

Emap/ABI Merger Inquiry
Memorandum from Emap plc
Commenting on certain third party submissions

1. In this memorandum Emap provides its comments on the “submission on behalf of an interested third party” of 24 August 2004 which has recently been posted on the CC’s web site. Where relevant, Emap also refers to certain other third party submissions that appear on the CC’s web site.
2. At the outset, Emap wishes to place on record that the version of this interested party submission that appears on the CC’s web site, and on which Emap now bases its comments, contains so many excisions, apparently designed to preserve the anonymity of the interested party, that it is difficult in some instances to make sense of what is being said. Substantial sections of the document have been redacted, with the result that it is not always possible for Emap to be sure about what point is being made (this is particularly so of parts of section 6 and section 11 which, Emap assumes, describe the interested party’s activities). Emap thus considers that it has been placed at a significant disadvantage in responding to the submission of this interested party.

Market definition

3. Much of the argument advanced by the interested party hinges around market definition. It is argued that there is no demand-side or supply-side substitutability between PICD products, static contact lists, marketing and competitor intelligence and CRM software (sections 4.2.1-4.2.2). It is further argued that there are separate markets for “comprehensive” and “basic” PICD products, on the ground that there is no demand-side or supply-side substitution between them (sections 4.3.1-4.4).
4. But as Emap has already pointed out to the CC in its note of 21 September 2004, market definition is not a particularly helpful tool to analyse the competitive effects of this merger. The key issue for consideration in this case is the nature and extent of the competitive constraints that the merged entity would face if this transaction were to be cleared, and market definition alone cannot resolve that issue. Moreover, if markets are defined purely by reference to the characteristics (visual or otherwise) of the product, this is apt to lead to the conclusion that, since each supplier of PICD products supplies a product which is, in some sense, unique it is therefore a monopolist in relation to the supply of its own, highly differentiated, product. Such a mechanistic approach provides little insight into the nature and extent of post-merger competitive constraints.
5. Yet this appears to be essentially the basis on which the interested party has sought to define separate markets for “comprehensive” and “basic” PICD products. At section 4.4 it is stated that

“[t]he former provide a complete range of data in terms of the geography and volume covered and an advanced degree of data customisation, whilst the latter do not.”

Elsewhere it is observed that “the Emap and ABI product offerings are very different from the competitor’s” (section 7.2.8). This approach to market definition is circular: it starts by identifying the differences between various types of PICD product and

concludes that, because such differences exist, the products are necessarily in different markets.

6. Even the points put forward by the interested party on substitution possibilities fail to advance the argument on market definition. No clear distinction can, in Emap's view, be drawn between "comprehensive" and "basic" PICD products: in reality there are infinite gradations between and within products that make such a classification inherently unworkable. For example, CDS and CIS both use the same national planning application and tender data as Glenigan and ABI but use it to provide rationed leads. Those products would, on the analysis of the interested party, presumably fall into the "basic" category, but in Emap's view, they compete directly with the products of Glenigan and ABI.
7. A more accurate way of explaining the potential for demand-side substitution in this industry is to think of it in terms of chains of substitution, linking different products for different customers with different levels of sophistication. Customers are highly diverse and their selection criteria reflect that diversity. The idea that customer requirements can be pigeonholed into a need for *either* "comprehensive" *or* "basic" PICD products does not reflect market reality. There are a range of products available to reflect this diversity and an individual customer will have a range of options from which to choose. This applies at all levels of sophistication, and would certainly apply at the point in the continuum between those products that the interested party would view as just falling into the "basic" category (in other words "sophisticated basic") and those just falling into the "sophisticated" category (in other words "basic sophisticated"). It is this substitution at the margin which renders the blunt distinction between "basic" and "sophisticated" products meaningless from a market definition perspective, and the resultant chain of substitution explains why all PICD products should be considered as part of the same relevant market. This approach would also argue for including a provider such as Protel in the market, given that, as Protel notes in its submission (paragraph 6) its data would be "a favourable substitute for Emap Glenigan/ABI data for users requiring more process/scientific orientated data", albeit that it would not be a good substitute for *all* Glenigan or ABI customers.
8. Likewise, the interested party's comments about the lack of supply-side substitution are misconceived: the argument is that a supplier of a "basic" PICD product would have to invest in IT systems, employ a "sizeable" research team, and would need "industry know-how and contacts possessed by suppliers of comprehensive PICD" (section 4.3.2). But Emap has never suggested that entry into the PICD segment would be cost-free. Similarly, Emap acknowledges that expansion by a small player with a view to replicating the offerings of Glenigan and ABI would involve an investment. But that is irrelevant to the debate on market definition and says nothing about the competitive effect of this merger: it is based on the mistaken assumption that, in order to compete effectively with Glenigan and ABI, a new entrant or a smaller player would need to replicate the offerings of Glenigan and ABI. However, Emap's view is that there are many different ways to compete in this market and that a small player with appropriate entrepreneurial skills would need to make only a relatively small investment to compete on a larger scale with Glenigan and ABI (or with the merged entity in the event that this merger is allowed to proceed); it would probably seek to do so by *differentiating* its offering from those of existing players, rather than simply *replicating* those offerings. It is significant that the "anonymous customer of ABI" appears to support this view, noting that:

