

Completed acquisition by Information Resources, Inc. of Aztec Group

ME/6469-14

The CMA's decision on reference under section 22(1) given on 20 October 2014.
Full text of the decision published on 19 December 2014.

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Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Information Resources, Inc. (**IRI**) and Aztec Group (**Aztec**) (together, the **parties**) both supply retail measurement services (**RMS**) in the UK. IRI's UK turnover in 2013 was [REDACTED]. Aztec's UK turnover in 2013 was [REDACTED].
2. IRI acquired the entire issued share capital of Aztec from its owner Aegis on 3 September 2013 (the **Merger**). The Merger was examined by the Office of Fair Trading (**OFT**) and was subject to an application of appeal to the Competition Appeal Tribunal. On 4 July 2014, the OFT's decision was quashed by agreement between the parties to the appeal and the case was remitted to the Competition and Markets Authority (**CMA**). The CMA considers that the parties have ceased to be distinct and that the share of supply test is met. Therefore, it believes that it is or may be the case that a relevant merger situation has been created pursuant to section 23(2) of the Enterprise Act (the **Act**).
3. The CMA has assessed the financial position of one of Aztec's subsidiaries, Litmus, which has been [REDACTED], and concluded that the relevant counterfactual in this case is the pre-Merger level of competition.
4. As regards the frame of reference, the CMA has assessed the Merger on the basis of the supply in the UK of: (i) disaggregated electronic point of sale (**ePOS**) data from convenience retailers (disaggregated convenience ePOS data); (ii) disaggregated ePOS data from grocery multiple retailers (disaggregated grocery ePOS data); and (iii) aggregated ePOS data.
5. In relation to horizontal unilateral effects, the CMA assessed whether there is a realistic prospect that the Merger will lead to a substantial lessening of competition (**SLC**) in the provision of disaggregated convenience ePOS data, disaggregated grocery ePOS data, and aggregated ePOS data.
6. Based on the evidence available to it, the CMA found that there was limited competition between IRI and Aztec pre-Merger in the supply of disaggregated convenience ePOS data, disaggregated grocery ePOS data, and aggregated ePOS data. Indeed, Aztec faced little competition in the supply of disaggregated convenience ePOS data where its share of supply is 90 to 100%. After the Merger the merged entity will continue to face competition from Nielsen in the supply of disaggregated grocery ePOS data and aggregated ePOS data.
7. In addition, the CMA assessed whether IRI was a potential entrant in the supply of disaggregated convenience ePOS data. It found that there was no realistic prospect of this being the case. Likewise, the CMA investigated whether Aztec was a potential entrant in the supply of aggregated ePOS data where it had tried to develop a product. Based on the evidence available to it, the CMA concluded that Aztec lacked the capacity to develop a viable

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aggregated ePOS data product prior the Merger, and was therefore not a potential competitor.

8. The CMA therefore does not believe that there is a realistic prospect that the Merger will give rise to an SLC as a result of horizontal unilateral effects.
9. With respect to non-horizontal effects, the CMA assessed whether there is a realistic prospect that the Merger will give rise to an SLC as a result of conglomerate effects. The CMA applied a framework of assessment as to whether the merged entity would have the ability and incentive to foreclose Nielsen with the effect that competition would be substantially lessened as a result.
10. It therefore examined whether the merged entity would have the ability to foreclose A.C. Nielsen Company Limited (**Nielsen**), the other main UK supplier of such data, in the supply of aggregated ePOS data and/or disaggregated grocery ePOS data by way of adopting a number of different strategies, including a tying or bundling strategy or by reducing data compatibility between its products and Nielsen's products. Based on the evidence available to the CMA, it concluded that the Merger would not give rise to an ability to foreclose Nielsen.
11. It found that the relative sizes of the markets for disaggregated grocery ePOS data and/or the aggregated ePOS data on the one hand and disaggregated convenience ePOS data on the other hand differ considerably with the former being around 25 times larger than the latter. The CMA considers that customers value aggregated ePOS data and disaggregated grocery ePOS data significantly more than they value disaggregated convenience ePOS data. As such, they are less likely to switch away from their preferred supplier of the substantially more valuable data in order to retain the less valuable Aztec disaggregated convenience ePOS data. Further, customer representations to the CMA indicate quite substantial variation in how closely they perceive IRI's and Nielsen's grocery data products. This suggests that there will be a pool of Nielsen customers who will not wish to switch to IRI's product. Indeed, some large customers of Nielsen told the CMA that they would not be likely to switch to IRI.
12. Moreover, the CMA found that a small proportion of customers who buy grocery ePOS data from either IRI or Nielsen also buy disaggregated convenience ePOS data from Aztec, although these customers account for a larger proportion of the revenues of Nielsen and IRI because they tend to be the larger well-known global brands. However, the majority of grocery customers (also accounting for a majority of these markets by value) do not acquire disaggregated convenience ePOS data and so could not be targeted by a foreclosure strategy.
13. The evidence also indicates that Aztec's disaggregated convenience ePOS data is not a 'must have' product for some customers, including customers

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with significant sales in the convenience channel. For example, out of the list of customers which Nielsen [X] to switching to IRI, several do not currently purchase disaggregated convenience ePOS data from Aztec. In addition, the CMA notes that Nielsen, after the Merger, has expanded its convenience offering and has commenced competing for customers of convenience ePOS data.

14. As a result of its conclusion that the Merger would not confer on to the merged entity the ability to foreclose Nielsen it has not found it necessary to conclude on the incentive or effect.
15. Therefore, the CMA does not consider that there is a realistic prospect that the Merger will give rise to an SLC as a result of conglomerate effects.
16. The CMA has also considered whether it is realistic that the Merger would harm a group of customers who strongly value disaggregated convenience ePOS data and also purchase disaggregated grocery ePOS data and/or aggregated ePOS data. The CMA has examined whether such customers could be made worse off as a result of the Merger if IRI/Aztec were to bundle or tie disaggregated convenience ePOS data with disaggregated grocery ePOS data. As part of its assessment the CMA has examined the extent to which such customers would face a reduction of choice and to what extent IRI/Aztec's and Nielsen's product offerings to this group of customers would be more differentiated, resulting in them competing less closely.
17. On the basis of the evidence available to it, the CMA considers that any attempt to restrict access to this data post-Merger or to raise the price of a bundle of grocery and convenience data significantly above the pre-Merger level would likely result in the merged entity's customers ceasing to purchase its disaggregated convenience ePOS data offering. Further, as expenditure by customers on disaggregated convenience ePOS data is small relative to disaggregated grocery ePOS data and to aggregated ePOS data, the extent to which competition over the supply of disaggregated grocery ePOS data and/or aggregated ePOS data could potentially be weakened through leveraging market power in convenience data is limited at most.
18. The CMA has found that the Merger would not lead to a SLC in this regard.
19. This Merger will therefore **not be referred** under section 22(1) of the Act.

ASSESSMENT

Parties

20. IRI is a US-based provider of market research services, including retail measurement services of goods sold through convenience retailers, grocery multiples, and health and beauty retailers. It is owned by a private equity fund managed by New Mountain Capital, a US private equity group. IRI's UK turnover in 2013 was £[REDACTED].
21. Aztec is active in a range of market research activities. In the UK, it operates through two subsidiaries: Litmus MR Limited (Litmus) and SalesOut Limited (SalesOut). Litmus provides retail measurement services, in particular in relation to goods sold by convenience retailers and grocery multiples. SalesOut provides market research for consumer goods sold by food service providers and wholesalers such as cash and carry operators. Prior to its sale to IRI, Aztec was wholly-owned by Dentsu Aegis (**Aegis**). Aztec's UK turnover in 2013 was £[REDACTED] (including Litmus's UK turnover of £[REDACTED]).

Transaction

22. IRI acquired the entire issued share capital of Aztec from its owner Aegis on 3 September 2013 for a consideration of around £[REDACTED].

Jurisdiction

23. The OFT issued a decision in relation to the Merger on 13 December 2013 (the **OFT Decision**) which was published on 24 March 2014. Nielsen applied to have the OFT's decision reviewed by the Competition Appeal Tribunal (**CAT**) pursuant to section 120 of the Act on 17 April 2014.¹ IRI applied for permission to intervene on 8 May 2014 in support of the CMA which was granted on 14 May 2014.
24. On 20 May 2014, IRI provided further information to the CMA regarding the exclusivity arrangements between Aztec and some retailers. This information had not previously been provided to the OFT. As a result of the new information the CMA considered that the OFT Decision contained material errors of fact as to the relevant exclusivity arrangements. The CMA's view was that these errors of fact may have affected the OFT's decision as to whether or not to make a reference to the Competition Commission pursuant to section 22(1) of the Act. The CMA considered that the OFT Decision should

¹ The CMA came into operation on 1 April 2014 and the OFT closed on 31 March 2014. Therefore, the CMA not the OFT was the respondent.

be quashed and the matter remitted to the CMA for a new decision to be taken. Nielsen and IRI agreed.²

25. The CAT quashed the OFT Decision and the case was remitted to the CMA for reconsideration on 4 July 2014.
26. As a result of this Merger, IRI and Aztec have ceased to be distinct. IRI and Aztec overlap in the provision of disaggregated ePOS data (including convenience and grocery ePOS data) with an estimated combined share of supply in the UK in 2013 of approximately [35 to 45%], by value. The CMA therefore considers that the share of supply test in section 23 of the Act is met and that it is or may be the case that a relevant merger situation has been created.

Conduct of the CMA's investigation

27. The CMA sets out the conduct of its investigation as the Merger was reviewed by the OFT, its decision quashed by the CAT and remitted to the CMA for a new decision. Relative to the OFT investigation the CMA investigation has been undertaken by a different case team and a different decision maker.
28. The CMA received a complete merger notice on 22 August 2014. It made an initial enforcement order pursuant to section 72(2) of the Act on 1 August 2014 and a revised order on 28 August 2014. It also gave directions for the appointment of a monitoring trustee on 1 August 2014 in order to assist the CMA in assessing the extent of integration between the merger parties as well as to monitor compliance with the initial enforcement order.
29. The CMA reviewed the information that had been provided to the OFT during the course of that investigation. The CMA also requested that the parties provide a revised merger notice. The CMA contacted third parties who had responded to the OFT's enquiries to confirm that their previous submissions were an accurate and up to date representation of their views on competition before the Merger and it also asked further market testing questions. It also provided them with the opportunity to supply further information. The CMA contacted a number of additional third parties in addition to those contacted by the OFT.
30. In doing so the CMA has determined that some facts available to the CMA have changed from those available to the OFT. For example, the number and value of exclusive contracts between Aztec and convenience retailers and the

² [2014] CAT 8.

number of Nielsen's customers whom Nielsen [X] of switching to IRI in the event of IRI undertaking a tying or bundling strategy (discussed below).³

31. As regards the number of exclusive contracts that Aztec entered into with convenience retailers, the CMA asked the parties to provide information on key terms, including duration. It requested the parties to provide copies of the contracts. It also asked the monitoring trustee to review the information available on these contracts.
32. The CMA has reviewed the information available to the OFT as well as the additional information available to the CMA. To the extent still relevant, the CMA has taken into consideration the information that had been available to the OFT as part of the overall evidence forming the basis for this decision. The CMA has considered all of the evidence afresh.
33. In deciding whether to refer the case for a phase 2 investigation the CMA has been mindful of its legal duty to refer those cases where the CMA has a reasonable belief, objectively justified by relevant facts, that there is a realistic prospect that the Merger will lessen competition substantially.⁴ The CMA must make a reference when it believes that the merger is more likely than not to result in an SLC. The Act also contemplates reference at lower ranges of likelihood. If the CMA believes that the relevant likelihood is greater than fanciful, but below 50%, it has a wide margin of appreciation in exercising its judgement.^{5,6}

Counterfactual

34. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of a merger. However, the CMA will assess a merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic or where there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.⁷

³ Please see paragraph 225 for a more detailed description of Nielsen's [X] customers.

⁴ CMA, [Mergers: Guidance on the CMA's jurisdiction and procedure, CMA2](#), paragraph 3.7.

⁵ [OFT 1254, Merger Assessment Guidelines](#), A joint publication of the Competition Commission and the Office of Fair Trading (**Merger Assessment Guidelines**), at paragraph 2.6.

⁶ This interpretation of the reference test was confirmed by the Court of Appeal in *OFT v IBA Health Limited* [2004] EWCA Civ 142.

⁷ [Merger Assessment Guidelines](#), at paragraphs 4.3.5 *et seq.*

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35. The parties submitted that the relevant counterfactual in this case is that Litmus, a subsidiary of Aztec active only in the UK, would have [REDACTED].
36. The parties submitted evidence that Litmus was [REDACTED] and [REDACTED]. The parties also submitted that it was experiencing [REDACTED].
37. The CMA assesses exiting firms or divisions on the basis of whether such exit would be inevitable, there were no substantially less anti-competitive buyers of the firm or its assets and whether the exit would have been substantially less anti-competitive than the merger being assessed.⁸
38. The parties submitted that Litmus' [REDACTED]. IRI's due diligence on the Litmus business indicated that it had [REDACTED]. It was [REDACTED]⁹. In Litmus' 2012 financial statement, [REDACTED]. The parties submitted that since that time Aegis had [REDACTED]. This was confirmed by Aegis.
39. The parties emphasised a number of practical elements to Litmus's difficulties. The parties argued that Litmus had been attempting [REDACTED] on the aggregated data project. This was supported by documentary evidence of [REDACTED] provided by the parties, and by customer comments received directly by the CMA. The parties submitted that this had led it to become [REDACTED] in areas of activity outside of aggregated ePOS data. Further, the parties submitted that Litmus had [REDACTED].
40. The CMA has not received evidence that Aegis had attempted to sell Litmus separately from the Aztec business as a whole (ie from SalesOut). The parties submitted that IRI [REDACTED].
41. On the basis of the information available to it, the CMA cannot rule out the possibility that absent the Merger Aegis would have tried to sell Litmus as a standalone business. Further, even if [REDACTED], the CMA has not received compelling evidence that there would not have been any less anti-competitive buyers for Aztec as a whole [REDACTED].
42. The CMA has also assessed whether the Merger has resulted in a loss of a potential entrant in the supply of aggregated ePOS data where it found that Aztec was not a realistic entrant into the supply of aggregated ePOS data.¹⁰ This is discussed further in the competitive assessment in paragraphs 113 ff.
43. In this case the evidence available to the CMA indicates that the relevant counterfactual should be the pre-Merger conditions of competition.

