

Letter sent to Customers

From: Tom Muir
Inquiry Secretary

Direct line: 020 7271 0230

3 August 2004

Dear

EMAP PLC / ABI BUILDING DATA LTD MERGER INQUIRY

As you may know, the Office of Fair Trading has referred to the Competition Commission (CC) for investigation and report the acquisition by Emap plc of ABI Building Data Ltd. I enclose a copy of the terms of reference and accompanying press releases.

The CC is now seeking views from interested parties. We would welcome any views you have on the likely effects of the acquisition and the reasons for those views. It would be particularly helpful if in doing so you could provide us with relevant background information on the specific points set out below. Could we please have your reply by **18 August 2004**. The specific points referred to are the following.

1. Brief description of your business and the part that Emap Glenigan and ABI products play in it e.g. to what extent these are essential or desirable in carrying out your business.
2. Whether these products are or were bought from any other suppliers, if so who and reasons for any switches.
3. Whom you see as Emap Glenigan and ABI's closest competitors and whether you could switch to them, including the feasibility of using a range of regionally-based suppliers as opposed to one national supplier.
4. What steps you might take (e.g. collecting data in house) in the event of the acquisition leading to a 5% increase in the prices of the products you buy from Emap Glenigan/ABI.
5. The relevant market, including the availability of other products/services (advertising, exhibitions, sales literature, etc) within the wider category of construction sales and marketing information services and the extent to which these are substitutes or complements for the products/services that you buy from Emap Glenigan/ABI.
6. To what extent it would be practicable and economic for other suppliers to enter the market/expand the range of products they already supply, as substitutes for Emap Glenigan/ABI products.
7. The extent to which the completion of the PARSOL project would reduce your need for Emap Glenigan/ABI products e.g. by facilitating in house data collection or making entry to the

market easier for competitive supply.

8. Any other factors you consider relevant to the Commission's inquiry.

We should be grateful if you would observe the deadline given as this will assist us in gathering evidence and help to ensure that the timetable for the inquiry is met. However, if you do anticipate problems in meeting this date please contact me as soon as possible to discuss how quickly you will be able to respond.

I enclose with this letter a note explaining the CC's powers to gather, handle and disclose information. The CC aims to be open and transparent during its inquiries. In considering whether to disclose or publish any representations or information that you may submit we will take into account your views on the sensitivity of the material you provide and any request you may make for anonymity. When you reply to this letter, therefore, please say whether or not you are content for your views to be published on our web site and attributed to your company. If the submission contains information that you consider to be sensitive, please provide a second version that you would be content to see published, omitting the sensitive information.

If you have any queries, please do not hesitate to contact me on the above number or email Tom.Muir@competition-commission.gsi.gov.uk, or, if I am unavailable, Matthew Weighill (Tel: 020 7271 0159, email same style).

Yours sincerely

Tom Muir
Inquiry Secretary

The CC's procedures and powers to gather information and the handling and disclosure of information by the CC

Procedures and role of the CC

1. Information about the CC's procedures and role is contained in a series of publications:

Competition Commission: Rules of Procedure (CC1)

Merger References: Competition Commission Guidelines (CC2)

Market References: Competition Commission Guidelines (CC3)

General Advice and Information (CC4)

Statement of Policy on Penalties (CC5)

Chairman's Guidance to Groups (CC6)

Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries (CC7)

These publications can be viewed at www.competition-commission.org.uk. Alternatively, if you would like to receive a hard copy, please contact Matthew Weighill (Tel: 020 7271 0159).

Information-gathering powers

2. The CC's information-gathering powers under section 109 of the Enterprise Act 2002 (the Act) include the power to require persons to give evidence to it or to produce specified or described documents that are within that person's custody or under their control. In the event of late provision or non-provision of information requested by notice under section 109 of the Act, the CC has the power to impose a penalty. (In merger cases, if the person who has failed to comply with the notice is a main party, the CC may also have the power to extend the period in which it must publish its report.)
3. Requests for information are usually made without formally exercising the CC's section 109 powers. However, in the event of delay or failure to respond to the CC's requests, the group of CC members appointed to conduct the inquiry (the Group) might decide to issue formal notices under section 109, this being the first necessary step towards the imposition of a penalty.
4. For more information about these powers, please see the *Statement of Policy on Penalties*.
5. The Group may ignore information submitted late (see Rule 9 of *Competition Commission: Rules of Procedure*).

Disclosure of information

6. The CC aims to be open and transparent in its work whilst wherever possible respecting the confidentiality of information that it obtains during its inquiries. Transparency is a means of achieving due process and of ensuring that, by having a better understanding of the case against them, the main parties in an inquiry are treated fairly. It also enables other interested persons to understand the issues that the CC is considering and thereby make an effective contribution to the process. In addition, an open and transparent approach assists parties when providing

information to the CC and improves the effectiveness, efficiency and quality of the CC's decisions.