"it would be relatively easy for another supplier to enter the market because 'it only involves the setting up of databases and the collection of planning data.'"

9. The interested party's assertion (section 6.4) that Glenigan and ABI are the only two suppliers of "comprehensive" PICD, and its assertion (section 7.1) that "the merged entity will have a monopoly with 100% of the market share as there are no other suppliers of this form of PICD" must similarly be rejected as spurious. In essence, this is no more than shorthand for the observation that Glenigan and ABI are the only two suppliers of products that have exactly the same characteristics as the products that Glenigan and ABI both supply. That observation is trivial and irrelevant to the debate.

Competitive effects of the merger

10. The interested party also raises a number of other observations on the competitive impact of the merger that are unsubstantiated and should therefore be disregarded by the CC.
11. It is said (section 7.1) that the merged entity would have a share in excess of 80% if the market is defined to include "comprehensive" and "basic" PICD; it is not clear how that estimate has been derived, and it is important that the interested party is put to proof.
12. It is also said (section 7.1) that the merged entity would have a share in excess of 30% in the CSMIS segment; aside from the fact that a market share of this level would not ordinarily suggest concerns about unilateral effects, it is not clear how that estimate has been derived, and it is important once again that the interested party is put to proof.
13. It is further alleged (section 7.2) that "it would be universally accepted by customers and competitors alike that Emap and ABI are each other's closest competitors and that there is no alternative supplier that can provide the same degree of sophistication and comprehensiveness as regards PICD." The switching data submitted by Emap does not bear out this allegation about the closeness of competition, as it shows very low levels of switching between Glenigan and ABI and vice-versa. Further, it does not appear to be "universally accepted" that there are no alternative suppliers to Glenigan and ABI: the submission from BDS identifies EGI and Property Mind amongst "other companies supplying similar planning leads". In addition, BDS describes its own offering as "covering Great Britain and Northern Ireland", adding that "Emap Glenigan and ABI offer similar information." The fact that BDS appears to regard Glenigan and ABI products as similar to its own calls into question the assessment by the interested party.
14. The interested party highlights the fact (section 7.2.2) that its own geographic coverage is "significantly more patchy" than that of Glenigan and ABI, that it does not systematically track and supply details of all national planning applications and that its approach is "reactive" compared with the "proactive" approach of Glenigan and ABI.
15. It is argued (section 7.3) that the merger will enable the merged entity to increase prices. The evidence submitted by Emap strongly suggests that it is constrained by churn levels which will prevent this: any future price increases (beyond inflation) will have to be justified by significant enhancements to the products concerned. Nevertheless, the interested party asserts that, following the merger, "due to a lack of alternative suppliers, customers may be prepared to accept an even higher price increase". No evidence is provided in support of this assertion, which is essentially speculative. Nor is any attempt made to quantify the potential for an "even higher" post-merger price increase, relative to the potential for a "significant" pre-merger price increase. In the absence of any evidence to support this point, the CC should, in Emap's view, reject it.
16. It is argued (section 7.4) that the merger will reduce the "strong incentive to compete aggressively on quality that existed prior to the merger", but Emap regards this as unfounded. Again, the churn data speaks for itself. It is the propensity of customers to

churn and to use alternative means of generating sales leads that creates the strong incentive to innovate and to continue providing a high quality service. If the pre-merger incentive were coming from ABI (or if the pre-merger constraint on ABI were coming from Glenigan), one would expect to see significant levels of customer switching between the two companies; but there is no evidence of such switching.

