

## Anticipated acquisition by SAP AG of Ariba, Inc

The OFT's decision on reference under section 33(1) given on 27 September 2012. Full text of decision published 11 October 2012.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

### **PARTIES**

1. **SAP AG** (SAP) is a multinational software company, based in Germany that develops, produces and markets enterprise software to manage business operations and customer relations. Its activities include providing software that supports company business functions commonly referred to as enterprise application software (EAS) solutions. It also provides the relevant support, consulting, maintenance, and training services for the implementation of its software solutions. SAP is active through a number of subsidiaries in more than 50 countries, including the UK.<sup>1</sup>
2. **Ariba, Inc** (Ariba) is a software and information technology services company based in the United States. Its activities include offering EAS as a niche provider (also known as best of breed) that focuses on one aspect of EAS, supply chain management (SCM), with a focus of on-demand solutions (also known as 'in the cloud'). Ariba provides access to a network with 730,000 buyer and supplier members. This network can be used to send purchase orders and invoices. Ariba is active through a number of subsidiaries in 25 countries, including the UK. Ariba generates the largest proportion of its revenues in the United States (U.S.). In 2011, its UK turnover was £[ ].

<sup>1</sup> In addition, SAP also has a 4.3 per cent shareholding in Hubwoo (a competitor to Ariba) and a director on Hubwoo's Board.

## **TRANSACTION**

3. SAP notified the Office of Fair Trading (OFT) of its anticipated acquisition of Ariba on 26 June 2012. The OFT's administrative deadline is 27 September 2012.

## **JURISDICTION**

4. As a result of this transaction SAP and Ariba will cease to be distinct. The parties overlap in the supply of EAS software in the UK. In the financial year 2011, Ariba's UK turnover was £[ ], which is below the turnover threshold of £70 million set out in section 23(1)(b) of the Enterprise Act 2002 (the Act).
5. The parties submit that share of supply in section 23 of the Act is not met, and that the Parties' combined share of supply of EAS in the UK is [0-10] per cent and for the SCM segment of EAS it is [20-30] per cent in the UK.
6. However, the parties indicated that industry analyst, Gartner, places the parties' combined share of supply of procurement software at around [30-40] per cent in the UK.<sup>2</sup> On the basis of this information, the OFT considers that the share of supply test set, out in section 23(1)(b) of the Act, is satisfied and that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **MARKET DEFINITION**

### **Product scope**

7. Similar to the Oracle/Peoplesoft merger,<sup>3</sup> this transaction affects business software. Business software can be broadly categorised into infrastructure software and application software. Business application software comprises software programs that address some aspect of planning, execution, or collaboration in businesses. EAS is one aspect of this.

<sup>2</sup> Gartner - List of competitors in the Procurement segment UK, 2011. Procurement software is software that aids procurement decisions via software functions that: make procurement spend visible, analyse spend, allow for better sourcing, and provide invoicing and supplier information.

<sup>3</sup> *Case No COMP/M.3216- ORACLE/PEOPLESOFT* see paragraph 15 and 16.

8. EAS is software that supports the major business functions needed to manage a business effectively at a corporate or branch level. EAS that is commercially available off-the-shelf through sale, lease, rental, or as a service is referred to as packaged software. This can be distinguished from customised software that fulfils the same functions as packaged applications, but is developed in-house and, or with the help of outside consultants.
  
9. The industry, in particular the industry analysts, generally distinguishes between various categories of EAS, grouping EAS into categories having functionality with broadly similar purposes. The European Commission has previously noted that EAS can be segmented into several functionalities:
  - i. Enterprise Resource Planning (ERP) applications help companies manage human resources, finances, and operations, and monitor enterprise assets and control costs
  - ii. Customer Relationship Management (CRM) applications help companies acquire and retain customers, gain deep market and customer insight, and align their organizations on customer-focused strategies
  - iii. Supplier Relationship Management (SRM) applications help firms to manage their interactions with the organisations that supply the goods and services it uses
  - iv. Supply Chain Management (SCM) applications automate supply- and demand-side business processes to bring products or services to market
  - v. Product LifeCycle Management (PLM) applications provide manufacturers with a single source of all product related information necessary for collaborating with business partners and supporting product lines and
  - vi. Business Analytics (BA) applications are tools and applications for extracting, consolidating, analyzing, modelling, managing and delivering data in support of all kinds of corporate decision-making processes.<sup>4</sup>