7. The Act imposes a general restriction on the disclosure by the CC of information that it has obtained in connection with the exercise of its functions, including the investigation of merger and market references. However, the Act also sets out the circumstances in which the CC may disclose information, including when disclosure is made for the purpose of facilitating the CC's functions. Dependent upon the circumstances of any disclosure by the CC, restrictions may apply to any further use or disclosure of the information. For more information, see paragraphs 2.1 to 2.5 of the *Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries*.
8. During the course of the inquiry, the CC will publish a number of its documents on its web site. These include a statement of issues, the Group's provisional findings on the statutory competition questions and if appropriate a statement of possible remedies. The Group will also be considering whether or not to disclose other information to main parties or selected third parties, or to publish information on the CC's web site, having regard to the *Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries*. For example, paragraph 3.5(c) of that document suggests that key arguments and views of third parties should be published, or, where the information is sensitive, made known to main and selected third parties, subject to the considerations set out in the following paragraph.
9. Whenever the Group is considering whether to disclose information, it must have regard to three considerations set out in section 244 of the Act:
 - (a) the need to exclude from disclosure (so far as practicable) any information whose disclosure the CC thinks is contrary to the public interest;
 - (b) the need to exclude from disclosure (so far as practicable):
 - (i) commercial information whose disclosure the CC thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual whose disclosure the CC thinks might significantly harm the individual's interests; and
 - (c) the extent to which the disclosure of the information mentioned in paragraphs (i) or (ii) is necessary for the purpose for which the CC is permitted to make disclosure.

Non-sensitive version of submission

10. When providing views and comments, you are requested to provide a non-sensitive version of your evidence for publication on our web site or for disclosure, which omits anything that you consider to be sensitive. Anything excluded from this non-sensitive version should be drawn to the attention of the CC. It is also to your advantage to explain why you regard the material that has been omitted as sensitive so that the CC may take this into account when it is considering the possible disclosure of your evidence. If you would like additional time in which to provide the non-sensitive version or have any queries concerning this request, please contact the Inquiry Secretary.

11. Whenever you supply information (whether or not it appears likely that the Group will wish to disclose the information to others), you should indicate to the CC which parts are sensitive, and why, so that the CC may take this information into account when having regard to the three statutory considerations (see paragraph 9). It may not always be practicable to discuss any proposed disclosure with you, so an indication at the outset, of what it is that you regard as sensitive, and why, will enable the Group to take account of your concerns and, when time permits, explore those concerns with you. In general, the CC will take the view that a party has failed to give sufficient explanation about the nature of the sensitivity if the information is marked 'sensitive' without further narrative.
12. The CC aims to be sensitive to requests for confidentiality. For example, it has often been possible for submission to be anonymized. If you do have any concerns as to the possible disclosure of information, you should make your concerns known to the Inquiry Secretary. In the event of a dispute with the Group, you may make representations to the Chief Executive. The Chief Executive will liaise with the Group, though the decision whether or not to disclose will remain that of the Group.
13. For further information please see the *Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries* and paragraphs 6.27 to 6.30 of the CC's *General Advice and Information*.

Checking the accuracy of information supplied

14. The Group may, for the purpose of preparing its report, send any material which it has produced based upon your submission back to you so that its accuracy can be verified. When doing so, you will be asked to identify any matter which you wish to have excluded from the report. When considering whether publication of the matter would be inappropriate, the Group will have regard to the considerations mentioned in paragraph 9. For further information about exclusions, see Part V of the *Competition Commission: Rules of Procedure* and paragraphs 6.27 to 6.30 of the CC's *General Advice and Information*.
15. Please also note that it is a criminal offence to give false or misleading information to the CC.

Further information

For further information about the CC's work and procedures, please see its guidance and rules publications on its web site (www.competition-commission.org.uk), in particular *General Advice and Information*.

ACQUISITION BY EMAP PLC OF ABI BUILDING DATA LTD

Terms of reference

1. Whereas in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the "Act") to make a reference to the Competition Commission (the "Commission") the Office of Fair Trading (the "OFT") believes that it is or may be the case that-
 - (a) a relevant merger situation has been created in that:
 - (i) enterprises carried on by or under the control of Emap plc have ceased to be distinct from enterprises carried on by or under the control of ABI Building Data Ltd; and
 - (ii) as a result, the condition specified in section 23(3) of the Act prevails or prevails to a greater extent, with respect to the supply of construction project information and contact data products in the United Kingdom; and
 - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, including within the market for construction project information and contact data products in the United Kingdom.
2. Now, therefore, the OFT, in exercise of its duty under section 22 of the Act, hereby refers to the Commission, for investigation and report within a period ending on 15 December 2004, the following questions in accordance with section 35 of the Act -
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
3. In relation to the question whether a relevant merger situation will be created, the Commission shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

Vincent Smith
Director of Competition Enforcement

1 July 2004

OFT REFERS COMPLETED ACQUISITION BY EMAP PLC OF ABI BUILDING DATA LTD

The OFT today referred the completed acquisition by Emap plc of ABI Building Data Ltd to the Competition Commission (CC).

The OFT believes that it is or may be the case that a relevant merger situation has been created, and that the creation of that situation may be expected to result in a substantial lessening of competition within the markets for the supply of construction project information and contact data.

Vincent Smith, Director of Competition Enforcement at the OFT, said: 'This merger has brought together the two major players in the sector. There does not appear to be sufficient other choice for some customers. The merged entity may therefore be able to increase prices, reduce service levels or the quality of information provided to these customers. Further investigation by the CC is required to assess these issues.'

The CC is expected to report by 15 December 2004.

NOTES

1. The Enterprise Act 2002 requires the OFT to refer to the CC a completed or anticipated merger for investigation and report where such a merger creates or enhances a 25% share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70m and where the OFT believes 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 any market or markets in the UK.
2. The CC may extend the 24 week period within which it is required to publish its report by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
3. The text of this decision will be placed on the OFT's web site at www.ofg.gov.uk and will also appear in the Office's Weekly Gazette and Competition Bulletin as soon as is reasonably practicable.

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