Contact lists

17. In relation to contact lists, the views of the interested party are internally inconsistent and unreliable and should therefore be similarly rejected. In section 8.1 it is stated that the interested party is “unable to estimate Emap/ABI’s combined market share of this segment with any degree of accuracy”, yet in the same breath it is asserted that it “would in any event expect it to be in excess of 30%.” This is an untenable position and the interested party should be put to proof of its market share estimates. In this connection, it should be noted that BDS suggests in its evidence that the market is rather more fragmented than implied by the interested party. It identifies seven other suppliers of contact lists (apart from itself and the merging parties), and comments as follows:

“In our view, there is no one company with a significant market share in this sector. A combined market share of Emap Glenigan and ABI in this sector is considered unlikely to exceed 25%.”

18. The second and third paragraphs of section 8.1 highlight the superiority of Glenigan’s and ABI’s product offerings, relative to those of the interested party; the fourth paragraph apparently draws on this comparison to reach the conclusion that, “as a result of the merger, Emap and ABI are likely to have a high combined market share”. This is a non-sequitur: the mere fact Glenigan and ABI offer a product that is better than the product of the interested party says nothing about the post-merger market share. Nor does it enable one to conclude, as the interested party purports to do, that the parties are each other’s closest competitors, or that the merger will enable the merged entity to raise prices. These are, once again, unsubstantiated assertions that deserve no serious consideration by the CC.

Competitor and market intelligence

19. A similar point arises in relation to competitor and market intelligence (section 8.3), where, once again, the interested party falls into the trap of saying, on the one hand, that it cannot estimate market shares with “any degree of accuracy” while, on the other hand, that it would “in any event expect” the merged entity’s market share to be more than 30%. These propositions are mutually inconsistent; they are unsupported by any evidence and they should accordingly be dismissed by the CC. Further, the conclusion that the parties “are likely to have a high combined market share” is in reality a further unsubstantiated assertion, for which no evidence is adduced; nor is any evidence put forward in support of the claim that the parties are each other’s closest competitors, or that they will be able to increase prices post-merger.

CRM software

20. In relation to construction CRM software (section 8.3), it is asserted that the merged entity will have “a high market share”, but no evidence is offered to justify this claim, which must once again be rejected as spurious.

Entry barriers

21. The discussion of entry barriers into “comprehensive PICD” is also highly questionable (section 9). It is argued that first year entry costs would be “well in excess of £1 million”, which is at odds not only with Emap’s own estimate, but also that of BDS. In its submission, BDS states:

“We believe that the cost of establishing a full national planning and project information service similar to the one currently offered by Emap Glenigan and ABI would be less than £1 million a year. Therefore, it is considered feasible for another company to develop a similar project information system to the one currently offered by Emap Glenigan and ABI.”

Emap agrees with the assessment by BDS.

22. In considering the feasibility and likelihood of entry, it is important to distinguish between what this particular interested party would or would not choose to do, and what other potential entrants might or might not choose to do. The mere fact that this particular interested third party has apparently concluded (section 9) that entry would be “unlikely to be successful” does not justify the conclusion that entry by other firms is unlikely to occur.
23. Indeed, there is a peculiar lack of logic underpinning the explanation given by the interested third party for its pessimistic assessment of entry prospects. It appears to have ruled out entry pre-merger on the basis of the costs of doing so, but its concern about the prospects of entry post-merger appears to revolve around the possibility of the merged entity’s engaging in predatory pricing. This is hard to square with the interested party’s argument that the merger would lead to price *increases*. In fact, the real concern of the interested party appears to be that the merged entity’s costs may be lower than its own costs. But even if that were so, it would not indicate that the merged entity’s prices would be predatory, or that this merger would result in an SLC. It would simply indicate that the merged entity was more efficient than the interested party, which should be viewed as pro-competitive.
24. In summary: if the concern with this merger is high prices, there is nothing to stop entry on a significant scale; if the concern is low prices, these arise from pro-competitive efficiencies which benefit customers. Further, entry does not have to replicate the merged entity’s business model to impose a significant competitive constraint.

PARSOL

25. The interested party’s views on the impact of PARSOL also seem confused, again casting doubt on its views about the prospects for new entry:
- PARSOL does indeed only cover England yet this represents 85% of the value of construction projects in the UK. The cost of accessing the remaining 15% (Scotland, Wales and Northern Ireland) is £3.7k per annum.
 - There will be consistent collection of all planning applications as evidenced by the e-Planning Programme highlights: see attached extract in the Appendix to this

memorandum. The e-Planning Division is currently looking at the feasibility of providing a one-stop-shop national planning service. In any event the current cost (which has fallen by 15% in the last year) to collect and aggregate into a database format all planning geographically is £63k for UK planning data, £54k for all of England; £41k for all major conurbations; £19k for London and the South-East. The investment in IT and staffing is therefore infinitely variable upwards from a very low level, depending on the scale of the planned entry. If the interested party had seriously considered the possibility of entering this market, it would have also noted that the cleansing and verifying of contact addresses, rather than requiring a large research team, can be purchased off-the-shelf for an initial payment of £1k and annual payments of only £700 per annum.