⁸ [Merger Assessment Guidelines](#), at paragraph 4.3.10.

⁹ See paragraph 2.10 of the parties' submission to the CMA.

¹⁰ [Merger Assessment Guidelines](#), paragraph 4.3.19

Product frame of reference

44. The CMA considers that market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.¹¹
45. In the UK, the parties (IRI and Aztec, through Litmus) overlap in the supply of market research data that relates to the sale of fast moving consumer goods (**FMCG**), in particular ePOS data from retailers. In addition, Aztec (through SalesOut) supplies similar data that it collects from wholesalers. IRI does not provide data collected from wholesalers.
46. Purchasers of these market research services tend to be major suppliers of FMCG. Some retailers also purchase the data or receive significant analysis and insight as part of their contract to supply data. In this decision, this is referred to as a 'saleback agreement'. FMCG manufacturers as well as retailers use market research data to assess demand for their products and for competing products, to develop strategies to engage more effectively with consumers and to help them better negotiate with retailers and wholesalers.

Types of data

47. Market research encompasses a wide range of products and services aimed at measuring and understanding customer attitudes, sales and purchasing behaviour, market trends and industry dynamics. Market research data may be collected through a number of different means, including:
 - from shop tills at the point of sale located at retailers, including multiple retailers and convenience stores (ePOS or transactional data)¹² and equivalent data from wholesalers
 - through loyalty cards

¹¹ [Merger Assessment Guidelines](#), at paragraph 5.2.2.

¹² 'Transactional data' differs from ePOS data in that it contains more detailed information collected at the point of sale (such as which products are bought together). Litmus provides this data to a limited extent. One competitor suggested that transactional data is an input into ePOS data and that it is a substitute. The CMA notes that the inclusion or exclusion of transactional data in the relevant market does not make a material difference to the competitive analysis and so it is not considered further.

- through consumer panels, which typically collect purchase information by means of scanners provided to household panel members who scan items purchased
 - through customised research¹³
48. The parties submitted that there may be some substitutability between data sourced through these different methods and ePOS data collected and sold by the parties.
49. In a previous decision, the European Commission (**EC**) noted a distinction between 'retail tracking' of consumer purchases at the point of sale through scanning technology and/or manual audit (also referred to as ePOS data), and consumer panels and customised research. It did not however conclude on a precise product market definition.¹⁴
50. Evidence received from third parties¹⁵ suggested that from a demand-side perspective, loyalty card, consumer panel, and customised research data may be substitutable for ePOS data only to a limited extent. The vast majority of customers indicated that they would not switch to other types of data in response to a five per cent rise in the price of ePOS data.
51. The parties submitted that the merged entity will be constrained by providers offering products which are based on other types of data, namely loyalty card data, transactional data, consumer panels, and customised research.
52. Based on the evidence available to it, including the responses received from third parties, the CMA considers that such data provides some constraint on the parties, but that this constraint is limited.
53. As a result, the CMA has considered the supply of ePOS data separately from other types of data. However, the constraint on the parties posed by other types of data is considered further in the competitive assessment.

Aggregated and disaggregated ePOS data

54. There are two main types of ePOS data. First, data from a single retailer may be sold in order to help a brand owner understand its sales patterns within a particular retailer (which may include information on sales in individual stores

¹³ Litmus provides this service on a very limited basis and IRI does not provide this. These are bespoke projects undertaken for specific clients based on one-off data sets.

¹⁴ Case No. COMP/M.2291, *VNU/Nielsen*, European Commission decision of 12 February 2001.

¹⁵ The CMA contacted third parties who had previously responded to the OFT to confirm that their previous submissions were an accurate representation of competition before the Merger.

belonging to that retailer). This data is referred to as disaggregated ePOS data.¹⁶

55. Second, the data from each retailer (and potentially wholesaler) may be combined, sometimes along with sample surveys and additional modelling, to account for retailers where data is unavailable, in order to provide brand or category level totals for the UK as a whole (or for particular types of sales channel). This data is referred to as aggregated ePOS data.
56. The parties submitted that aggregated and disaggregated ePOS data serve different purposes and should therefore be considered as complements, rather than substitutes. They stated that aggregated ePOS data allows a brand to analyse its sales across the UK in comparison with its competitors, while disaggregated ePOS data allows it do so within particular retailers or stores.¹⁷ The parties argued that aggregated and disaggregated ePOS data are not functionally interchangeable and are commonly purchased together.
57. Responses from the OFT's market investigation corroborated the parties' submission that aggregated and disaggregated ePOS data were not considered to be substitutable from a demand-side perspective. Most third party respondents said that they would not switch between disaggregated and aggregated ePOS data in response to a price rise in relation to either aggregated or disaggregated ePOS data. They also indicated that they did not view these products as substitutes for each other.
58. Although the boundaries of the frame of reference are generally determined by reference to demand-side substitutability, the CMA may, where appropriate, aggregate several narrow frames of reference into one broader frame of reference on the basis of supply-side factors.¹⁸
59. The parties submitted that it would be difficult for a supplier of disaggregated ePOS data to begin supplying aggregated ePOS data. They argued that different technologies are needed to produce aggregated and disaggregated ePOS data, aggregated ePOS data being more complex to create. The CMA

¹⁶ Where the data in question is brand-level and/or category-level detail, but at retailer level, this is known as 'named account data'; where the data is brand level across many stores it is sometimes known as 'disaggregated data'. Suppliers almost always provide both, as the disaggregated data is an input into their named account data. This distinction has not been considered further for this reason.

¹⁷ They explained that disaggregated ePOS data could be used to identify problems in the supply chain: for example, if sales fall sharply in a particular store, this may indicate a stock problem which can then be investigated by the manufacturer.

¹⁸ This would apply where: production assets can be used by firms to supply a range of different products that are not demand-side substitutes and firms can shift capacity between these products relatively easily; and the same firms compete to supply these different products and the conditions of competition in the supply of each are the same. See [Mergers Assessment Guidelines](#), paragraph 5.2.17.

notes that this is supported by evidence of the difficulties faced by Aztec in its efforts to produce such data, as well as by responses from competitors.

60. As a result, the CMA has considered the supply of aggregated and disaggregated ePOS data separately. The remainder of this section focuses on disaggregated ePOS data where the parties' activities overlap.

Disaggregated ePOS data

Grocery multiple retailers and convenience retailers

61. Different customers of named account/disaggregated ePOs data will have a different focus, depending on whether they are interested in grocery or convenience retail. Producers of goods sold in supermarkets typically will have a particular demand for reports based on data sourced from supermarkets. Even where a customer's product is sold in both supermarkets and convenience or impulse stores, it may be the case that their sales are considerably stronger in one retail format than the other. For example, the parties submitted that tobacco companies make a majority of their sales from the convenience/impulse channel. This will affect their demand for ePOS data.
62. Important retailers in the convenience/impulse segment include the large convenience store chains such as Martin McColl's, Spar, Nisa, petrol station forecourt stores and a wide range of smaller operators.
63. The convenience format stores of the grocery retailers (for example, Tesco Express and Sainsbury Local) are regarded by customers as grocery ePOS data. Nielsen submitted that a typical FMCG supplier will have a Sainsbury team that negotiates terms with Sainsbury. That team will want access to all Sainsbury ePOS data across all store formats. Equally, a typical FMCG supplier will have a convenience/impulse team that negotiates with dedicated convenience retailers such as McColl's – that team will not need or want access to Sainsbury convenience format store ePOS data.
64. Nielsen and IRI both sell named account data for the convenience format stores of grocery retailers (eg Tesco Express or Sainsbury's Local).
65. The parties submitted that their product offering is differentiated. Aztec is focused on the convenience segment, where it has a number of exclusive contracts with retailers for the purchase of their sales data for use primarily in its disaggregated ePOS product. In contrast, IRI focuses on providing ePOS data from grocery multiple retailers and health and beauty retailers.

66. On the demand side, third parties who responded to the OFT's market investigation did not consider disaggregated convenience ePOS data and disaggregated grocery ePOS data to be substitutable for one another. Some customers indicated that grocery and convenience ePOS data were complements given that brands are generally interested in data regarding sales of their products across all sales channels. Third party evidence gives a mixed picture, with customers that expressed a view often seeing the data as neither substitutes nor complements for each other, given that they are used in separate parts of the business. Several customers told the CMA that the data was used in separate parts of the business.
67. On the supply side, although it is possible for a supplier focused on disaggregated grocery ePOS data to begin supplying disaggregated convenience ePOS data, the CMA notes that the same firms do not compete to supply these two product offerings (for example, IRI is not present in the supply of disaggregated convenience ePOS data to any significant extent).¹⁹ Nielsen submitted that it is [X] it does not have the access to the retailer data that Aztec does.
68. The CMA has therefore considered separately the supply of disaggregated convenience ePOS data and the supply of disaggregated grocery ePOS data.

Wholesale and retail disaggregated ePOS data

69. Aztec (through SalesOut) provides disaggregated ePOS data from wholesalers, but IRI does not. The parties submitted that the supply of wholesale data and retail data (either disaggregated convenience ePOS data or aggregated ePOS data) should be considered as separate markets.
70. The parties submitted that on the demand side the customers of wholesale data tend to be different to those of retail data, as the products sold through the wholesale channel are often different to those sold through the retail channel. The parties submitted that customers of wholesale data do not (as with retail data customers) generally want insights into end consumer behaviour, but instead into the efficiency of their supply chain.
71. In support of the parties' submissions, third parties who responded to the OFT's market investigation did not generally consider wholesale data and retail data to be substitutes for one another. In certain circumstances wholesale data complements retailer data, in particular for that segment of convenience retail which is too fragmented for data collection to be practical

¹⁹ Nielsen has however recently expanded its offering – see paragraph 151.

(that is, independent retailers that purchase stock from wholesalers), and that as a result Aztec [✂].²⁰

72. The parties also presented supply-side arguments that the competitor set differs for wholesale and retail data, that the pricing mechanism is different, and that the 'go to market' approach is different. While retail data market research is sold to customers by providers such as Nielsen, IRI and Aztec, wholesale data is often provided directly to users by the wholesalers themselves (using SalesOut's services to do so), and included in the contracts between wholesalers and their major suppliers rather than through separate negotiations between manufacturers and market research providers.
73. Based on evidence provided by the parties and supported by third parties, the CMA considers disaggregated ePOS data from retailers should be considered separately from wholesale data. The parties' activities do not overlap in the supply of wholesale data.

Summary on product market definition

74. The CMA has therefore assessed the Merger on the basis of the following product frames of reference:
- (a) The supply of disaggregated convenience ePOS data.
 - (b) The supply of disaggregated grocery ePOS data.
 - (c) The supply of aggregated ePOS data (in relation to potential competition and non-horizontal effects only).
75. The CMA notes that it will not assess the supply of wholesale data in this case because IRI does not provide this type of data. Therefore, there is no overlap in the parties' activities in this respect and there was insufficient evidence to suggest that there could be any potential competition or non-horizontal effects arising in this regard.

Geographic frame of reference

76. The EC²¹ has assessed similar market research activities at a national level, although the precise market definition was left open.

²⁰ Aztec presentation (annexe 22.1 provided by the parties in response to questions of 14 October 2013), page 7.

²¹ Case No. COMP/M.5232, *WPP/TNS*, European Commission decision of 23 September 2008.

77. In this case, the parties submitted that, in the absence of competition concerns, the geographic market definition can be left open. In line with the EC, the parties submitted that the geographic scope is the UK.ⁱ
78. Responses from third parties to the OFT's and CMA's market investigations supported assessing the Merger at a national level. Customer responses indicated that data was usually aggregated to a national read, and covered retailers operating throughout the country. The CMA's market investigation confirmed this view, and also found evidence suggesting purchasing decisions are made at a national level. The CMA has therefore assessed the Merger on the basis of the supply in the UK of all three product categories listed in paragraph 74.

Competitive assessment

79. The CMA has assessed whether there is a realistic prospect that the Merger will result in an SLC in the supply of disaggregated convenience ePOS data, disaggregated grocery ePOS data and/or aggregated ePOS data as a result of: (1) horizontal unilateral effects or (2) non-horizontal effects.

Shares of supply

80. The parties submitted that their combined share of supply of disaggregated ePOS data (for both grocery multiples and convenience retailers together but excluding aggregated ePOS data) was [30 to 40%] in 2014, [35 to 45%] in 2013 and [35 to 45%] in 2012, with an increment of [0 to 10%].²²
81. Separate shares of supply for disaggregated grocery ePOS data and disaggregated convenience ePOS data were not provided by the parties. The CMA estimated that the parties' combined share of supply was [30 to 40%] in the supply of disaggregated grocery ePOS data in 2013 (Nielsen's share of supply was [50 to 60%] and others [0 to 10%]).²³
82. The CMA understands from third party replies during its market investigation that Aztec supplied the vast majority of disaggregated convenience ePOS data prior to the Merger.²⁴ Neither IRI nor Nielsen considered that they competed in the supply of disaggregated convenience ePOS data pre-Merger. The parties submitted that IRI had only one contract to supply convenience data, and that this data was from only one convenience retailer ([X]). Nielsen

²² The CMA understands that this estimated reduction in the merged entity's share of supply is partly attributable to a number of Nielsen's recent customer wins, including [X].

²³ This has been calculated by deducting Litmus's 2013 UK turnover.

²⁴ One third party stated Aztec provided 'almost the entirety' of convenience sector data.

stated that it did not compete in the supply of disaggregated convenience ePOS data and considered that Aztec held a high market share.

83. In their responses to the OFT and CMA, the vast majority of third parties considered that neither IRI nor Nielsen competed for the supply of disaggregated convenience ePOS data pre-Merger.²⁵ The value of the contracts attributable to the exclusive agreements Aztec held in that segment in 2013 amounted to [40 to 60%] pre-Merger and has since dropped to approximately [40 to 60%] of convenience ePOS sales (as a result of Aztec entering into non-exclusive agreements with [REDACTED]).²⁶
84. The CMA therefore considers, based on the evidence available to it, that Aztec was the main supplier of disaggregated ePOS data from convenience retailers, with limited competition pre-Merger from any other provider (including Nielsen or IRI).
85. Separate shares of supply estimates were also not provided for aggregated ePOS data from grocery multiple retailers. The CMA understands from replies to its market investigation that the supply of such data was broadly split evenly between only two suppliers, Nielsen and IRI, and that Aztec was active to a limited extent, if at all.

