[X]

4.6 Similarly, [X] cannot be viewed as a competitive switch. [X] statement that ["REDACTED"<sup>12</sup> REDACTED] and that the reduction in price it obtained was due to a narrowing of the scope of the data requested by the customer, rather than as a result of constraint by Portfolio UK. It is therefore incorrect to conclude that [X] "*managed to obtain improved offers from one of the Parties by benchmarking the price against the other Party's offering.*"<sup>13</sup>

[X]

4.7 As far as Nielsen is aware, [X] has never requested data from it<sup>14</sup>, and therefore Nielsen is unable to explain [X] statement as to "*the difficulty of obtaining a quote from Nielsen*"<sup>15</sup>. Nielsen therefore regards the CMA's conclusion that such difficulty "*may reflect a reluctance by Nielsen to supply the data [X] needs*"<sup>16</sup> as unsupported.

4.8 Moreover, Mr. Fischer's statement at the Main Parties' Hearing that, post-Merger, Nielsen will need to review the terms under which [X] distributes the data to its customers to ensure they are compliant with Nielsen's own terms and conditions, is only a statement of the obvious, namely that Nielsen will supply data to [X] in a manner compliant with its terms and conditions. Far from supporting the CMA's conclusion at para 7.66 (d) that "*post-Merger [X] may be left without a supplier of AdIntel data*", the statement is simply a reflection of the fact that Nielsen is not aware of the terms of [X] contract with Ebiquity. The CMA's concern is therefore unfounded, in particular in light of Nielsen's demonstrable willingness to supply data to third parties.<sup>17</sup>

*International*

4.9 The Parties agree with the CMA's provisional findings that *the Parties "do not impose a significant constraint on each other"* and that "*the Parties are unlikely to become stronger competitors in the future*" leading to the provisional conclusion that "*the Merger is not likely to lead to an SLC in the supply of International AdIntel products to UK customers*".<sup>18</sup>

4.10 As regards the CMA's finding that there is "*one example of a customer switching between the two Parties' products in the last eight years*"<sup>19</sup>, the Parties have identified no switching between their respective International products. As they are not aware

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<sup>12</sup> Para 7.43(a).

<sup>13</sup> *Ibid.*

<sup>14</sup> See Nielsen's response to the CMA's questions dated 18 September 2018.

<sup>15</sup> Para 7.66 (d).

<sup>16</sup> *Ibid.*

<sup>17</sup> See para 26.1 of Nielsen's Response of 25 July 2018 to the CMA's Market Questionnaire.

<sup>18</sup> Paras 8.46 and 8.47.

<sup>19</sup> Para 8.45 (a).

of the identity of the customer who claims to have switched,<sup>20</sup> they remain unable to comment on this evidence.

- 4.11 As regards the CMA's statement that there is "*only one example of an attempt by a customer to negotiate on price with reference to the other Party*"<sup>21</sup>, the Parties would reiterate that [X] contract for International AdIntel with Ebiquity is unusual in that it covers a significant number of markets, with data provided by Ebiquity, Nielsen and [X], all invoiced through Ebiquity, which holds the overall contract. In the Parties' view, the unusual circumstances of [X] contract explain why this isolated incident of negotiation has occurred (which is a negotiation of complements, not substitutes).

## 5 **Input Foreclosure**

- 5.1 The Parties agree with the CMA's provisional finding that the Merger is not expected to result in input foreclosure in the supply of UK AdIntel data post-Merger and have no further comments in this regard.

- 5.2 The Parties note that the CMA received additional evidence from a customer shortly before publishing the PFR and understand this will be put to them shortly for comment.

## 6 **Conclusion**

- 6.1 The Parties welcome the CMA's provisional conclusions that (a) the Merger is not expected to result in an SLC, either in the supply of UK Deep Dive AdIntel products, or in the supply of International AdIntel products to UK customers; and (b) the Merger is not expected to result in input foreclosure in the supply of UK AdIntel data post-Merger.

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<sup>20</sup> The Parties understand that the customer has requested to remain anonymous.  
<sup>21</sup> Paras 8.45 and 8.21.