



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

#### CASE NO.: 1227/4/12/14

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Rules”), the Registrar gives notice of the receipt, on 17 April 2014, of an application for review under section 120 of the Enterprise Act 2002 (the “Act”) by A.C. Nielsen Company Limited (“Nielsen”) of the decision of the Office of Fair Trading (the “OFT”)<sup>1</sup> contained in a document published on 24 March 2014 entitled “Completed acquisition by Information Resources Inc. of Aztec Group – ME/6211/2013” (the “Decision”). Nielsen is represented by Squire Sanders (UK) LLP of 7 Devonshire Square, London EC2M 4YH (ref.: Diarmuid Ryan).

By its Decision, the OFT decided not to refer to the Competition Commission the completed merger between Information Resources Inc. (“IRi”) and Aztec Group (“Aztec”). IRi and Aztec are suppliers in UK markets of services (“retail measurement services”) for the continuous tracking of product sales to consumers, based on information gathered at the retail point-of-sale. Both of them buy sales data – in the case of IRi, from retailers and, in the case of Aztec, from both retailers and wholesalers – and resell such data to major suppliers of fast moving consumer goods (“FMCG Suppliers”). Nielsen also supplies retail measurement services to FMCG Suppliers in the UK.

Nielsen contends that, for the reasons set out in its Notice of Application, the Decision is flawed in that the OFT’s relevant findings or conclusions were: (a) incapable of being properly supported by the OFT’s reasons and reasoning; (b) not based on sufficient analysis or enquiry; and/or (c) not ones that a reasonable regulator, properly directing itself in law, could have come to on the basis of the findings and reasoning set out in the Decision as a whole. In particular, Nielsen contends that the OFT’s conclusion that the completed merger did not give rise to a realistic prospect of a substantial lessening of competition (“SLC”) is unsustainable in light of the OFT’s own findings and analysis in the Decision.

By its Notice of Application, Nielsen contests the Decision on four grounds:

1. The OFT erred in ignoring the effect of the merger on an important category of customers, which the OFT found will have no choice of supplier post merger.
2. The OFT erred in ignoring the other possible effects of the merged firm’s strategy and associated conduct on competition as a whole.
3. The OFT erred in its assessment of the merged firm’s strategy and associated conduct on Nielsen’s ability to serve as a competitive constraint on the merged firm.
4. The OFT failed to accord Nielsen an opportunity to provide information relating to its own future decisions and conduct, before making findings in relation to those matters (which were critical to the OFT’s decision not to make a reference).

By way of relief, Nielsen requests that the Decision be set aside and remitted to the CMA to be considered afresh compatibly with the Tribunal’s judgment.

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<sup>1</sup> The relevant functions of the OFT have been taken over by the Competition and Markets Authority (“CMA”), which is accordingly the respondent to this application.

Any person who considers that he has sufficient interest in the outcome of proceedings may make a request for permission to intervene in the proceedings in accordance with rule 16 of the Rules. Pursuant to the Order of the President abridging time for applying for permission to intervene (made 24 April 2014), any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received by **no later 4pm on 8 May 2014**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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