Horizontal unilateral effects

86. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices on its own and without needing to coordinate with its rivals.²⁷ The CMA has considered theories of harm relating to the loss of existing competition between the parties as well as any elimination of potential competition as a result of the Merger in the supply of each of disaggregated convenience ePOS data, disaggregated grocery ePOS data, and aggregated ePOS data.
87. The CMA has assessed whether the loss of any existing competition, as well as potential or increased future competition between the parties resulting from the Merger would allow the merged entity to unilaterally raise prices above those that would prevail absent the Merger, or to unilaterally deteriorate its non-price competitive offering.

²⁵ Internal business documents provided by the parties point to IRI and Nielsen having access to convenience data pre-Merger covering approximately [REDACTED] of sales made in that segment (data coverage refers to the proportion of data over the whole convenience sector which a provider has access to).

²⁶ IRI [REDACTED].

²⁷ [Merger Assessment Guidelines](#), at paragraph 5.4.1.

Closeness of competition between the parties - tender data covering different categories of ePOS data

88. Some of the evidence available to the CMA indicates that the parties may have competed head-to-head to some extent pre-Merger. The CMA received information from IRI relating to the contracts worth more than £40,000 for which it had bid or for which it had been involved in a negotiation during the past three years, as well as instances where IRI had lost a contract to Aztec outside of a bidding process. This information relates to all contracts – rather than to specific data types – due to the prevalence of contracts and negotiations involving multiple data types (for example, both aggregated ePOS data and disaggregated ePOS data from grocery multiple retailers).
89. Based on the evidence submitted by IRI, Aztec bid in [fewer than ten] of [more than 100] contracts for new or renewed business worth more than £40,000 where IRI had also bid between January 2010 and January 2013. Out of those [fewer than ten] tenders Aztec went on to win [X].²⁸ Very few of IRI's bids included convenience ePOS data. Aztec does not record bidding information and so the data includes only those instances where IRI is aware it has competed against Aztec. However, an analysis of customers lost and gained by the parties shows that only [X] switched [X] purchase of disaggregated ePOS data from IRI to Aztec (outside of a bidding process) in the time period covered by the bidding data. The bidding data also shows that Nielsen is a strong competitor to IRI: Nielsen appears [X] for manufacturer/brand data contracts. This data strongly suggests that pre-Merger competition between Aztec and IRI was weak. Other competitors who won contracts according to the data available to the CMA include Kantar, Brandview and REL, which, based on the evidence available to the CMA²⁹ have won at least [fewer than ten] tenders for retailer or brand customers.
90. The parties submitted that in each of the [fewer than ten] cases where the parties bid against one another, the circumstances indicate it is unlikely that Aztec provided a competitive constraint on IRI or vice versa: the [X] where Aztec won [X] related to the provision of data to a [X] and the parties submitted that the contract was won [X]. More specifically, the parties submitted that Aztec provided the data to cover the convenience sector, Nielsen provided the data to cover the grocery sector.³⁰ The parties submitted that the tobacco sector was not a sector where IRI competed strongly, and

²⁸ The parties submit that in [fewer than ten] cases the customer did not consider Litmus capable of meeting the aggregated element of the contract. Among other contracts for which IRI bid but Litmus did not, the large majority included aggregated ePOS data and disaggregated grocery ePOS data. Very few included disaggregated convenience ePOS data.

²⁹ See Annex 5.5. of the parties' submission as well as CRA's analysis dated 23 June 2014.

³⁰ Parties' submission, paragraph 5.29.

that it [REDACTED]. In respect of the other contracts where Aztec bid against IRI, the parties submitted and third parties confirmed that Aztec was not considered to be a serious contender because it was not perceived to have the technical capability to produce the product required.

91. The tender data summarised above corroborates the view that, pre-Merger, the parties did not compete closely across multiple categories of ePOS data and that there was only very limited actual competition between Aztec and IRI.

Disaggregated grocery ePOS data

92. The CMA has assessed to what extent the Merger may give rise to concerns in relation to any loss of competition in the supply of disaggregated grocery ePOS data.
93. Based on the evidence available to it, the CMA notes that Aztec was focused primarily on the supply of disaggregated convenience ePOS data where IRI had a very limited presence given its focus on the supply of grocery ePOS data.
94. Aztec was also active in the supply of disaggregated ePOS data from grocery multiple retailers. The parties submitted that, prior to the Merger, Aztec had [70 to 80%] coverage of the grocery multiple sector³¹ and that Aztec supplied disaggregated grocery ePOS for [REDACTED] of its [REDACTED]customer contracts. The parties overlapped (at least) in the supply of data from [REDACTED]. In the [fewer than ten] instances in which IRI and Aztec had bid for the same contracts, Aztec's bid included disaggregated grocery ePOS data. However, the parties submitted that Aztec was a weak competitor in this area, highlighting the tender data summarised above, and pointing to Aztec's offer being unattractive to many customers. In particular, the parties submitted that the majority of customers wish to purchase aggregated grocery ePOS data and disaggregated grocery ePOS data from the same supplier, for instance for data compatibility reasons. Given Aztec's inability to provide aggregated grocery ePOS data, it had not been in a position to compete strongly for the business of these customers.
95. In support of this argument, the parties submitted that [REDACTED] per cent of IRI's clients purchase both aggregated and disaggregated grocery ePOS data from the same supplier. Responses from customers and competitors during the CMA's market investigation also supported the parties' submissions to some

³¹ IRI and Nielsen have 100 per cent coverage of retail sales in the grocery multiples segment. See 'Project diamond' presentation to the board of IRI directors (August 9 2013), page 16.

extent. A significant number of customers who replied during the CMA's market investigation stated that Aztec was a weak competitor in this segment. However, some customers noted that it was not essential that disaggregated ePOS data is purchased alongside aggregated ePOS data.³² A small number of customers indicated that the parties competed in the supply of disaggregated grocery ePOS data and that the Merger would remove an important competitor to IRI, noting a reduction in the level of choice and competition in relation to the supply of disaggregated grocery ePOS data.

96. The parties also submitted that, in general, where Aztec provides disaggregated grocery ePOS data, it is as an adjunct to its provision of disaggregated convenience ePOS data. The parties submitted that Aztec's supply of disaggregated grocery ePOS data is focused on customers for whom convenience data is especially important, in particular to tobacco brands. In support of this, the parties provided information showing that only [REDACTED] of Aztec's contracts pre-Merger include only disaggregated grocery ePOS data without disaggregated convenience ePOS data. Further, the CMA understands that the majority of Aztec's revenue attributable to data from disaggregated grocery ePOS data related to tobacco products. The CMA considers this supports the parties' view that Aztec's sales of disaggregated grocery ePOS data for grocery multiple retailer are made as an adjunct to contracts focused on disaggregated convenience ePOS data
97. There is some evidence that Nielsen competed to a limited extent with Aztec pre-Merger in relation to disaggregated grocery ePOS data. Nielsen described [fewer than ten] occasions on which it has faced competitive interaction with Aztec³³ and submitted that it [REDACTED] as a result of Aztec's exclusive contracts.³⁴
98. In summary, the CMA considers that, although Aztec has some presence in the supply of disaggregated grocery ePOS data, the extent of any constraint it may have on IRI is very limited and any competition lost as a result of the Merger would not be material. As a result, the CMA does not believe that there is a realistic prospect of the Merger resulting in an SLC as a result of unilateral effects in the supply of disaggregated grocery ePOS data.

³² [REDACTED].

³³ Nielsen's submission to the OFT.

³⁴ Nielsen also noted that [REDACTED]the non-convenience/impulse RMS business of consumer packaged goods with large convenience/impulse channel revenues was [REDACTED].

Disaggregated convenience ePOS data

99. The CMA has assessed to what extent the Merger may give rise to concerns in relation to any loss of competition in the supply of disaggregated convenience ePOS data.
100. As noted earlier, notwithstanding the fact that several brand owners with a strong presence in the convenience sector did not purchase Aztec's disaggregated convenience ePOS data product, the CMA understands that Aztec has a strong position in the sale of disaggregated convenience ePOS data. According to the parties, the overall coverage of its data, across convenience sales, is 90³⁵ to 100 per cent.³⁶ Aztec also has a very high market share in the sale of disaggregated convenience ePOS data. However, as discussed in paragraph 156 below, several of the customers Nielsen regards [redacted] are also not purchasing from Aztec and [redacted] has recently decided not to renew their contract with Aztec.
101. Pre-Merger Aztec had [redacted] exclusive contracts with convenience retailers. Their expiration dates range from [redacted], and some contracts had been very recently renewed. The value of the contracts attributable to the exclusive agreements Aztec held in that segment in 2013 amounted to [40 to 60%] pre-Merger and has since dropped to approximately [40 to 60%] per cent of convenience ePOS sales (as a result of Aztec entering into non-exclusive agreements with [redacted]).
102. According to the parties, [redacted] of Aztec's contracts include disaggregated convenience ePOS data, and more than [redacted] of its revenue is derived from sales of this data. In contrast, IRI and Nielsen had a very limited presence in the supply of disaggregated convenience ePOS data from convenience retailers.³⁷ IRI's internal documents show that it has data covering [redacted] of the segment,³⁸ but on a disaggregated basis IRI currently sells disaggregated convenience ePOS data from only [redacted]. The parties submitted that this is a minor adjunct to the multiple grocery retailer data provided in the same contract. The [redacted] did not raise concerns about the Merger. Disaggregated ePOS data from convenience retailers was included in [redacted] of the contracts for which IRI bid in the last three years.

³⁵ Aztec presentation annex 22.1 page 7 around [redacted] per cent.

³⁶ 'Project diamond' presentation to the board of IRI directors (August 9 2013), page 16; the CMA understands from the parties' internal documents that Aztec's [redacted].

³⁷ The CMA understands that both IRI and Nielsen were more active in this sector until 2008 when Aztec ended its agreements with both firms to on-supply this data.

³⁸ 'Project diamond' presentation to the board of IRI directors (9 August 2013), page 16. This essentially refers to the proportion of the convenience sector it obtains information on – no inference on market share can be drawn from this figure.

103. The parties submitted that, pre-Merger, with the exception of [REDACTED], IRI used this data [REDACTED], since it lacked the expertise to do so. In relation to the [REDACTED] where IRI provided disaggregated convenience ePOS data, IRI submitted that it had purchased this retailer data in the first place [REDACTED].
104. The absence of any material existing competition from IRI or Nielsen pre-Merger was supported by customers, who frequently noted that for much of the data provided by Aztec, neither IRI nor Nielsen competed. The CMA notes that, more recently, Nielsen has started a disaggregated ePOS convenience segment offering. Nielsen submitted that it started supplying disaggregated ePOS data from one convenience retailer (BP) in September 2009, and from additional retailers in March 2014 (Budgens) and September 2014 (Bargain Booze, WH Smith and One Stop). It also told the CMA that it is in negotiations with [REDACTED] possible customers for the purchase of disaggregated ePOS data from some convenience retailers (BP, Budgens, WH Smith, One Stop and Bargain Booze) available since September 2014. Nielsen has also sent commercial proposals for the supply of this data in the UK to a number of customers [REDACTED].

Potential competition in relation to disaggregated convenience ePOS data

105. The CMA has also assessed to what extent the Merger may give rise to concerns in relation to any loss of potential competition in the supply of disaggregated ePOS data.
106. The CMA has considered to what extent the Merger may remove a potential bidder for the purchase and sale-back of the data to retailers and to what extent this may result in the retailer having less choice about the provider from whom it receives such services. Customers of disaggregated ePOS data include both brand-owners and, in some cases, the retailers themselves. In response to the CMA's market investigation a number of concerns were raised by retailers about their negotiating strength relative to the parties and the effects this may have on the data received by brand-owners. The CMA considered whether any loss of potential competition between the parties may lead to a deterioration of the competitive offer to retailers that purchase data, even if these 'purchases' are part of a wider agreement in which the retailer is itself paid for the use of its data. However, the parties submitted that they did not, pre-Merger, compete in the sale back of data to retailers, since IRI held [REDACTED], and Aztec held [REDACTED]. This was supported by evidence from retailers suggesting that Nielsen is particularly strong in the sale back of data.
107. In addition, where IRI had bid for the purchase of convenience data (and not won), this could suggest that IRI may have been a potential competitor in the supply of this data that could have exerted a constraint in the future. This

includes the possibility that bids for non-exclusive purchases by IRI and Nielsen could win against an exclusive bid by Aztec, giving IRI access to more convenience data which it could then supply on to brands and retailers. The CMA received some concerns that the merger would remove potential competition.

108. The parties submitted that IRI was not a likely potential competitor in the supply of disaggregated ePOS data from convenience retailers. The parties noted that [REDACTED]. Even where convenience retailers have no exclusive contract with Aztec, [REDACTED], demonstrating the absence of any commitment or willingness to supply disaggregated convenience ePOS data.
109. The parties also submitted that IRI had no interest in the convenience sector given that its roots were in the provision of data relating to the health and beauty sector and that the development of its business in those areas, which include products generating substantial sales in supermarkets, had been its focus for 20 years allowing it to develop its wider supermarket offering.
110. The parties submitted that IRI had never sought to develop a disaggregated convenience ePOS data offering and that, as such, there were no internal documents discussing any intentions in this regard. The parties also noted that had it wished to enter this segment organically it would have had to develop an entirely new customer base in order to monetise its investment in the data and would have had to develop the expertise necessary to bring an offering to the market in this segment. According to the parties, this would have not been an attractive route for IRI since it would have required even more investment and distracted it from its core competencies.³⁹
111. The CMA notes that, given the limited number of suppliers active in the supply of ePOS data generally, IRI is potentially one of very few likely suppliers of convenience data. However, the evidence shows that IRI has negligible current activity in the convenience sector. There is no evidence to suggest that it had any intention of becoming more active in this area absent the Merger.
112. In conclusion, therefore, the CMA does not believe that there is a realistic prospect that the Merger will result in a substantial lessening of either actual or potential competition in the supply of disaggregated grocery or convenience ePOS data.

³⁹ Parties' Merger Notice, at paragraph 5.26.

Aggregated ePOS data

113. The CMA has also assessed to what extent the Merger may give rise to concerns in relation to any loss of actual or potential competition in the supply of aggregated ePOS data.
114. The parties submitted that, pre-Merger, Aztec had bid for and secured a very limited number of contracts for the supply of aggregated ePOS data.ⁱⁱ However, given that it did not have a sufficiently developed product, it had been unable to provide any product based on aggregated data to any client. As such, the parties submit that they did not compete in relation to aggregated data pre-Merger. The vast majority of customers who responded to the OFT's investigation were not concerned about a reduction in competition in relation to aggregated ePOS data, thereby supporting the parties' submissions in this regard.
115. Overall, the evidence available to the CMA supports the parties' submissions. As such, the CMA does not consider that there is a realistic prospect that the Merger will give rise to an SLC in the supply of aggregated.

