COMPETITION COMMISSION

ERICSSON/CREATIVE MERGER INQUIRY

Issues statement

6 November 2013

The reference

1. On 30 September 2013, the Office of Fair Trading (OFT) referred the anticipated acquisition by Telefonaktiebolaget LM Ericsson (Ericsson) of Creative Broadcast Services Holdings (2) Limited (Creative) to the Competition Commission (CC) for investigation and report.

2. The CC must decide:

   (a) whether a relevant merger situation would be created if the merger proceeded; and

   (b) if so, whether the merger may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

3. In this statement we set out the key issues that we are likely to consider in reaching our decision. This does not preclude the consideration of any other issues that may be identified in the course of our inquiry.

Background

4. Ericsson is a leading provider of telecommunications equipment and services to mobile and fixed network operators. Ericsson is 100 per cent owner of a number of subsidiaries providing a range of broadcast services in the UK, including linear playout services for television, known together as Technicolor.

5. Creative is 100 per cent owner of a number of subsidiaries including Red Bee Media Limited (Red Bee Media). Red Bee Media also provides broadcast services in the UK, including linear playout services for television.

The markets in which the parties operate

6. Ericsson and Creative overlap in the supply of outsourced linear playout services, as well as two other broadcast services—media logistics and digital media services. Our current view is that the main overlap is in the supply of outsourced linear playout services.

7. Linear playout is a process whereby television content is compiled and prepared into a continuous stream for transmission to the audience, in compliance with the broadcaster's programme schedule. Some broadcasters, such as Sky, perform this process in-house, however over the past ten years many other broadcasters have opted to outsource this service.

8. Technicolor supplies services to ITV and NBC Universal. Red Bee Media supplies services to the BBC, Channel 4, UKTV, BT Sport, Public Broadcasting Service, Japanese Satellite TV and Box TV.

Market definition

9. For the purposes of the inquiry we will initially consider the impact of the proposed merger on contracts for linear playout services that are 'built to order' and procured through competitive tender.

10. The suppliers that could meet a customer's requirement for linear playout services may differ depending on the complexity of the needs of a customer (in this case a broadcaster). We will investigate whether competitive conditions may therefore differ according to the nature of a customer's requirements, including, for example;

    (a) the reactivity and intervention levels of the customer's television channel(s);

    (b) the quality and service standards required; and

    (c) the scale and level of risk of work that has to be performed.

11. We will initially consider the proposed merger on the basis of a UK frame of reference. We have, to date, seen limited evidence to suggest that many UK broadcasters would, in response to a price rise, consider using a provider based outside the UK, particularly given the value of face-to-face meetings and the ability of the playout provider and broadcaster to manage schedule changes.

Assessment of the competitive effects of the merger

Counterfactual

12. We will assess the possible effects of the proposed merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation without the merger). At this stage, we consider that the appropriate counterfactual should be a scenario in which Technicolor and Red Bee Media would both continue to be competitors independent of each other. We will consider whether in the future, and absent the proposed merger, the scope for competition between the parties would increase or decrease compared with the level of pre-existing competition.

Theory of harm

13. We will consider whether the proposed merger could give rise to an SLC by removing a key competitive constraint for customers of linear playout services, leading to price rises and a degradation of quality of service, including the potential for future innovation.

14. We will assess whether the number of credible bidders for a customer's work may vary depending on the complexity of their requirements. For instance, those with more complex requirements may not have the same degree of choice as other broadcasters within the market and may therefore be more likely to be impacted by the removal of a key competitive constraint.

15. We may revise this initial view as our assessment of the proposed merger progresses. The identification of this theory of harm does not preclude an SLC being identified on another basis following further work by the CC and/or the receipt of additional evidence.

Proposed analysis

16. In assessing these theories of harm, we will examine:

    (a) the extent to which the parties are close competitors for some or all customers in the market in the absence of the proposed merger, in comparison to alternative suppliers;

    (b) the requirements of customers and how they might vary;

    (c) the sensitivity of customers to changes in price or quality;

    (d) the extent to which there are barriers and/or impediments to switching provider;

    (e) the costs and the likelihood of potential suppliers entering the market;

    (f) the feasibility and cost of customers opting to provide playout service themselves in-house; and

    (g) whether new technological or market developments may facilitate the emergence of new business models for providing playout services.

Countervailing factors

17. We will consider whether the following countervailing factors would prevent or reduce an SLC:

    (a) *Entry.* We will explore whether entry would be timely, likely and sufficient to prevent any SLC that might otherwise arise. In particular we will assess whether the proposed merger creates opportunities for competitors to expand or for new entrants to enter the market with alternative business models. As part of this process we will consider the existence of barriers to entry, evidence of providers' or potential providers' plans to enter or expand, history of past entry and exit, potential technological developments, and whether customers would be likely to sponsor entry into the relevant market.

    (b) *Buyer power.* We will assess whether the customers or potential customers of the merging entities have countervailing buyer power, whether any buyer power possessed by some customers would be sufficient to protect all customers from the effects of an SLC, and what the impact of the proposed merger is on any existing countervailing buyer power.

    (c) *Efficiencies.* We will examine any arguments made in relation to efficiencies arising from the proposed merger, and in particular whether any of these can be expected to offset the effects of any loss of competition resulting from the proposed merger.

Possible remedies and relevant customer benefits

18. Should the CC conclude that this proposed merger may be expected to result in an SLC in one or more markets, it will consider whether, and if so, which, remedies might be appropriate, and will issue a further statement.

19. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the proposed

merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

20. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on Wednesday 20 November 2013. Please email EricssonCreative@cc.gsi.gov.uk or write to:

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