<sup>4</sup> Case M.3215 – *SAP/Business Objects*

10. The Parties overlap on a worldwide basis, including in the UK, in respect of EAS and more particularly in the sub-segment, procurement of SCM. SAP provides a large range of EAS software often referred to as a 'suite vendor' whereas Ariba focuses its activities in the procurement segment of SCM which is one of six sub-segments of EAS as noted above.
11. Gartner places the area of overlap between SAP and Ariba as being procurement within SCM, identifying procurement as one of the four sub-segments of SCM.<sup>5</sup> The other sub-segments are Supply Chain Planning (SCP), Supply Chain Execution (SCE), and Service Parts Planning (SPP). But the parties submit that there are both demand-side and supply-side reasons why it is not appropriate to define the market as narrowly as 'procurement'. The Gartner market share data on procurement have been used as a starting point with customer comments focussing on the providers that were the closest match to their needs which may not precisely equal the Gartner category.
12. On a cautious basis, the OFT cannot rule out that firms may not switch away from procurement software to any other type of SCM or EAS software or even that they may have a strong preference for on-demand solutions to on-premise. Some of the features of such potential clients may be visible to suppliers in tender requirements and allow the parties to price discriminate on this basis. Price negotiations can continue for some time.
13. The OFT also considered whether it was appropriate to define a separate market for on-premise solutions to those solutions that are provided in the cloud. However, customer evidence was mixed with many firms that were buying suite solutions not seeing Ariba (and other specialists) as a competitor for the broad range of on-premise products offered by SAP. Customers that were buying specific procurement software were often doing so because they have heard of benefits of cloud provision and were willing to consider such solutions. The OFT considered whether any of the conclusions would change in the light of a different product delineation.
14. Thus while not finding it necessary to conclude on the product market in this case, the OFT has examined each of these distinctions in turn in its analysis.

<sup>5</sup> Gartner - Market Snapshot Supply Chain Management Software, Worldwide, 2011 (April 2012).

## **Geographic scope**

15. The parties submit that the market for EAS is worldwide in scope and this geographic market definition remains valid even if SCM is considered. The parties considered that customer demand does not vary across the different geographic regions except for certain language or other local requirements which can easily be customized in the software application. The parties did not consider that procurement was an appropriate market definition.
16. Third parties did not consider it important if the product was specifically designed for the UK. However, it does appear that firms which specifically target and market in the UK have a stronger presence in the UK.
17. Based on the analysis above, and without needing to conclude on the geographic market, the transaction has been assessed on the cautious basis of the UK as well as considering shares of wider geographic markets where appropriate.

## **HORIZONTAL ISSUES**

### **Market shares**

18. Third parties did not provide share of supply estimates, and referred to the analysis undertaken in the industry by experts including Gartner and Forrester.<sup>6</sup> The Forrester Report suggests that Ariba and Basware lead the procurement market followed by Oracle and SAP.<sup>7</sup>
19. The parties submit that Gartner allocates the parties a combined UK share of [30-40] per cent of the EAS procurement market ([10-20] per cent for SAP and [10-20] per cent for Ariba). In the EU, Gartner gave shares SAP [20-30] per cent, Ariba [0-10] per cent, Basware [0-10] per cent, Oracle [0-10] per cent and Bravo Solution [0-10] per cent.

<sup>6</sup> Both Gartner and Forrester are providers of industry analysis, and seen within the industry as authoritative. [www.gartner.com/technology/about.jsp](http://www.gartner.com/technology/about.jsp) and [www.forrester.com/home#/aboutus](http://www.forrester.com/home#/aboutus).

<sup>7</sup> Forrester Wave: eProcurement Solutions, Q1 2011

**Table 1: Share of EAS procurement in the UK, 2011**

<b>Companies</b>	<b>Share (per cent)</b>
Ariba	[10-20]
SAP	[10-20]
<b>Combined</b>	<b>[30-40]</b>
Oracle	[0-10]
IBM/Emptoris	[0-10]
Bravo Solution	[0-10]
IQ Navigator	[0-10]
Hubwoo	[0-10]
GEP	[0-10]
Fieldglass	[0-10]
Basware	[0-10]
Infor/Lawson Software	[0-10]
SciQuest/Upside Software	[0-10]
Zycus	[0-10]
IBS AB	[0-10]
Symfact	[0-10]
Unit4	[0-10]
lasta	[0-10]
JDA Software/i2 Technologues	[0-10]
Others	[20-30]

**Source: Gartner 2011**

20. The market shares in Table 1 above are not necessarily at a level that would normally cause competition concerns on unilateral effects grounds for the OFT. However, the differentiated nature of the products and in particular the focus of these firms on large clients that may not want to use some of the smaller start-up firms listed in the long tail of the market, means that for certain breadth of functionality the parties could be very important competitors. For this reason the OFT also examined a range of other evidence.