Potential competition in relation to aggregated ePOS data

116. The parties submitted that, pre-Merger, Aztec had bid for and secured a very limited number of contracts for the supply of aggregated ePOS data.ⁱⁱⁱ However, given that it did not have a sufficiently developed product, it had been unable to provide any product based on aggregated data to any client. As such, the parties submit that they did not compete in relation to aggregated data pre-Merger. The vast majority of customers who responded to the OFT's investigation were not concerned about a reduction in competition in relation to aggregated ePOS data, thereby supporting the parties' submissions in this regard.
117. Overall, the evidence available to the CMA supports the parties' submissions. As such, the CMA does not consider that there is a realistic prospect that the Merger will give rise to an SLC in the supply of aggregated ePOS data.
118. The parties submitted that, despite Aztec's attempts [REDACTED]. The parties submitted that [REDACTED] aggregated ePOS data [REDACTED].⁴⁰ As outlined above, the parties point to Aztec having [REDACTED].
119. However, the parties' internal documents provided to the CMA suggest that Aztec had the clear intention of providing aggregated ePOS data for several

⁴⁰ For IRI, [REDACTED]% of its clients purchase aggregated and disaggregated data together as a combined product.

years. For example, the CMA notes an Aztec sales-pitch presentation in which it implies that the firm is currently offering to supply brands with total marketplace information for some sub-segments. It also states that Aztec had 'a vision to cover the entire UK marketplace.'⁴¹ However, there was some indication that, even during due diligence undertaken as part of the purchase of Aztec pre-Merger, it was unclear to IRI to what extent to Aztec would be able to provide aggregated ePOS data.⁴² The CMA notes that Aztec in the UK [REDACTED] and had a contract with [REDACTED], an existing convenience customer, to produce an aggregated ePOS product.

120. In relation to the [REDACTED] product which Aztec has been endeavouring to produce, Aztec had been [REDACTED]. The parties have informed the CMA that despite the aggregated ePOS product relating to [REDACTED] and being limited in scope, Aztec did not have the capability to produce it. They submitted that the production of aggregated ePOS data is complex and labour intensive, and that it was [REDACTED] for an organisation of the size and resources of Aztec to undertake.
121. The parties described a number of lengthy and difficult stages which, pre-Merger, remained to be completed before Aztec could have provided even a [REDACTED] product, and submitted that even with significant funding it would have been [REDACTED] for Aztec to complete these stages. For example, the parties submitted that an aggregated ePOS product requires coding of items' barcodes, a lengthy and labour intensive process which IRI had streamlined to a high degree of expertise over the past 20 years. While many steps in the coding process require human intervention, IRI has developed an automated coding process which populates attributes for a barcode directly from the web and/or product images. In contrast, Aztec [REDACTED]. The parties submitted that a [REDACTED] resources and investments would have been required to make any inroads into this [REDACTED] – particularly as Aztec, pre-Merger, lacked the level of expertise and automation that IRI has developed over many years.
122. Aztec had already received [REDACTED] from Aegis, according to the parties. The parties submitted that [REDACTED]. However, the parties submitted that the parent company (and wider group) did not have the necessary expertise to support Aztec to complete its aggregated ePOS product. Aztec had made previous failed efforts to draw on that expertise. Moreover, Aegis provided evidence to the CMA that absent the Merger, it would [REDACTED].
123. The parties also submitted that since IRI had taken control of Aztec it had become clear that there was no prospect that Aztec could have moved from the status of the project at the time of the Merger to bring a product to

⁴¹ Aztec presentation Annex 22.1 page 3.

⁴² See Annex 5 to the parties' submission.

market.⁴³ They submitted that IRI had had to take full control of the project and deploy its own resources, technology and expertise in order to develop a product in this segment that could be brought to the market. According to the parties, [REDACTED] to undertake the steps required for a product to be brought to market.

124. In light of the evidence above, including Aztec's [REDACTED] to produce aggregated ePOS data pre-Merger, the CMA considers that the Merger will not result in a realistic prospect of a substantial loss of potential competition relating to the supply of aggregated ePOS data.
125. The CMA therefore does not believe that there is a realistic prospect that the Merger will result in an SLC arising from horizontal effects.

Non-horizontal effects

126. The Merger brings together Aztec's activities in the supply of disaggregated convenience ePOS data with IRI's activities in the supply of disaggregated grocery ePOS data and aggregated ePOS data. The Merger therefore increases the set of products that can be provided by the same firm.
127. Following third party concerns, the CMA has assessed the possibility of the Merger giving rise to conglomerate effects. In particular, it was put to the CMA that:
- IRI/Aztec would be able to tie/bundle (by a variety of means) Aztec's disaggregated convenience ePOS data with IRI's disaggregated grocery ePOS data and/or its aggregated ePOS data
 - IRI/Aztec would be able to degrade the compatibility of its disaggregated convenience ePOS data with Nielsen's disaggregated grocery ePOS data⁴⁴
128. For ease of reference, tying, bundling or degradation of data compatibility strategies are collectively referred to as 'foreclosure strategies' for the purposes of this decision unless otherwise specified.
129. Conglomerate effects may arise in mergers of firms that are active in the supply of goods that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's

⁴³ Parties' Merger Notice, at paragraph 5.16.

⁴⁴ Alternatively IRI/Aztec may improve the compatibility of its disaggregated convenience ePOS data with its disaggregated grocery ePOS data or aggregated ePOS data or create an improved combined product.

demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).⁴⁵

130. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
131. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁴⁶ In other words, the CMA has focused its analysis on harm to competition rather than to competitors. In general, the effect of foreclosure will be greater if competing providers are weakened to such an extent that the competitive constraint that they place on the parties is reduced.⁴⁷
132. The CMA's approach to assessing conglomerate theories of harm is to analyse the ability of the merged entity to foreclose competitors, the incentive of it to do so and overall effect of the strategy on competition.⁴⁸ These are discussed below. The term 'foreclosure' in this decision is used to describe any scenario whereby Nielsen would either be substantially competitively weakened or would exit altogether the market for aggregated ePOS data/disaggregated grocery ePOS data.
133. The ability of the merged entity to foreclose competitors and its incentive to do so may vary for each of the foreclosure strategies set out in paragraph 134 below. In its assessment of ability, the CMA has focused primarily on a pure bundling strategy, as it is likely to be the most effective in terms of drawing grocery or aggregated ePOS data customers away from Nielsen (for the reasons in paragraphs 140 and 141 below). While the incentive to pursue the foreclosure strategies may vary, the CMA has not needed to make this assessment, given its finding that there is no realistic prospect of the merged entity having the ability to pursue an effective foreclosure strategy.

⁴⁵ [Merger Assessment Guidelines](#), at paragraph 5.6.2.

⁴⁶ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

⁴⁷ The CMA may also need to take account of any stimulus to rivalry that may arise from efficiencies resulting from the Merger. [Merger Assessment Guidelines](#), at paragraph 5.6.12.

⁴⁸ [Merger Assessment Guidelines](#), at paragraph 5.6.13.

Foreclosure

134. The CMA has considered the following foreclosure strategies that IRI/Aztec could potentially engage in as a result of the Merger:

- Pure bundling: IRI could only offer disaggregated convenience ePOS data and grocery ePOS data together and would not offer the products separately.
- Mixed bundling: the disaggregated convenience ePOS data, disaggregated grocery ePOS data and aggregated ePOS data would be available separately, but the sum of the stand-alone prices would be higher than the bundled price.⁴⁹
- Tying: Making sales of disaggregated convenience ePOS data contingent on buying disaggregated grocery ePOS data and/or aggregated ePOS data from IRI. IRI would nevertheless continue to offer the IRI grocery product separately.
- Reduced data compatibility: IRI/Aztec could reduce the compatibility between Aztec's disaggregated convenience ePOS data and Nielsen's disaggregated grocery ePOS data and/or its aggregated ePOS data (while ensuring data compatibility between Aztec's and IRI's products).

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135. The CMA considers that these foreclosure strategies are credible to investigate.

136. In relation to reduced data compatibility, several foreclosure strategies have been described to the CMA:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].

137. The parties told the CMA that it would not be in the merged entity's commercial interests to provide data to customers that is not compatible as

⁴⁹ In this case, those customers that were not buying grocery and/or aggregated ePOS data from IRI would have to pay more to obtain the Aztec ePOS data.

⁵⁰ Alternatively IRI/Aztec may improve the compatibility of its disaggregated convenience ePOS data with its disaggregated grocery ePOS data or aggregated ePOS data or create an improved combined product.

this might upset them and negatively impact on the merged firm's reputation.⁵¹ The parties were not aware whether client compensation had ever been provided because of issues relating to data compatibility. Nevertheless, they stated that the possibility of such compensation would depend on the contract (and any possible penalty provision would vary by client or by the nature/length of delay).

138. However, Nielsen submitted that there is scope for two independent data providers to [REDACTED] and yet supply data sets which are in some way incompatible⁵². [REDACTED].
139. The CMA consulted third parties on this possibility. Of [REDACTED] customers [REDACTED] told the CMA that they already considered the data incompatible, difficult to integrate or at least not worth running in the same system. Analysis of these data was not always run together (one customer told the CMA that to integrate these data sources would be 'like comparing apples and pears'), and those that did so often conducted this outside of the software provided by the data suppliers. [REDACTED] did believe the data to be compatible and manipulated it directly in their systems, however did not express concerns about the Merger's effect on this compatibility.
140. In any event, in its assessment of whether the merged entity has the ability to foreclose Nielsen, the CMA has focused on a pure bundling strategy, as this would be the most effective in terms of drawing aggregated ePOS data/disaggregated grocery ePOS data customers away from Nielsen. This is because with a pure bundling strategy customers must choose either to switch away from Nielsen or to forgo Aztec's convenience product, while if the merged entity pursued a mixed bundling strategy or reduced data compatibility, some customers may decide not to buy the bundle but to remain with Nielsen while continuing to buy the convenience product.⁵³
141. Therefore, the CMA considers that if the merged entity did not have the ability to foreclose Nielsen with a pure bundling strategy, then it would not have the ability to foreclose Nielsen with any of the other foreclosure strategies, including any degradation of data compatibility. As a result, the CMA did not, for the purposes of assessing the merged entity's ability to foreclose Nielsen, examine the potential impact of a data compatibility reduction strategy separately, but has instead focused on examining the potential impact of a

⁵¹ Telephone call of 19 September 2014.

⁵² Email to the CMA of 19/09/2014 with subject RE: OFFICIAL - SENSITIVE - IRI/AZTEC merger - questions for Nielsen [I-L.FID1744938].

⁵³ In the case of mixed bundling customers may choose to buy the standalone convenience product, albeit at a higher price. In the case of reduced compatibility they may continue to purchase Nielsen's grocery ePOS product but accept the reduced compatibility with the convenience product.

pure bundling strategy (and has referred to the term 'foreclosure strategy' to encompass all relevant strategies) as noted above.

Ability

142. The Merger brings together Aztec's disaggregated convenience ePOS data product with IRI's disaggregated grocery ePOS data product and aggregated ePOS data product. Before the Merger, IRI had a very limited presence in the supply of disaggregated convenience ePOS data and Aztec was not active in the supply of aggregated ePOS data at all.
143. The CMA has assessed whether, as a result of the Merger, the merged entity could undertake a foreclosure strategy such that it would give rise to a realistic prospect of a substantial lessening of competition. As part of its assessment of these foreclosure strategies, the CMA has examined the extent to which:
- the merged entity has a significant degree of market power in one of the markets concerned such that the product is viewed by many customers as particularly important and there are few alternatives
 - the markets for the different products are similar in size
 - strategies are available to the merged entity (such as tying or bundling) which could foreclose Nielsen⁵⁴
 - the products that are subject to a foreclosure strategy are supplied to a large common pool of customers
 - there are barriers to these customers switching, for instance as a result of the length or multinational nature of contracts
 - there is substitutability between IRI's and Nielsen's grocery ePOS data products
 - customers have a strong incentive or preference to buy the range of products from a single source
 - Nielsen would be able to retain its aggregated ePOS data/disaggregated grocery ePOS customers or win new aggregated ePOS data/disaggregated grocery ePOS customers from IRI

⁵⁴ Or its other rivals.

- Nielsen will be able to deploy effective and timely counter-strategies in response to any tying or bundling^{iv} from the merged firm

144. The CMA has then conducted an overall assessment of whether the merged entity has the ability to foreclose Nielsen. This assessment considers the overall effect on Nielsen of a foreclosure strategy, taking into account the factors above, and as a result whether Nielsen may be weakened or may exit the supply of aggregated ePOS data/disaggregated grocery ePOS data.

The extent to which the markets for the different products are similar in size

145. The CMA has considered the relative sizes of the grocery ePOS data (tied product) and convenience ePOS data (tying product) markets. Conglomerate effects are more likely if the tying product market is of a similar size to the tied market.⁵⁵ If the tying product market is substantially smaller than the tied product market then this suggests that either a) there is only a small pool of common customers that purchase both products, or b) customers that buy both products are paying substantially more for the tied product.
146. In either case, foreclosure is less likely. If the size of the common pool of customers is small then competitors will be able to effectively compete for the large proportion of customers that do not buy the tying product. If customers are paying substantially more for the tied product, then they are less likely to value the tying product sufficiently compared to the more competitive tied product such that they are willing to switch to the bundle.
147. In this case the CMA notes that the total size of the aggregated and disaggregated grocery ePOS data market (£[REDACTED])⁵⁶ is approximately [REDACTED] larger than the convenience ePOS data market ([REDACTED]). Further, it notes from figures provided by the Parties and Nielsen that for customers that buy disaggregated convenience ePOS data from Aztec and aggregated ePOS data/disaggregated grocery ePOS data from Nielsen, [REDACTED]. For [REDACTED] customers⁵⁷ who also buy from Aztec, expenditure on Nielsen's products is on average [REDACTED] (if weighted by revenue) although this is highly variable from customer to customer ([REDACTED]).⁵⁸

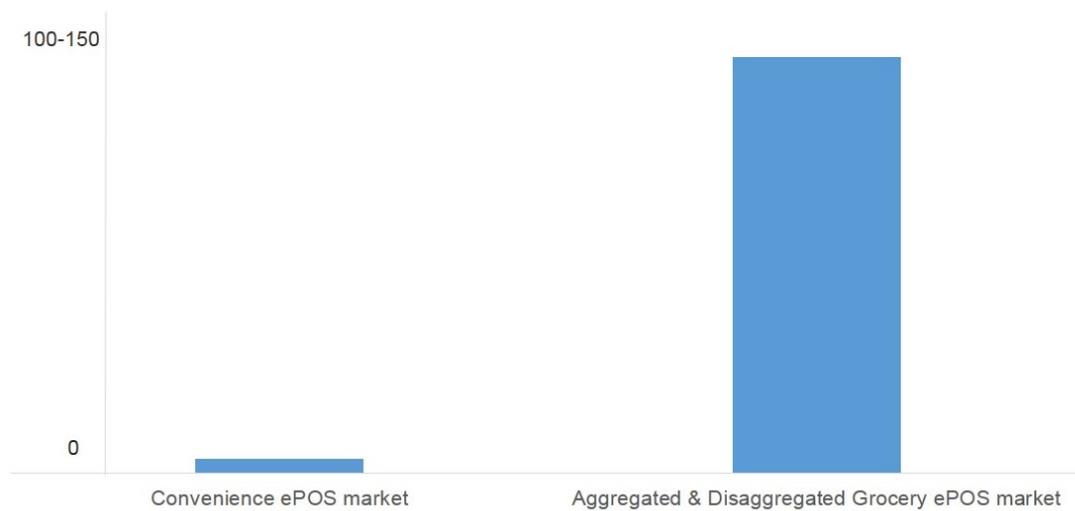
⁵⁵ For example see Neven, The analysis of conglomerate effects in EU merger control, 2005 at p.36.