- The interested party also notes that it will remain possible to submit planning applications on paper. This is indeed the case yet remains totally irrelevant to the argument. What is relevant is whether details of these applications are freely available electronically – the PARSOL project will ensure that all local authorities publish details electronically by the end of 2005.¹
- The interested party suggests that regardless of PARSOL, entrants would still have to expend significant resources to research the 40% of non-planning projects that Glenigan provides. The “significant” resources that Glenigan expends are in reality the salary costs of two or three researchers, whose job it is to find out which projects contractors are tendering for, and which may not (yet) have gone through the planning approvals process.

Self-supply

26. The interested party argues (section 10) that there is some scope for customers to self-supply “basic” PICD, which, it is acknowledged, might act as a constraint on suppliers of “basic” PICD. But it is argued that self-supply would not occur in relation to “comprehensive” PICD. This view is inconsistent with the evidence put forward by Ordnance Survey in their submission: at section 2 of their submission they state that “Until fairly recently, Ordnance Survey surveyors gathered all CI [Change Intelligence] themselves.” Although Ordnance Survey add (section 4) that “a small price increase would not necessarily cause Ordnance Survey to consider the in-house option”, it would seem that the self-supply option is not completely ruled out either.
27. While Ordnance Survey is perhaps not comparable to most customers who are using Glenigan and/or ABI products to generate sales leads, Emap’s experience suggests that a large number of actual or potential customers already self-supply to a greater or lesser extent: that is one method – and an important method – of generating sales leads.

Effect at the downstream level

28. Section 11 of the interested party’s submission argues that if the merged entity were to increase prices such that the interested party were no longer able to purchase that data, it would face a competitive disadvantage at the downstream level. Emap finds it difficult to comment sensibly on this argument, as the redactions to section 11 mean that it has no information on the nature of the interested party’s business, or why it apparently feels that it is so dependent on having a supply of PICD. This underlines the point made in

¹ It is already possible to view the planning applications of some 31 local authorities online through the UKPlanning portal (www.ukplanning.com). The web site explains that it allows one to search the database of real planning applications – both pending and decided.

paragraph 2 above, that the manner in which the interested party's submission has been redacted creates real difficulties for Emap in constructing its response.

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30 September 2004

Appendix

Extract from the E-Planning Programme Blueprint of the Office of the
Deputy Prime Minister, August 2004

(NB: highlighting in this document has been provided by Emap)

E-Planning Programme Blueprint – selected quotes

August 2004

Office of the Deputy Prime Minister

Introduction

Main Customer Grouping:

- a. Service users including the **business** and voluntary **sector** as well as the public

25 Users want easier access to more responsive, planning and related information and advisory services that enable them to help themselves to information and increase transparency of the decision-making process.

Public Sector Service Providers

30 There are 397 LPAs and national park authorities in England all employing professional planners and support staff. The involvement of LPAs will be essential to the delivery of an effective e-planning system, as they will be responsible for delivering many of the e-services identified in Section 4 of this Blueprint. Central government departments also have an interest in planning-related matters particularly those such as the Environment Agency with statutory consultee status.

31 There are major opportunities for improving service delivery by joining up processes across organisations, in particular, through increased exchange and sharing of data and information.

Next Actions

35 The vision will be further developed, supported by the Stakeholder Engagement approach described in Section 6. The vision will drive the definition of the Service Propositions in section 4. Each e-planning service will be developed with regard to the following wider, cross-cutting considerations:

- **Information** to support all of the proposed services, such as applications, appeals, casework and inquiries, will be, as far as possible, collected once, stored and managed in a single location but accessible via multiple channels as required
 - **Users will be offered**, as far as possible, seamless, integrated consistent services that will be delivered by joining-up across traditional organisational or geographic boundaries
 - New services will be designed to take full advantage, where possible, of central government infrastructure being developed by the e-Government Unit and in compliance with relevant e-standards such as the UK Government Interoperability Framework
 - The development of new services will take account of emerging information policy obligations such as the Freedom of Information legislation.
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Pre-Application Planning Information Service

44 This service will enable users to explore planning and development information that is relevant to a particular geographic area, irrespective of administrative

boundaries. The key aim will be to enable users to identify sites that might provide opportunities for development e.g. brownfield sites, to better understand any planning constraints e.g. conservation or flood-risk areas and to **view current and historical planning-related activity in a particular area.** The service will also support users in moving to further development of proposals for site-specific projects.