### **Unilateral effects**

21. The OFT examined the merger on a narrower basis of the supply of electronic or e-procurement on-demand services in the UK.<sup>8</sup> The parties submit a list of over 30 firms that they considered there was sufficient industry evidence to show that they were active in procurement software in the UK. About 20 of these competitors had relatively substantial UK on-

<sup>8</sup> E-procurement and procurement using the software produced by the parties are used interchangeably.

demand procurement revenues. The OFT notes that even if SAP was to try to encourage all its customers post-merger to move to on-demand for procurement (and this was more likely than these customers staying in-segment with on-premise) there would still be significant UK alternatives in this area. There was also no evidence in any internal documents provided by the parties that this strategy was at all likely. Thus it is not clear in the event of SAP's procurement customers moving to on-demand services that they would switch to Ariba.

22. Ariba's internal documents included win/loss data on new contracts, but most of these were US focussed and the interaction with SAP in particular does not contain many UK clients. The document lists [0-10] win or loss results against SAP in North America and [ ] outside ([ ]). SAP's internal documents show that on-premise revenue is growing [0-10] per cent, and on-demand at [10-20] per cent. SAP's internal papers also note that Ariba [ ]. SAP only appears to produce 'winning against' brochures and guidelines for [ ]. However much of this material is U.S. or globally focussed and does not point to significant activity in the UK.
23. The internal documents suggest that SAP [ ].
24. The parties submit that in the UK, SAP gains [90-100] per cent turnover from on-premise solutions with only [0-10] on-demand customers in the UK. Since SAP is a suite vendor, and its on-premise solutions are paid for up-front, it would not be aware if a customer stopped using part of that offering or suite (for example procurement) and it is very difficult to allocate the payments SAP receives for a suite to calculate revenues in segments such as procurement. SAP uses Hubwoo and IBX CapGemini to provide supplier networks for its customers.
25. The parties submit that, in comparison, Ariba's revenue in the UK from on-premise is only [0-10] per cent of its turnover. Of its total turnover, [20-30] per cent comes from [0-10] customers and the rest from many other smaller customers. Although Ariba has invested in its supplier network, Ariba has gained [0-10] new customers in the UK since the beginning of 2011, and [0-10] overall since summer 2007.
26. The parties submit examples of recent UK bidding data. Ariba provided evidence of UK customers turning to [10-20] other procurement firms instead of Ariba. It was clear from this data that [ ]. On [0-10] contracts

where SAP was the incumbent EAS supplier, Ariba was not successful [ ], noticeably [ ] customer chose SAP.

27. In comparison on a tender for a council contract, [ ]. SAP provided evidence of [0-10] bids where it lost out to [0-10] different competitors, and Ariba only participated in [0-10] of those bids.
28. The OFT notes that the parties are noticeably differentiated in their product offering in the UK. This would normally point to a much lower diversion between them than to other suppliers. However, third party comments to the OFT indicated that the market appears to be moving from on-premise to more on-demand computing and the potential lack of firms running both SAP and Oracle (such that firms do not switch a small part of their EAS system to Oracle from SAP) may mean the differentiation does not have as much of an impact on diversion ratios as it would in other markets. On a global basis Ariba may be a credible competitor to both SAP and Oracle in the procurement segment with less competition for this specific application between Oracle and SAP directly.
29. The OFT considers that the UK switching data suggest that the parties do not compete against each other any more often than would be expected given the market shares in the UK. Below the OFT uses other ways to determine whether the parties are close competitors.
30. The OFT received mixed views from third parties as to whether SAP and Ariba are close competitors.
31. The parties submit that their products are differentiated, complementary products, such that they cannot be considered close competitors. Some customers (albeit a minority) considered the parties' procurement products to be similar and substitutes. Some indicated that the parties have bid against each other for their contracts. One third party told the OFT that firms using SAP for ERP, for instance, do not necessarily use SCM products from a on-premise suite competitor since they either keep with SAP or go for a best of breed (where the software is specialised to a particular function and not necessarily integrated into the whole EAS suite) supplier like Ariba.
32. However, despite contacting both large customers and those with recent tenders, only one customer raised minor concerns about horizontal

competition and mentioned that there would be fewer alternatives. The majority said that they had reasonable alternatives remaining and listed alternatives including GEP, Fieldglass, Basware, and IBM-Emptoris. Some listed many more with one large customer considering over 20 suppliers. Several customers (including those that used both SAP and Ariba) had positive views about the transaction.