⁵⁶ Using the data on IRI and Nielsen's full customer lists – all revenue from RMS and KAD (key/named account data).

⁵⁷ See paragraph 225 for further information on Nielsen's customers that [REDACTED].

⁵⁸ Source: Litmus P&L Plan 2014 (Annex 2.39 of Parties' submission) and [REDACTED].

Relative sizes of the Convenience ePOS and Aggregated and Disaggregated Grocery ePOS markets



Source: CMA analysis based on information from the parties and Nielsen.

148. The CMA considers that this evidence implies that customers value the convenience data substantially less highly than the aggregated ePOS data/disaggregated grocery ePOS data. The CMA considers in paragraph 173 that there may be substantial variation in how close substitutes customers perceive IRI and Nielsen’s grocery data products to be. The CMA therefore considers that many customers are unlikely to be willing to switch away from their preferred supplier of the substantially more valuable grocery ePOS data in order to retain access to the substantially less valuable Aztec’s disaggregated convenience ePOS data product in the event of a foreclosure strategy. The CMA considers that this would greatly limit the potential for any such strategy to be effective in foreclosing competitors in the grocery ePOS data market.

149. The size of the common pool of customers is considered in paragraphs 159 ff. below.

The extent to which the merged entity has a significant degree of market power in one of the markets concerned such that the product is viewed by many customers as particularly important and there are few alternatives

150. Pre-Merger Aztec accounted for almost all of the UK sales of disaggregated convenience ePOS data (accounting for between 90% and 100%).

151. The CMA understands that Nielsen has recently launched a disaggregated convenience ePOS data product. Nielsen submitted that it started supplying

disaggregated ePOS data from one convenience retailer (BP) in September 2009, and from additional retailers in March 2014 (Budgens) and September 2014 (Bargain Booze, WH Smith and One Stop). It also told the CMA that it is in negotiations with [REDACTED] possible customers for the purchase of disaggregated ePOS data from some convenience retailers (BP, Budgens, WH Smith, One Stop and Bargain Booze) which Nielsen has made available to its customers since September 2014. Nielsen has also sent commercial proposals for the supply of this data in the UK to a number of customers [REDACTED].

152. [REDACTED].
153. Nielsen submitted that IRI/Aztec having the exclusive ability to supply disaggregated convenience ePOS data of one or more of [REDACTED] convenience retailers ([REDACTED]), when its only rival is deprived of this by virtue of the exclusive agreements Aztec entered into with these retailers, [REDACTED] (absent access to the relevant ePOS data).⁵⁹
154. The parties submitted that Aztec now has [REDACTED] exclusive contracts with convenience retailers, following the re-negotiation of the agreements with [REDACTED]. The [REDACTED] exclusive contracts represent around [40 to 60%] of Litmus's 2013 convenience ePOS data revenues.⁶⁰ They consider that Nielsen could bid for these contracts as they come up for renewal. The CMA has considered Nielsen's ability to bid for exclusive contracts in paragraphs 188 ff. below.
155. Most third parties told the CMA that, prior to the Merger, there were limited substitutes for disaggregated convenience ePOS data and that Aztec was the main provider. The vast majority of third parties who responded to the OFT's investigation did not consider that either IRI or Nielsen competed for the supply of disaggregated convenience ePOS data pre-Merger.⁶¹ Several third parties mentioned to the CMA that they had not chosen to buy Nielsen's disaggregated convenience ePOS data because of its limited coverage compared to Aztec and, in any case, that Nielsen did not have the retailers these customers were interested in.
156. However, the CMA also notes that [REDACTED] of the [REDACTED] customers that Nielsen [REDACTED] do not currently purchase convenience data from Aztec. In addition, [REDACTED] of these customers [REDACTED] currently purchase some form of convenience data from

⁵⁹ Nielsen submitted that [REDACTED] of convenience stores, representing [REDACTED] of impulse revenues are covered by exclusive contracts and thus not accessible to Nielsen. According to Nielsen, [REDACTED] (Nielsen's submission of 17 October at paragraph 11.1).

⁶⁰ The value of the contracts attributable to the exclusive agreements Aztec held in that segment in 2013 amounted to [40 to 60%] per cent pre-Merger and has since dropped to approximately [40 to 60%] per cent of convenience ePOS sales ([REDACTED]). These estimated were provided by the parties.

⁶¹ As noted above, both Nielsen and IRI had access to some data on impulse sales (in particular convenience format grocery stores) that several customers were buying. Nielsen has also had access to data from several convenience retailers for use in its aggregated data including on convenience segments.

Nielsen [REDACTED]. These [REDACTED] customers have considered purchasing convenience data from Aztec. [REDACTED] of these indicated the [REDACTED] as a reason for not purchasing it so far; one referred to [REDACTED]. Further, the CMA notes that [REDACTED], which has [REDACTED] of its sales in the convenience segment and is a [REDACTED] customer of both Litmus and IRI has recently decided to stop purchasing Aztec's disaggregated convenience ePOS data [REDACTED]. The CMA considers that this evidence suggests that not all customers with significant relationships with convenience retailers consider Aztec's convenience ePOS data to be a 'must have' product.

157. In this respect, IRI submitted that Aztec's disaggregated convenience ePOS data is not 'must have', at least for the vast majority of customers. On the contrary, IRI submitted that customers have a mixed response on whether they want to buy Litmus's product.⁶²
158. On the basis of the evidence above, the CMA considers that there is currently no credible alternative to the parties' disaggregated ePOS convenience data for the majority of customers who strongly value this form of data. However, the CMA considers that, while there are currently limited substitutes available for Aztec's disaggregated convenience ePOS data, not all customers with significant sales in the convenience channel consider it to be a 'must have' product. In addition, the CMA notes that Nielsen has expanded its convenience offering and is competing for customers of disaggregated convenience ePOS data.⁶³ As a result of these factors, many customers may be less likely to switch to IRI for aggregated ePOS data and disaggregated grocery ePOS data in order to retain access to Aztec's disaggregated convenience ePOS data product if faced with a foreclosure strategy. The CMA notes that this is further supported by the considerable difference in the amount that customers are paying for convenience and grocery ePOS data, as described in paragraphs 147 ff. above.

The extent to which the products that are subject to a foreclosure strategy are supplied to a large common pool of customers

159. The CMA considered whether IRI's and Aztec's products have a large pool of common customers in order for a tying or bundling strategy to be implemented. Specifically, it has considered the proportion of customers of aggregated ePOS data and disaggregated grocery ePOS data who also buy disaggregated convenience ePOS data. The higher this proportion, the

⁶² See, IRI's response to the Issues Paper.

⁶³ See also paragraphs 188 ff.

greater the ability of a foreclosure strategy to be effective in competitively weakening competitors in the grocery ePOS data segment.

160. The CMA estimates that around [REDACTED] of customers who buy aggregated ePOS data and disaggregated grocery ePOS data from either IRI or Nielsen also buy disaggregated convenience ePOS data from Aztec. However, these customers account for about [REDACTED] Nielsen's and IRI's revenues because they tend to be the larger, brands (this comprises £[REDACTED] of Nielsen's revenue and £[REDACTED] or [REDACTED] of IRI's revenue).⁶⁴
161. The CMA considers that this evidence suggests that, while there is an overlapping pool of customers, a substantial proportion [REDACTED] of Nielsen's and IRI's revenues are from grocery ePOS data customers that do not buy disaggregated convenience ePOS data and so could not be targeted by a foreclosure strategy.

The extent to which there are barriers to these customers switching, for instance as a result of the length or multinational nature of contracts

162. IRI has submitted that there are high switching costs because the offerings of Nielsen and IRI are significantly differentiated (including the fact that Nielsen offers certain customers a multi-country bundle).
163. The CMA has considered whether there is evidence of switching costs that might limit the effectiveness of a foreclosure strategy. Between 2013 and 2014, approximately [REDACTED] customers switched between IRI and Nielsen. Compared to the [REDACTED] grocery clients in the market and taking account of the fact that IRI's average contract length is [REDACTED] years this suggests that approximately [REDACTED] of customers switch when renewing.⁶⁵ However, when the CMA asked customers who had switched about how costly/difficult it was to switch, [REDACTED] that replied said switching had been difficult.⁶⁶ The CMA considers that this evidence does not in itself suggest that switching costs are

⁶⁴ [REDACTED]% of IRI's customers also buy from Litmus, [REDACTED] of Nielsen's customers buy from Litmus. These figures are based on 2013 data, for which the CMA had a full list of customers and revenues per customer. The CMA has used the lists of customers and revenues per customer provided by the parties and Nielsen. IRI listed a total of [REDACTED] grocery customers (Response to CMA questions of 9 October 2014). Aztec's (Litmus's) customers were taken from Annex 2.39 of the Merger notice). Nielsen provided a list of [REDACTED] (response to the CMA questions of 8 and 9 October 2014, Annex 2). To calculate the common pool of customers, the CMA has only taken Nielsen's customers of RMS and KAD services, and has grouped the repeated observations and customers members of the same company group (eg [REDACTED] were considered as one customer). This process resulted in a total of [REDACTED] customers of RMS or KAD services. The grouping process is likely to have resulted in an overestimation of Nielsen's revenues from customers who also buy Aztec data.

⁶⁵ About [REDACTED] customers have switched in the 2014 to 2015 renewals, the precise numbers are subject to adjustment depending on how common corporate groups that include entities that may buy independently are aggregated.

⁶⁶ [REDACTED], Nielsen's response to the CMA dated 17 October, proposition 8.

particularly high.⁶⁷ However, it notes that switching costs may vary across customers and so may be substantial for specific customers.

Long-term contracts

164. IRI argued that many of Nielsen's customers may be locked into long-term contracts with Nielsen, which would reduce the merged entity's ability to effectively implement a bundling strategy.
165. Nielsen submitted (in its answer to CMA questions of 7 August 2014) that it has not [REDACTED] experienced any increase in switching rates following the Merger by comparison with rates over the last two to three years. However, it argued that FMCG suppliers negotiate their RMS data supply agreements in the late Autumn/Winter [REDACTED].⁶⁸
166. The CMA has therefore considered the extent to which customers may be restricted from switching away from Nielsen because of the length of their contracts. Based on Nielsen's submissions and information from Aztec,⁶⁹ the CMA considers that about [REDACTED] of Nielsen's 2014 UK turnover is from customers [REDACTED] and also buy Aztec's disaggregated convenience ePOS data product.⁷⁰ Nielsen submitted that an immediate loss of [REDACTED] of revenue would amount to a realistic prospect of a substantial lessening of competition and that [REDACTED]. The CMA considers that, even on a cautious basis, any potential loss arising from switching would not be expected to materialise immediately (and possibly not until [REDACTED]), including in light of the customer evidence on the likelihood of switching discussed below.⁷¹

Multi-national contracts

167. The CMA also considered the extent to which customers may be discouraged or prevented from switching away from Nielsen by virtue of multinational contracts. The parties submit that Nielsen has recently won a number of large customers from IRI [REDACTED], for instance by [REDACTED].⁷² The CMA notes that [REDACTED] of H1 2014 Nielsen's UK turnover is derived from customers buying in four or more

⁶⁷ See also Nielsen's response to the CMA dated 17 October, proposition 8.

⁶⁸ Nielsen won about [REDACTED] of customer revenues between 2013 and 2014 and the small amount of net revenue won by IRI up to September 2014 for the 2014 to 2015 renewals have not changed that position.

⁶⁹ Based on Nielsen's updated figures including [REDACTED].

⁷⁰ This estimate is based on [REDACTED].

⁷¹ See Nielsen's response to CMA questions of 7 August – Annex 4 and Annex 7. In particular the internal documents do not refer to issues such as [REDACTED].

⁷² [REDACTED].

countries and that only [REDACTED] of the [REDACTED] customers purchase data solely in the UK.⁷³ Nielsen's internal document states that [REDACTED].⁷⁴

168. The CMA considers that, if convenience data is perceived to be particularly important, current international contracts may not stop customers from switching. However, given that bundles of UK and non-UK grocery ePOS data are potentially as important or more important to some firms,⁷⁵ the CMA considers that multinational contracts may stop some customers switching away from Nielsen. [REDACTED]⁷⁶ cited multinational contracts as a factor that would make switching away from Nielsen difficult, when asked whether they would switch in response to a bundling strategy.
169. Overall, the CMA considers that the length and multinational nature of contracts may restrict or discourage some customers from switching away from Nielsen in the event that the merged entity pursued a foreclosure strategy.