Features

45 Users who wish to explore and develop site-specific proposals within a particular geographic area value easier access to information about development opportunities and constraints. **Users will be able to:**

- **Search for data in a variety of ways via either a map, geographic area such as Local Authority/postcode/streetname and/or by searching for a particular type of data such as greenbelt area or brownfield site**
- **View current and historical planning applications, by location, in their chosen geographic area**

Service Availability

- Initial service to be **available nationally by end 2005**
-

Planning Consultation Service

55 **Users,** stakeholders and planning service providers **will be able to:**

- Engage with each other and communicate in an interactive way facilitated by the most appropriate electronic processes such as e-mail, on-line messaging, video-conferencing, web-casting, digital TV to support, for example, consultation processes or pre-planning application discussions
- These new channels of communication will be available for extended service hours to meet the needs of users, including 24x7 where appropriate
- **Make use of national standards and guidance** to engage better with communities on the development of Local Development Frameworks (LDFs) - (via the Development Plans Representation Administration Service (DPRAS) project) **and planning applications/appeals**

Service Availability

- **Users to have access to on-line** consultation services for commenting on planning policies, applications, appeals and LDFs **by end 2005**
-

Timescales & Funding

143 The Planning and Compulsory Purchase Bill, which implements changes to the regional and local planning processes and to development control, has now received Royal Assent (in May 2004).

144 The current ODPM PSA 6 states:

145 "All local planning authorities to complete local development frameworks by 2006 and to perform at or above best value targets for development control **by 2006.** The Office of the Deputy Prime Minister will deal with called-in cases and recovered appeals in accordance with statutory targets."

146 **Significant extra resources have been put into planning.** The Planning Delivery Grant will provide **£350m to planning authorities over 3 years** to reward

improvements in performance. The Government is also providing £4m over 3 years under 'Planning Aid' to enable authorities to expand their services and to be more proactive, especially in communities that are harder to reach. A new Planning Advisory Service is also being created. Where local planning authorities are not performing, action will be taken under the Best Value regime. Increasing the effectiveness of community involvement in planning is one of the key aims of the reform. This is crucial for achieving local ownership of the policies that will determine planning applications under the plan-led system.

147 ODPM is leading a programme to help deliver a PSA target to assist local government to achieve 100% capacity in electronic delivery of planning services by 2005, in ways that customers will use (PSA4). This includes e-planning, customer relationship management, web sites and electronic payments amongst others. Each local authority is required to produce plans for meeting this PSA target (Implementing Electronic Government (IEG) targets, on which their capital funding is based).

148 Government as a whole is committed to delivering high quality, efficient services that make effective use of technology. As a whole government is committed to providing a wide range of priority services, including e-planning, by the target date of 2005.

Contacts

The E-Planning Programme Board

202 This is a new Board that has been formed to drive the e-Planning Programme. It is possible that this Board could serve as the Stakeholder Focus Panel - this needs to be considered in terms of appropriate accountabilities. Suggested terms of reference and responsibilities are set out in Annex E. Current membership is:

Brian Hackland Chair, Programme SRO and Director of Planning, ODPM

Mike Ash Deputy Director of Planning, ODPM

Richard Goodwin e-Planning Programme Manager

Ken Hall Interim Director, Planning Portal

Martin Howell Wandsworth Council (for PARSOL)

Lee Searles LGA

John Culligan Birmingham City Council

Graham Saunders Director, Business Improvement, PINS (for PCS and DPRAS)

Kenneth Kitson Head, E-Business Strategy Team, ODPM

Geoffrey Tierney Manager, Local Government Efficiency and Modernisation Team, ODPM

Ken Swan Deputy Head, Finance, ODPM

Steve Peters Planning Land Use and Statistics, ODPM

John Blundell E-Government Unit, Cabinet Office

John Barker IDeA

Mark Southgate Head of Planning, Environment Agency

Faraz Baber RICS

David Rose RTPI

Ian Silvera Planning Aid

James McCulloch Scottish Executive
Jeff Philips Welsh Assembly
Joe Beattie DoE Northern Ireland