33. In conclusion the OFT notes the general lack of customer concern and the number of alternative providers active in the UK means the merger will not give rise to a substantial lessening of competition (SLC). Indeed many more customers viewed the merger positively than negatively and several different suppliers were named as viable alternatives by customers in the UK.

#### **Barriers to entry and expansion**

34. The parties submit that potential entry and expansion remains a constant competitive constraint for incumbent software vendors for all EAS segments.
35. The parties submit evidence that best of breed solutions, especially in on-demand, can be started in a back room, and once the software is created and marketed, the vendor may then expand into providing a full suite.
36. Some competitors indicated that there are no significant barriers to entry in the UK market. However, other competitors identified entry barriers including (i) cost of investment in process knowledge and development costs, (ii) marketing, competition for customers with existing ERP vendors and winning the critical customer mass, (iii) skills and resources required to provide managed services and support until critical mass, and (iv) special requirements for certain sectors (for example, defence, medical and government contracts).
37. However, a third party suggested that it is easier to enter at the low end of the market, but that large companies (customers) want to work with a stable brand. The parties submit that customers are not using complete suites and reverting to best of breed for specific needs including some of the bidding data where some large companies chose very narrow product functionality. The global procurement market has been expanding rapidly

and many smaller firms are growing, but not all are producing organic growth to keep up with the pace of growth in the market as a whole.

38. It is not clear that it is possible for new firms to enter the industry and quickly be able to provide a suitable alternative to the size of customer the parties target, but third party comments indicate that there is a wide variety of potential existing suppliers. Some large customers consider many of these smaller firms are viable alternatives even if they have relatively low UK revenues at present.
39. However, given the lack of concerns the OFT has not found it necessary to conclude on whether there are barriers to entry and expansion in this case.

### **BUNDLING ISSUES**

40. Several concerns were received that the acquisition of Ariba would allow SAP to reduce access to Ariba's products by rival suite vendors and that the loss of these potential features would limit the ability of rivals to compete with SAP. A combination of Ariba's supplier network with SAP's full suite of EAS applications and large customer base will offer a competitive advantage to the merged entity. The OFT first considers loss of the independent best of breed provider, due to bundled products, and then considers the impact of any hypothetical attempt to restrict access to Ariba's supplier network.
41. The Ariba supplier network is a way of transmitting tender requirements, orders, catalogues and invoices between the customer and the suppliers. Some of those on the network (particularly customers) appear to get access via the Ariba software products, they then link up to their suppliers via this network so that they do not have to manually re-enter data at their end. All those customers' suppliers must thus adopt the network systems. Suppliers have free access to the network up to a certain limit. Once the transaction limit is reached, if they are not an Ariba customer, they have to pay a proportion of the transaction value to access it.
42. The OFT notes that SAP is particularly strong in ERP. Competitors raised strong concerns that the value of their offering will be reduced if SAP

bundles its ERP products with Ariba. Ariba is by far the largest best of breed supplier in the UK, and globally according to Gartner data.<sup>9</sup>

43. Based on third party views, the OFT considers that other on-demand firms can replicate the functional characteristics of Ariba's software. Several industry reports suggest there is a large range of alternative providers that have similar or better features across the full range of functionality. SAP was already able to bundle its strong ERP products with well regarded products in areas of SCM including some on-demand products. The views of industry experts and UK customers point to sufficient alternative software solutions to enable competitors to provide equivalent products.
44. Third parties raised concerns that SAP would create barriers to integration between the Ariba system and other procurement technologies or ERP suites, thus giving unfair advantage to SAP for customers who are evaluating on-demand solutions. In addition, industry experts have commented that the network is the key value of the transaction that is driving the deal.<sup>10</sup>
45. A competitor acknowledged that degrading competitors' use of the Ariba network risked damaging its success. The only concerned UK customer that responded to the OFT was not worried about the network. Only one UK customer said that they valued the size of the network and used it to look for suppliers (rather than just connecting to it as a means of communication with existing suppliers).
46. The OFT notes that there could be that there is a lack of incentive for SAP to foreclose competitors access to the Ariba network because fewer suppliers may join the network and this will diminish the value of Ariba network. Users and businesses could switch to alternatives. Some competitors agreed that it was unlikely for the network to be cut off from competing ERP suppliers.
47. Third party concerns about the importance of Ariba's supplier network appear to be mainly related to the position in the U.S.. The parties submit

<sup>9</sup> Market Share Analysis: Supply Chain Management Software, Worldwide, 2011. 3 May 2012.