The extent to which there is substitutability between IRI's and Nielsen's grocery ePOS data products

170. IRI has submitted that IRI's and Nielsen's ePOS data products in the grocery segment are highly differentiated and that, as a result, customers would be unlikely to switch from Nielsen to IRI if faced with a foreclosure strategy.
171. The CMA obtained some evidence from third parties about how differentiated IRI's and Nielsen's products are. [REDACTED] customers and [REDACTED] customers of IRI and Nielsen [REDACTED] thought that IRI and Nielsen offered or could offer comparable products. [REDACTED] other [REDACTED] customers [REDACTED] told the CMA that the offerings were not comparable in terms of quality. In addition, when asked about reasons for switching from Nielsen to IRI, [REDACTED] customers (out of [REDACTED] who responded) mentioned service quality, [REDACTED] mentioned product quality, and [REDACTED] mentioned global fit and cost.
172. Some customers also mentioned how much Nielsen or IRI would have to cut their respective prices for UK ePOS data for them to switch. Responses varied [REDACTED]. Nielsen said that both offer broadly comparable services illustrated by their respective market shares but that they would become more differentiated under any post-Merger bundling strategy.⁷⁷

⁷³ [REDACTED].

⁷⁴ See Nielsen's response to CMA questions of 7 August – Annex 8.

⁷⁵ As the value of the multinational contracts would likely be substantially greater than the value of the UK grocery and convenience bundle.

⁷⁶ [REDACTED].

⁷⁷ Nielsen's response to the CMA's 16 October Proposition 10.

173. On the basis of this evidence, the CMA considers that there may be substantial variation in how close customers perceive IRI's and Nielsen's grocery data products to be, and that, as a result a significant proportion may not switch away from Nielsen as they do not perceive IRI to be a sufficiently close alternative.

The extent to which customers have a strong incentive or preference to buy the range of products from a single source

174. The merged entity will have a greater ability to foreclose Nielsen if customers have a strong incentive to buy disaggregated convenience ePOS data and grocery ePOS data from a single source.
175. In this respect, Nielsen submitted that piecing together data from different agencies/providers causes complexity and creates inconsistencies with their benchmark. Nielsen submitted that if the data required by a customer was available across the most important channels from one provider, clients were likely to single-source. The parties submitted that single sourcing may reduce transaction costs for customers wishing to purchase both convenience and grocery data and that this would be a benefit for customers.
176. The CMA has considered evidence from customers on the extent to which customers may value sourcing both convenience and grocery ePOS data from a single provider. The CMA notes that customers buying from Aztec currently tend to multi-source (ie they source disaggregated or aggregated grocery ePOS from either Nielsen or IRI and convenience data from Aztec). In response to the OFT's investigation, several customers submitted that the Merger may result in the merged entity providing an improved product, or that there would be benefits to dealing with a single supplier.
177. The CMA asked [redacted] customers [redacted] Nielsen whether they thought that Nielsen's RMS data would be less likely to integrate smoothly with Aztec's convenience ePOS following the Merger. The majority of customers did not think that there would be a significant difference to the ease with which data could be integrated, some noting that they analysed data separately or had data formatted to specification. However, some considered that the merged entity would improve its offering by improving the compatibility of IRI and Litmus, [redacted] noting that this may make them more likely to consider purchasing grocery data from IRI.⁷⁸

⁷⁸ However, [redacted] submitted that while it was more likely to consider purchasing from IRI if compatibility improved, it would rather lose the Aztec data and continue to receive Nielsen data at current service levels and prices.

178. The CMA notes that [X] switched its purchase of disaggregated grocery/aggregated ePOS data from Nielsen to IRI following a pitching process in [X]. Amongst the reasons cited was the possibility that IRI and Litmus data may in the future have improved compatibility and potentially be offered in the same software.
179. On the basis of the evidence available, the CMA considers that some customers may have a preference for single sourcing or believe that the Merger will result in an improved, combined product. This increases the likelihood that customers would choose to purchase a bundled product from the merged entity.

The extent to which Nielsen would be able to retain or win grocery customers from IRI

180. The CMA has considered how Nielsen may competitively respond to a potential bundling strategy by IRI, in particular whether it may also have some ability to retain customers with individually tailored price discounts.
181. IRI argued that even if for more than 10% of Nielsen's customers convenience ePOS data is a 'must-have', 90% of IRI's customers currently not purchasing convenience data, would remain as a contestable group for whose custom Nielsen could compete. IRI submitted that since January 2014 [X] have switched from IRI to Nielsen and that IRI has [X].⁷⁹
182. More than 60% of customers in the grocery market by revenue) do not buy convenience ePOS data. This is particularly the case for IRI as [X]% of IRI grocery revenues (£[X]) are derived from customers that do not buy Aztec's disaggregated convenience ePOS data.
183. Nielsen submitted that there would be some opportunity for it to obtain additional revenues from clients for whom convenience ePOS data is not of such high importance. However, it considers that such new business would not 'replace' lost revenues, and in any event it is [X] unlikely that any such revenues would come near to replacing the [X] identified as losses that would be incurred from losing the [X] customers. Nielsen also submitted that it could attempt this strategy but that its success depends on individual customer preferences, and the extent to which [X].
184. For the reasons set out below, the CMA does not consider that Nielsen would [X] from the loss of its [X] customers. In addition, the CMA notes that Nielsen provided it with examples of offering [X] to some of its customers.

⁷⁹ Up to September 2014 IRI has won [X] customers [X] (of those switching for 2015 [X]).

For instance, Nielsen told the CMA that it is offering [REDACTED] customers [REDACTED]. Nielsen has also offered commercial proposals for the supply of disaggregated convenience ePOS data in the UK to a number of its customers, including some [REDACTED] customers. In addition, Nielsen told the CMA that its disaggregated convenience ePOS data will be [REDACTED].

185. On the basis of this evidence, the CMA considers that were the parties to attempt to foreclose Nielsen it would be able to compete for customers that do not buy convenience data in the grocery market, who represent [REDACTED] of revenues.

The extent to which Nielsen will be able to deploy effective and timely counter-strategies to any tying or bundling from the merged firm

186. IRI submitted that Nielsen could engage in a number of counterstrategies to defeat a foreclosure strategy. These include Nielsen (i) developing a rival convenience ePOS data product; and (ii) using its strength in other countries in negotiations with UK customers.
187. The CMA has considered whether Nielsen would have the incentive and ability to deploy effective and timely counterstrategies. In particular it has considered whether Nielsen would be able to defeat an attempt by the parties to foreclose through developing a rival convenience ePOS data product or through offering similar bundling strategies (for instance, involving its multinational offering).⁸⁰ Possible counterstrategies are considered below.

Counter-strategies: Nielsen's incentive and ability to develop a rival convenience ePOS data product

188. The CMA has considered whether Nielsen would have the incentive and ability to extend its product offering (for instance by obtaining more convenience ePOS data as an exclusive agent⁸¹ or a non-exclusive basis) if it were to face any risk of losing important clients.
189. In relation to **incentive**, the CMA considers that Nielsen would lose its profits from UK disaggregated and aggregated grocery ePOS data if it exited the UK market as a result of a foreclosure strategy by the merged entity. In this respect it notes that the grocery ePOS data market is approximately [REDACTED] larger than the convenience ePOS data market and that Nielsen is earning [REDACTED] in profit on its UK grocery ePOS data business. The overall amount that

⁸⁰ Evidence from customers, the parties, and [REDACTED] suggests that it contracts with customers in this way. Nielsen says that it endeavours not to do this but accepts that it sells some products (such as convenience data) in a package.

⁸¹ Nielsen told the CMA that it would [REDACTED].

Aztec has spent on its exclusive contracts in the convenience ePOS data market amounts to [REDACTED] per annum.

Competing for convenience contracts

190. The CMA submitted to Nielsen that if its ability to compete in the UK were threatened by IRI/Aztec holding these contracts, then it would be rational for Nielsen to spend at least the whole of its UK profits to break Litmus's hold on these contracts, because doing so would be material to maintaining its ability to offer a multi-country bundle including the UK, a major market.
191. Nielsen responded that it is [REDACTED] because of the inherent risk of violating competition law. Since the value of the exclusive contracts which would be used on an open access basis [REDACTED] lower than the value of the contracts used on a 'closed' basis, IRI/Aztec [REDACTED] able to pay more for them. Nielsen 'spend[ing] at least the whole of its UK profits to break Litmus's hold' would [REDACTED]. According to Nielsen, this is not, therefore, a feasible commercial proposition, and further demonstrates the obvious damaging effects of exclusive access to essential retailer information. Nielsen however submitted that while it favours open access to data, it accepts that [REDACTED]⁸² so that it could respond to IRI/Aztec's continued use of exclusive contracts.
192. Nielsen told the CMA that [REDACTED]. The CMA notes Nielsen's response that it would [REDACTED]⁸³ and that spending the whole of its profits to break Litmus's hold would [REDACTED].⁸⁴ However, while [REDACTED] the amount that Nielsen would be prepared to spend to some extent, the CMA nevertheless considers that Nielsen has a strong incentive to outbid Aztec for the contracts that are currently still exclusive, whether on an exclusive basis [REDACTED] or on a non-exclusive basis.
193. Nielsen has also submitted that, if both IRI/Aztec and Nielsen were to purchase convenience data for the exclusive use of, respectively, IRI/Aztec or Nielsen, this would inevitably lead to the degradation of both parties' service offerings, taking into account that neither party would be able to provide a complete set of data. The CMA notes, however, that Nielsen itself has submitted that it would contemplate buying data from convenience retailers on an exclusive basis [REDACTED].
194. In relation to ability, Nielsen has suggested that the sector is highly fragmented so that it may not be commercially viable to obtain convenience

⁸² Nielsen submitted that it would contemplate buying data from convenience retailers on an exclusive basis, [REDACTED].

⁸³ See footnote 79.

⁸⁴ Nielsen's internal documents suggest some strategies it could pursue to [REDACTED]. See Nielsen's response to CMA questions of 7 August – Annex 7 and Nielsen's answers to CMA questions of 5 September Question 2.

data from smaller retailers or these smaller firms may not have appropriate systems. [REDACTED].⁸⁵

195. Third party evidence gathered by the CMA has shown that while many customers consider [REDACTED] to be important, several may be interested in a broader set of retailers. At least [REDACTED] Nielsen's [REDACTED] customers told the CMA that there were no retailers of particular importance to them. For those that did list retailers important for their business, whilst [REDACTED] was the most mentioned [REDACTED], there were [REDACTED] others which were mentioned at least [REDACTED]. [REDACTED] was not amongst this group. The CMA considers that this indicates that Nielsen may not need to have access to data from each retailer [REDACTED] in order to be able to develop an enhanced product that is viable for many of its customers.⁸⁶
196. IRI submitted that the exclusive convenience data contracts are not long-term in nature (all contracts could be renegotiated within [REDACTED] or earlier) and that Nielsen could seek to persuade convenience retailers to switch to a non-exclusive model or switch to Nielsen relatively quickly (in particular, because [REDACTED] of the contracts with retailers contain provisions permitting the retailer to give notice to Litmus of [REDACTED]). It also argued that Nielsen could bid for the retailer contracts as they come up for renewal.
197. The CMA notes that four of the [REDACTED] of the exclusive contracts have a termination notice of [REDACTED]. [REDACTED] contract has a [REDACTED] termination clause. [REDACTED] exclusive contracts have a [REDACTED] termination notice ([REDACTED]). [REDACTED] has a [REDACTED] notice after [REDACTED]. [REDACTED]'s contract expires on [REDACTED] and [REDACTED]'s contract expires on [REDACTED]. All the exclusive contracts can thus be terminated or will terminate by [REDACTED]. [REDACTED]
198. Nielsen submitted that it had been [REDACTED] so that it [REDACTED]. Nielsen also submitted information on the convenience retailers that it contacted between April 2013 and January 2014. Nielsen secured contracts with Bargain Booze, One Stop, MFG, and [REDACTED]. No contract was agreed with [REDACTED] despite Nielsen contacting some of them (including [REDACTED]). However, a contract was later agreed between Nielsen and WH Smith, [REDACTED]. The CMA understands that Nielsen has now begun selling this newly acquired data.
199. [REDACTED].

⁸⁵ Based on Nielsen's submissions, as well as internal documents provided as annexes to Nielsen's response of 7 August 2014.

⁸⁶ The CMA notes that Nielsen may need access to [REDACTED] data based on the number of customers that mentioned [REDACTED] as a retailer they would like to obtain ePOS data from. However, the other [REDACTED] were mentioned ([REDACTED] and ([REDACTED]) by [REDACTED] customers that responded to the CMA.

Extension of exclusivity beyond the duration of contracts

200. Nielsen submitted that the exclusivity of contracts with convenience retailers may extend beyond the duration of such contracts as these retailers may take the view that they continue to be restricted from supplying their historic convenience ePOS data to Nielsen.⁸⁷ Nielsen submitted that this has not been sustained as a serious issue by any of the convenience retailers who have recently agreed to provide the ePOS to Nielsen.⁸⁸ It nevertheless considered that IRI has the incentive to take the position that historic data remains covered by exclusive contracts. IRI, [REDACTED], submitted that [REDACTED].
201. Based on the evidence available to it, the CMA does not consider that it is likely that exclusivity will extend beyond the duration of the contracts as it is [REDACTED] and the supply of historic data has not caused problems with other retailers.⁸⁹

Extension of the effects of exclusivity through long-term customer contracts

202. Nielsen further submitted that the exclusionary effects of Aztec's agreements will be felt by Nielsen long beyond the expiry of those agreements, as the merged entity could enter into long-term customer contracts in respect of the convenience data and monopolise any potential custom Nielsen could have if it were to gain access to convenience data.
203. The parties submitted that Nielsen could defeat such long term contracts by simply bidding for exclusive access to the convenience contracts when they are up for tender. They stated that if IRI lost the contracts, it would no longer have the ability to provide the convenience data it was contracted to supply which would therefore put it in breach of the coverage terms of its customer contracts and the contract would be void. The parties submitted that forcing customers to enter long term contracts on the basis of data which may not be available in the long term makes no business sense.
204. IRI considered that if it tried to make a long-term agreement a condition of buying its convenience product, customers would refuse. It has been IRI's consistent experience that customers use frequent RFPs to maintain competitive pressure on IRI's (and Nielsen's) margin.⁹⁰ This incentive will

⁸⁷ Nielsen submitted that it would [REDACTED] customers require access to historic ePOS data (normally three years' historic data).

⁸⁸ Nielsen told the CMA that [REDACTED].

⁸⁹ Nielsen has been able to obtain sufficient historic data from all convenience retailers. This issue was only raised by [REDACTED] in the early stages of negotiation. See Nielsen's responses to CMA questions of 25 September, Question 7.

⁹⁰ IRI submitted that there is no reason to believe that this market dynamic would be any different in the future (and we discuss further below why this theory of harm is in any event not a merger specific issue).

continue based on IRI's submissions. IRI also submitted that Dan Finke, IRI's UK Managing Director, is clear that there has never been a single discussion at IRI about using long-term customer contracts as a way of locking Nielsen out of the market as it simply would not work.⁹¹

205. IRI submitted that the convenience data is simply not important enough to customers to warrant them signing a long term contract in disaggregated grocery ePOS data for the sake of a few months (in most cases) of disaggregated convenience ePOS data. For example, the parties consider that they would not be in a position to force [X] to sign a long-term contract with them based on a £[X] contract in disaggregated convenience ePOS data.⁹² In addition, the parties submitted that it would be trivial for Nielsen to match the £[X] value of the convenience data by providing a [X] discount on the cost of Nielsen's supermarket data product.
206. Based on the evidence available to it, the CMA does not consider that the merged entity would be able to incentivise customers to commit to long term contracts in respect of its disaggregated convenience ePOS data.

Ability of Nielsen to win contracts with convenience retailers

207. The CMA has considered whether Nielsen may have the ability to win contracts with convenience retailers that Nielsen considers [X] even when IRI bids on an exclusive basis. Nielsen told the CMA that it would contemplate buying data on an exclusive basis [X].⁹³ Nielsen also submitted that since the value of the exclusive contracts which will be used on an open access basis will inevitably be lower than the value of the contracts used on a 'closed' basis, IRI/Aztec [X] able to pay more for them.
208. The CMA has asked retailers whether they would switch to non-exclusive contracts. Of the exclusive retailers who responded to the CMA, [X]⁹⁴ submitted that they would consider entering into a non-exclusive contract. [X] stated that it would not enter into a non-exclusive contract [X]. [X] did not give information as to whether they would switch to a non-exclusive contract.
209. Nielsen submitted an email [X].⁹⁵

⁹¹ Nielsen submitted an example of a customer that it said was [X]. See Nielsen's response to CMA questions of 25 September – Annex 5.

⁹² [X] has a contract worth £[X] per year for disaggregated grocery ePOS data and a contract for disaggregated convenience ePOS data worth £[X] per year.

⁹³ Nielsen submitted that [X].

⁹⁴ [X].

⁹⁵ The email (Annex 10 of Nielsen's response to the CMA questions of 7 August 2014) refers to [X].

210. In addition, an email provided by Nielsen to the CMA mentions that Nielsen [REDACTED] and that the plan would be to [REDACTED]⁹⁶ In terms of costs, [REDACTED]⁹⁷ [REDACTED].⁹⁸
211. The CMA considers that the documents Nielsen submitted to the CMA⁹⁹ show that Nielsen [REDACTED].
212. Based on the evidence available to it overall, the CMA considers that Nielsen would have the incentive and ability to compete for access to disaggregated convenience ePOS data (including data currently covered by exclusive agreements) in order to defeat any possible attempt by IRI to foreclose it. Further, given the number of exclusive agreements that have a [REDACTED] notice, the CMA considers that such a counter-strategy would be timely and effective.

Counter-strategies - multi-national bundling strategy

213. The CMA has assessed whether Nielsen could respond to an IRI/Aztec bundling strategy in the UK by an international bundling strategy, for example selling grocery ePOS data for multiple countries for less than the price of the component parts if bought individually.
214. The parties have submitted that Nielsen has recently won a number of large customers from IRI (including [REDACTED]) by offering discounts conditional on customers signing a multinational contract.
215. The CMA notes that Nielsen has a monopoly or near-monopoly presence in many countries and considers that multinational bundling strategies may be at least as effective as tying convenience and grocery data, as the tying products are likely to be of significantly greater value to many customers.¹⁰⁰ The CMA considers that such a strategy could be targeted both at multinational customers who buy from Aztec and at multinational customers who do not buy from Aztec.
216. [REDACTED] customers that switched from IRI to Nielsen ([REDACTED]) mentioned that their companies have multi-national contracts with Nielsen. [REDACTED] mentioned that the global deal with Nielsen allows it access to globally negotiated discounts within the UK, although price was only one contributing factor for choosing Nielsen.

⁹⁶ Annex 10 to Nielsen's submission of 7 August 2014 – [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ Annexes 6R and 8 to Nielsen's submission of 7 August 2014. Nielsen submitted that Annex 8 is dated September 2013. Nielsen said that the reference in Annex 8 [REDACTED].

¹⁰⁰ See also paragraph 220.

217. The CMA submitted to Nielsen that it could respond to an IRI/Aztec foreclosure strategy in the UK by an international mixed bundling strategy (ie selling grocery ePOS for multiple countries for less than the price of the component parts if bought individually). However, [REDACTED] selecting one service provider in one country and a different service provider in another country.¹⁰¹ [REDACTED] submitted that it was [REDACTED], simply by reason of geographic coverage, Nielsen [REDACTED].
218. The CMA therefore considers that it is not clear to what extent, or under which circumstances, Nielsen may be willing to engage in a strategy that allows its customers to benefit from its multi-national offering (which the merged entity would not be in a position to provide given its much more limited geographic coverage).

Evidence on customers' likely response to bundling

219. As discussed in paragraphs 147 et seq. above, the CMA considers that the relative expenditure by customers on disaggregated convenience ePOS data and aggregated ePOS data/disaggregated grocery ePOS data implies that many customers would be unlikely to be willing to switch their supplier of aggregated ePOS data/disaggregated grocery ePOS data from Nielsen to IRI in order to retain access to Aztec's disaggregated convenience ePOS data if faced with a bundling strategy.
220. The CMA asked Nielsen's [REDACTED] customers directly whether they would switch away from Nielsen if IRI/Aztec bundled its data. [REDACTED] said that it would switch [REDACTED] while [REDACTED] said they would likely stay with Nielsen [REDACTED]. More specifically, when asked whether, if it could only obtain Aztec's disaggregated convenience ePOS data if it were a customer of IRI for disaggregated grocery ePOS data and aggregated ePOS data, it would decide (i) not to use Litmus's product for disaggregated convenience ePOS data or (ii) to switch buying disaggregated grocery ePOS data/aggregated data from Nielsen to IRI, [REDACTED]¹⁰² told the CMA that both convenience and grocery ePOS data are important. It referred to advantages of Nielsen's¹⁰³ and Aztec's offerings¹⁰⁴. However, it noted that Aztec's offering is slightly less valuable overall than the grocery data. It also stated that it did not think that it would do business with a company that restricted access to such an important data source to customers of supermarket product: 'In my view, you should be able to pick and choose your purchases from companies.' In response to the same

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED] stated that another advantage of Nielsen is that their data integration is very good: [REDACTED].

¹⁰⁴ Litmus data is very useful also – convenience stores represent a large portion of sales.

question, [REDACTED] told the CMA that this is difficult as both sets of data are important. It added that Nielsen has relatively clear advantages over IRI in terms of the quality of its service provision and the cost of data. Aztec data is also important to [REDACTED] – but to fewer areas of the business. ‘Based on the fact that fewer parts of the business need Litmus data, I would probably say we would rather lose the Litmus data and continue to receive Nielsen at current service levels and prices.’ It noted that Nielsen would have to [REDACTED] for the decision between them and IRI to be more balanced. This shows that for these [REDACTED] customers, aggregated ePOS data/disaggregated grocery ePOS data is more valuable than disaggregated convenience ePOS data.

221. In addition, [REDACTED] customers [REDACTED] told the CMA that a bundling/tying strategy would affect their willingness to work with IRI.
222. The other [REDACTED] customers that responded could only say that it would be a difficult decision. While the small sample of customers limits the weight that the CMA can place on these responses, the CMA notes that more customers said that they would stay with Nielsen than said they would switch to IRI.

Likely effect on Nielsen

223. The CMA has considered the likely effect that any attempted foreclosure strategies may have on Nielsen, in terms of both a potential exit or weakening.

Potential exit

224. As submitted by the parties and by Nielsen, a large proportion of data providers' costs is made up of payments to retailers for use of their data. These costs constitute fixed costs that are likely to drive substantial economies of scale. The CMA considers that any foreclosure effects are more likely to occur where significant economies of scale exist.
225. Nielsen has identified [REDACTED] customers that [REDACTED] and in response to the various bundling options open to IRI/Aztec.¹⁰⁵ It estimated that these customers collectively account for over [REDACTED] of Nielsen's UK RMS revenues (both grocery ePOS data and aggregated ePOS data).
226. Nielsen submitted that the loss of only [REDACTED] of the [REDACTED] customers (accounting for [REDACTED] of 2013 revenues) would lead to Nielsen's [REDACTED]. Based on Nielsen's projections, Nielsen estimates that the loss of only [REDACTED] in 2014 (accounting for UK RMS revenues of [REDACTED]) will result in Nielsen's UK RMS business [REDACTED].

¹⁰⁵ [REDACTED].

However, not all of Nielsen's customers [REDACTED] currently purchase Litmus. The CMA has identified that [REDACTED] customers, representing [REDACTED]% of Nielsen's UK RMS revenues currently purchase Aztec and that [REDACTED] of these customers [REDACTED] do not purchase Aztec.¹⁰⁶

227. The CMA notes that internal documents¹⁰⁷ suggest that Nielsen assumed only [REDACTED] customers whose contracts expired in [REDACTED] would be lost even under a [REDACTED] scenario. Nielsen said that even [REDACTED] clients that were not buying from Aztec could switch to IRI/Aztec for the [REDACTED]. Nielsen stated that this internal document¹⁰⁸ [REDACTED].
228. Nielsen suggested another internal document¹⁰⁹ [REDACTED], should be given more weight than the first internal document referred to in the paragraph above. However, this first internal document was produced in [REDACTED].¹¹⁰ The other internal document¹¹¹ also emphasises [REDACTED].¹¹² Nielsen also argued that losing customers of [REDACTED].
229. The CMA has considered, on the basis of Nielsen's submission and the evidence set out in this section, whether Nielsen may exit the aggregated ePOS/disaggregated grocery ePOS data market as a result of a bundling strategy by the merged entity. Overall, the CMA considers it unrealistic that Nielsen would incur sufficient losses to cause it to exit its UK operations primarily for the following reasons:
- (a) The disaggregated convenience ePOS data market is [REDACTED] smaller than the disaggregated and aggregated grocery ePOS data markets. The CMA considers that this very substantial difference in relative market size suggests that foreclosure is highly unlikely.
 - (b) For customers that buy convenience data, expenditure on convenience ePOS data is similarly many times smaller [REDACTED] for [REDACTED] customers. This implies that customers value the convenience data substantially less highly than the aggregated ePOS/disaggregated grocery ePOS data and

¹⁰⁶ Nielsen stated that [REDACTED]. The parties said that the Japanese operation had faced a long-term competitive disadvantage compared to the exclusive contracts that would be available to obtain in a short period. [REDACTED]. See the parties' response to the issues paper, slide 70, Nielsen's response to the CMA's questions of 25 September, question 11.

¹⁰⁷ Annex 7 to Nielsen's response to CMA questions of 7 August 2014.

¹⁰⁸ Annex 7 to Nielsen's response to CMA questions of 7 August 2014.

¹⁰⁹ Annex 6R Nielsen's response to CMA questions of 7 August 2014.

¹¹⁰ [REDACTED].

¹¹¹ Annex 6R Nielsen's response to CMA questions of 7 August 2014.

¹¹² Nielsen submitted that annex 6R was [REDACTED], but the numbers in annex 7 are also supported in annex 9 and the relative lack of concern about the Merger is also apparent in Annex 6T that Nielsen stated was unreliable as it was an external document (but is labelled as [REDACTED]). (Annexes 6R, 6T, 7 and 9 to Nielsen's response to CMA questions of 7 August 2014).

so would be likely to be less likely to switch aggregated ePOS/disaggregated grocery ePOS data product in order to retain access to the convenience product if faced with a bundling strategy. The CMA considers that this would greatly limit the potential for any such strategy to be effective in foreclosing competitors in the grocery market.

- (c) This is supported by customer evidence that, while there are currently limited substitutes available for Aztec's convenience ePOS data, not all customers consider it to be a 'must have'. In particular the CMA notes that: several customers with substantial convenience sales do not purchase convenience ePOS data from Aztec; [REDACTED] has switched away from buying Aztec's convenience product; [REDACTED] customers responded that they would rather give up the convenience product than switch from Nielsen to Litmus^v if faced with a bundling strategy.
- (d) While there is an overlapping pool of customers, a substantial proportion (62%) of grocery ePOS revenues^{vi} are from customers that do not buy disaggregated convenience ePOS data and so could not be targeted by a bundling strategy. The CMA considers that Nielsen is not restricted in competing for the [REDACTED]% of IRI's grocery revenues (£ [REDACTED]) from customers that do not buy convenience data.
- (e) The length and multinational nature of contracts may restrict or discourage some customers from switching away from Nielsen in the event that the merged entity pursued a bundling strategy.
- (f) Nielsen would have the incentive and ability to compete for access to convenience ePOS data (including data currently covered by exclusive agreements) in order to defeat any possible attempt by IRI to foreclose it.

Potential weakening

- 230. Nielsen additionally submitted that [REDACTED]. Nielsen submitted that some [REDACTED] in the national market (rather than global profits) [REDACTED].
- 231. Nielsen told the CMA that [REDACTED]. By way of example, Nielsen submitted that [REDACTED].¹¹³ Another example is [REDACTED]. However, the CMA notes that Nielsen has not provided evidence that a profitable investment in the UK has [REDACTED].
- 232. The CMA considers that losses to Nielsen would be limited and insufficient for it to exit its UK operation for the reasons set out in paragraph 229 above. The

¹¹³ Nielsen submitted that this demonstrated how critical the inability to gain access to data can be, and has been, to Nielsen's business and [REDACTED].

CMA considers that this would also limit the degree to which Nielsen could be weakened. [✂]. Therefore, to the extent that bundling by the merged entity was successful in drawing customers away from Nielsen, the CMA considers that Nielsen would have a strong incentive to improve its product offering to retain customers or win additional customers, for example by lowering its prices. While lowering prices would have the implication that Nielsen's profits are reduced, it would also mean that Nielsen's competitive offering was strengthened to the benefit of its customers. In this respect the CMA notes further that IRI has continued to compete aggressively despite being loss making. For these reasons, the CMA considers it unrealistic that Nielsen would be competitively weakened (such that its competitive offering to customers is worsened).

Conclusion on ability

233. Overall, on the basis of the evidence available to it, the CMA considers that the merged entity would not have the ability to foreclose Nielsen in the supply of disaggregated grocery ePOS data and/or aggregated ePOS data.

Incentive

234. As the CMA has found that the merged entity does not have the ability to engage in a strategy to foreclose Nielsen, it has not found it necessary to conclude on whether or not the merged entity has the incentive to do so.