<sup>10</sup> [http://blogs.forrester.com/andrew\\_bartels/12-05-23-sap](http://blogs.forrester.com/andrew_bartels/12-05-23-sap) buys ariba huh, and [www.gloobal.com/saps-planned-ariba-acquisition---a-smart-move-beyond-its-cloud-strategy](http://www.gloobal.com/saps-planned-ariba-acquisition---a-smart-move-beyond-its-cloud-strategy)

that approximately [70-80] per cent of money spent on the network may be U.S. sourced. This was supported by a customer that suggested that the network was stronger in the U.S.. A competitor said that about 40-50 per cent of its customers used Ariba products (with most of these on the Ariba network). It also mentioned that [80-90] per cent of the Ariba customers were in the U.S. with [0-10] per cent in Asia and [10-20] per cent in Europe (including the UK).

48. The OFT notes that Gartner lists Ariba as competing in the UK but not the full 'effective' rating it gets in the U.S.<sup>11</sup> The firms 'effective' in the UK that are significant in procurement are: SAP, Oracle, Proactis, and Wax Digital. Firms that are on a par with Ariba on this are, Hubwoo, Basware, Coupa, and SciQuest.
49. Apart from the one customer mentioned above, all UK customers said that the network size was not important and it did not affect its value if the network had a lot of existing suppliers already linked up. The customers said that the ease of switching to the network just depended on how quickly participants and their suppliers could join. The network was just a means of communicating with existing and established suppliers that could be switched if required (one customer said that most of their purchases went through seven suppliers).
50. Based on third party views and the analysis from market reports and although the network appears to be very large globally, especially in the US, it does not appear to be as strong in Europe. Forrester has also said that Basware (a European based network) is competing for the largest network (on transaction numbers) and so this may be a suitable alternative outside the U.S.<sup>12</sup>
51. The OFT considers that there may always be some barriers to switching in terms of getting all the suppliers a business connects with to change their processes. The OFT noted that there are several other supplier networks available and UK customers find it just as convenient to switch to smaller networks with no value to them of the network benefits of linking to many suppliers.

<sup>11</sup> Gartner – eprocurement market and vendor landscape 2 September 2011, page 26.

<sup>12</sup> Forrester - Predictions 2012 The ePurchasing Market Will Grow 10%, p30 (April 2012).

52. Given that very few UK customers considered that they would face strong obstacles to moving away from the Ariba network and did not view this as part of their choice of software suite provider, the OFT has not found that there is a realistic prospect that the merger would give rise to a SLC via bundling.

### **THIRD PARTY VIEWS**

53. Third party views were sought and many competitors provided comments related to the global position of the parties rather than specific UK concerns. On the whole customers were supportive of the merger and thought it would bring benefits to their business. The main competitor concerns were related to access to the Ariba supplier network that no UK customers raised concerned about.

54. Where relevant concerns were raised, they have been discussed above.

### **ASSESSMENT**

55. The transaction consists of the acquisition of Ariba by SAP. The main overlap between the parties is in the supply of procurement software within SCM which is part of EAS. The OFT has examined the merger on the UK-wide basis.

56. The parties account for [30-40] per cent of EAS procurement services in the UK (with an increment of [10-20] per cent). However, they are somewhat differentiated. SAP mostly provides on-premise solutions where the equipment is housed and run at the client's premises and Ariba mostly provides on-demand procurement services, where customers pay for their usage of the software that is managed by Ariba. The OFT took these differentiations into account, where relevant.

57. Bidding data analysed by the OFT showed that the parties are not close competitors and the parties have lost sizeable contracts to third party competitors. Customers contacted by the OFT were unconcerned about the merger and could identify a number of credible alternatives to the merger parties including GEP, Fieldglass, Basware and IBM-Emptoris. Most SAP customers were in favour of the transaction with greater integration

possible between SAP and on-demand. Virtually all customers considered there to be sufficient alternatives.

58. Some competitors were concerned, suggesting that the value of Ariba was its network of firms or suppliers linked up to its IT platform. Some of these concerned competitors accepted that the merger parties were unlikely to cut off competitor access to the network due to the loss of scale and value of the network. Moreover, this network is most relevant in the U.S and where most of the customer benefits of the network are.
59. Only one UK customer found the size of the network an important feature with most just saying it was one possible solution that could be changed for another approach. The Ariba network appears to offer few benefits to UK customers above the features of several other networks.
60. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

61. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.