Effect

235. To the extent that the merged firm has both the ability and incentive to engage in behaviour which to some extent forecloses its rivals, the CMA will consider the impact of such foreclosure on competition. The CMA may also take account of any stimulus to rivalry that may arise as a result of efficiencies from the merger – efficiencies are considered later in the document.¹¹⁴

236. However, as the CMA does not consider that IRI/Aztec has the ability to foreclose Nielsen, it has not needed to weigh any possible efficiencies created by the Merger against the anticompetitive effects of foreclosure.

Reduction in choice for some customers

237. In its submissions to the CMA, Nielsen has raised concerns to the effect that there would be at least a realistic prospect of the Merger resulting in an SLC

¹¹⁴ [Merger assessment guidelines](#), paragraph 5.6.12.

on the basis that it would reduce competition in relation to the supply of disaggregated and/or aggregated grocery ePOS data for customers who purchase disaggregated convenience ePOS data.

238. More specifically, Nielsen submitted that the Merger would harm a group of customers who strongly value disaggregated convenience ePOS data and also purchase disaggregated grocery ePOS data and/or aggregated ePOS data. According to Nielsen, these customers would be worse off as a result of the Merger if IRI/Aztec were to bundle or tie disaggregated convenience ePOS data with disaggregated grocery ePOS data. Such customers would face a reduction of choice, [REDACTED].
239. Moreover, to the extent that IRI/Aztec's and Nielsen's product offerings to this group of customers would be more differentiated than they were pre-Merger, they would compete less closely and competition would be softened.¹¹⁵ As a result prices may rise or quality diminished.
240. Although Nielsen submits that [REDACTED] of disaggregated grocery ePOS data and aggregated ePOS data, [REDACTED], it also submits that competitive harm would likely arise even if [REDACTED].
241. The CMA considers that this theory of harm is novel and notes that it is not considered in either the CMA's Merger Assessment Guidelines or in the EC's guidelines on the assessment of non-horizontal mergers.¹¹⁶ However, in light of Nielsen's submissions it has nevertheless considered the potential of a realistic prospect for the Merger to result in an SLC as a result of this theory of harm. As the theory of harm is based on the Merger bringing under common ownership two complementary products the CMA has considered this theory of harm under conglomerate effects. However, the CMA notes that this theory of harm does not concern foreclosure and so the appropriate analytical structure differs to that typically envisaged under conglomerate effects. Specifically it concerns whether the merged entity would have a unilateral incentive to worsen its competitive offering as a result of a reduction in competition created by bundling or tying its products or from reducing data compatibility between its product and those of its competitors.

Potential strategies

242. In considering this theory of harm, the CMA has considered the possibility of IRI/Aztec engaging in the following strategies:

¹¹⁵ Based on Nielsen not being able to replicate IRI/Aztec's bundled offering to those customers.

¹¹⁶ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265 of 18 October 2008.

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- Offering its disaggregated convenience ePOS data only together with its disaggregated and/or aggregated grocery ePOS data, such that competition in grocery ePOS data is lessened and the merged entity is able to raise the price or reduce the quality of the bundle above the pre-Merger price of the component parts combined.
- Reducing data compatibility between its disaggregated convenience ePOS data and Nielsen's disaggregated and/or aggregated grocery ePOS data and raising the price of its disaggregated grocery ePOS data above pre-Merger levels.

243. According to Nielsen's submissions, neither of these strategies would necessarily have to result in the foreclosure of Nielsen for the Merger to give rise to a realistic prospect of a substantial lessening of competition.

The ability of IRI/Aztec

244. The CMA has considered the following factors in relation to the parties' ability to pursue such strategies and the likelihood of the Merger giving rise to a substantial lessening of competition:

- The extent to which customers value disaggregated convenience ePOS data taking into account the respective size of the disaggregated grocery ePOS data and disaggregated grocery ePOS data/aggregated ePOS data markets.
- The extent to which the merged entity's ability to price discriminate would be enhanced by the Merger.
- The extent to which customers purchasing disaggregated convenience ePOS data would switch away from Nielsen to IRI for grocery ePOS data.
- The extent to which IRI/Aztec may be able to mitigate some of the costs associated with executing one of these strategies.
- The scope for Nielsen to respond competitively, including the possibility of it employing counter-strategies.

245. The CMA has considered each of these factors in turn below.

The extent to which customers value disaggregated convenience ePOS data

246. If IRI/Aztec were to pursue a pure bundling strategy, the merged entity would gain from customers who continue to purchase its disaggregated convenience ePOS data as part of the offered bundle.
247. The CMA considers that customers purchasing Nielsen's disaggregated grocery ePOS data and/or aggregated ePOS data pre-Merger may switch to the merged entity's bundle if they both (i) sufficiently value the convenience data to tolerate a price rise and (ii) consider the merged entity's disaggregated grocery ePOS data and/or aggregated ePOS data offering to be a close substitute to the Nielsen's.
248. To the extent that these customers were to switch, IRI/Aztec would gain from the margin made on the disaggregated grocery ePOS data (sold in the bundle and not purchased pre-Merger). In addition, it would benefit directly from raising the price of the IRI grocery data.
249. In the event that customers did not value the merged entity's disaggregated convenience ePOS data sufficiently, an increase in the price of the bundle above the pre-Merger combined price of the component parts would be likely to result in customers ceasing to purchase disaggregated convenience ePOS data (and switching to purchasing disaggregated grocery ePOS data and/or aggregated ePOS data only).
250. As noted above, the CMA considers that there were a lack of alternatives to Aztec in relation to disaggregated convenience ePOS data pre-Merger¹¹⁷ and that Aztec was able to price discriminate between customers. Therefore, the CMA considers that it was likely to have been pricing at (or near) the maximum point it believed its customers were willing to pay (or would have had the ability to do so). That is, if Aztec had attempted to raise the price of the convenience ePOS data pre-merger it would have faced losses from customers deciding to no longer purchase the convenience ePOS data product.
251. The CMA considers that the Merger does not increase the degree of market power that Aztec already had pre-Merger in relation to disaggregated convenience ePOS data. Post-Merger, were the merged entity to attempt a strategy of bundling convenience and grocery ePOS data or reducing data

¹¹⁶ See paragraphs 100 ff.

compatibility, it would face a similar constraint from customers deciding to no longer purchase the bundle.¹¹⁸

252. The CMA has considered whether the merged entity would be able to charge a higher price for the bundle on the basis that IRI was not pricing at (or near) the maximum point that it believed its customers were willing to pay, given the competition it faced from Nielsen in particular.
253. However, in this case, it considers that the merged entity would face a similar constraint to pre-Merger from customers continuing to purchase Nielsen's grocery ePOS data at a competitive price and forgoing the convenience data. Therefore, the CMA considers that any attempt to restrict access to this data post-Merger or to raise the price of bundled grocery and convenience ePOS data significantly above the pre-Merger level would be likely to result in the merged entity's customers ceasing to purchase its disaggregated convenience ePOS data offering.¹¹⁹
254. Further, as expenditure by customers on disaggregated convenience ePOS data is small relative to disaggregated grocery ePOS data and aggregated ePOS data, the extent to which competition over the supply of disaggregated grocery ePOS data and/or aggregated ePOS data could be weakened through leveraging market power in convenience data is limited.¹²⁰
255. The figures provided by the Parties and Nielsen show that [REDACTED]. For [REDACTED] customers who also buy from Litmus [REDACTED], expenditure in Nielsen's products is on average [REDACTED], although this is highly variable from customer to customer [REDACTED]. Therefore, for IRI/Aztec to profitably raise grocery prices (within the bundle) by 5% to a given customer, it must be the case that the customer would have continued to buy the convenience data even if it was [REDACTED] more expensive. The CMA considers that this makes it unlikely that the parties would have the incentive to follow a bundling strategy of the type mentioned above.

The extent to which the merged entity's ability to price discriminate would be enhanced by the Merger

256. As noted above the CMA considers that any attempt to restrict access to this data post-Merger or to raise the price of bundled grocery and convenience

¹¹⁸ See paragraph 220.

¹¹⁹ This is the Chicago School benchmark, according to which there is only one monopoly rent to exploit. Absent an impact of the bundling strategy on Nielsen's ability to compete for grocery customers or its incentives to compete, the Chicago School benchmark is very likely to apply (see Neven 2005; p.57)

¹²⁰ This is set out as a necessary condition for a bundling strategy to be harmful in the economic literature (Neven 2005; p.22).

ePOS data significantly above the pre-Merger level would be likely to result in the merged entity's customers ceasing to purchase its disaggregated convenience ePOS data offering. Nevertheless [✂], post-Merger, IRI/Aztec would be better able to extract value from customers purchasing their or Nielsen's products than pre-Merger because of the fact that it would gain information on the value that these customers place on both disaggregated grocery and convenience ePOS data (for instance through access to the IRI grocery ePOS data and negotiation history).

257. However, the CMA considers that while IRI/Aztec might gain information on customers' valuation of grocery data it would be highly unlikely to become significantly better informed of customers' valuation of the disaggregated convenience ePOS data. As a result, any additional information that the merged entity may gain as a result of the Merger would be highly unlikely to provide it with relevant insight to further extract value from these customers.

The extent to which customers purchasing disaggregated convenience ePOS data would switch away from Nielsen to IRI for grocery ePOS data

258. The CMA considers that a substantial proportion of customers would be unlikely to switch away from Nielsen in the event of a bundling strategy by IRI for the reasons in paragraphs 220 ff. above. The CMA further considers that customers would be even less likely to switch in the event that the parties were to also raise the price of bundle as would be the case for this theory of harm.

The extent to which IRI/Aztec can mitigate some of the costs of this strategy

259. Bundling or reducing data compatibility may involve substantial costs to the merged entity. If the merged entity were to make the purchase of disaggregated convenience ePOS data contingent on the purchase of aggregated or disaggregated grocery ePOS data sales, customers who previously only bought the convenience data product but did not buy the grocery product from Nielsen or IRI pre-Merger would be unlikely to buy a bundle now offered at a higher price. It is likely that the profit from these sales would therefore be lost, unless IRI/Aztec was able to identify these customers and offer them the convenience data separately rather than the bundle.
260. If IRI/Aztec were to reduce the data compatibility between its disaggregated convenience ePOS data and Nielsen's disaggregated grocery ePOS data, compared to a bundling strategy, customers would still retain the option of continuing to purchase the convenience data from IRI/Aztec and grocery data from Nielsen, albeit the value that they derive from this may be lower than pre-Merger because of the reduction in data compatibility.

261. However, because they retain this option, compared to the situation where there is pure bundling and where customers' only option is to cease purchasing the convenience data, this would further constrain any ability by IRI/Aztec to raise the price of its disaggregated grocery ePOS data.
262. Moreover, as discussed in paragraph 137 above, reducing data compatibility may result in some reputational damage which would further limit IRI/Aztec's incentives to engage in this strategy.

Nielsen's competitive response

263. In the event that this strategy were to be successful in drawing grocery customers away from Nielsen, as Nielsen submits, the CMA considers that it would have the incentive to react by lowering its prices for grocery ePOS data. As noted in paragraph 232, Nielsen [REDACTED]. Accordingly, even if its number of customers were to fall, each additional customer would be very valuable for its contribution to the UK profit. It would therefore have a strong incentive to compete harder for additional customers to cover these fixed costs if faced with a bundling strategy. This would benefit customers of grocery ePOS data.
264. Finally, the incentive to use this bundling strategy would be reduced as, if this strategy were to be successful in drawing customers from Nielsen, it may engage in a variety of counter-strategies, including bidding for Aztec's exclusive contracts or employing multinational bundling strategies (as discussed in detail in paragraphs 188 to 218 above).

Conclusion

265. On the basis of the evidence and reasoning set out above, the CMA considers that the merged firm would not have the ability to pursue a bundling strategy (or a strategy to reduce data compatibility) that would reduce competition in the supply of grocery data to those customers that also buy convenience data.

Entry and expansion

266. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient. In

terms of timeliness, the CMA's guidelines indicates that the CMA will look for entry to occur within two years.¹²¹

267. Based on the evidence available to it, the CMA notes that there are substantial costs of entry into the market for the supply of ePOS data. It received no evidence that entry would be timely likely or sufficient to counteract a substantial lessening of competition. No new entry has taken place in the last five years and no third party anticipated any new entry in the next two years. As has already been discussed, Aztec has attempted to produce aggregated ePOS data without success.
268. However, the CMA has not had to conclude on entry or expansion as no concerns arise as a result of the Merger on any basis.

Buyer power

269. Some customers who responded to the market investigation felt that they had a degree of countervailing buyer power. However, many noted that this power is or would be limited in the context of a market where only IRI and Nielsen had a significant market share.
270. However, the CMA has not had to conclude on buyer power as no unilateral effects concerns arise as a result of the Merger.

Third party views

271. The CMA contacted customers and competitors of the parties. As noted above, it also used evidence gathered by the OFT to the extent it remains accurate.
272. Third party comments have been taken into account where appropriate in the competitive assessment above.

Efficiencies

273. The parties submitted that the Merger will allow IRI to gain additional scale, so allowing it to spread its fixed costs over a wider customer base. The parties went on to submit that the additional scale will allow IRI to more effectively compete with Nielsen. As such the parties are claiming that the Merger will result in enhanced rivalry in the market(s).

¹²¹ [Merger Assessment Guidelines](#), para. 5.8.1 ff.

274. Given the outcome of the CMA's competition assessment it has not found it necessary to conclude on efficiencies.

Decision

275. Consequently, the CMA does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

276. This Merger will therefore **not be referred** under section 22(1) of the Act.

Sheldon Mills

Senior Director of Mergers

Competition and Markets Authority

20 October 2014

ENDNOTES

ⁱ The parties noted previous EC decisions, and the submissions made in each that the relevant markets are national, based on national consumption trends as well as the way in which data is collated. The parties submitted that the geographic market can be left open. They provided information in the Merger Notice in relation to the UK.

ⁱⁱ The parties submitted that pre-Merger Aztec was not able to compete for aggregated data business, despite representing that it did.

ⁱⁱⁱ The parties submitted that pre-Merger Aztec was not able to compete for aggregated data business, despite representing that it did.

^{iv} Foreclosure strategy.

^v [X] customers responded that they would rather give up the convenience product than switch from Nielsen to IRI if faced with a bundling strategy.

^{vi} While there is an overlapping pool of customers, [X] revenues are from customers that do not buy disaggregated convenience ePOS data and so could not be targeted by a foreclosure strategy.