ANTICIPATED ACQUISITION BY BRIGHTSOLID GROUP LIMITED/ FRIENDS REUNITED HOLDINGS LIMITED

Statement of issues

9 December 2009

Background

1. The reference concerns the anticipated acquisition of Friends Reunited Holdings Limited (Friends) by Brightsolid Group Limited (Brightsolid). The reasons for the reference are given in the Office of Fair Trading's (OFT's) decision document. The OFT estimates that the combination of the respective online genealogy businesses of the two parties—Genes Reunited (Genes) and Find My Past Limited (FMP)—account for over 25 per cent of the supply of online genealogy services in the UK.

2. As noted in the OFT decision document genealogy refers to the study or investigation of ancestry and family history. Researchers of family history can make use of various public documents such as census or births, marriages and deaths (BMD) data records. The proliferation of Internet use in recent years has allowed much archive data held by original data holders to be made available online, through a process of digitization: scanning, transcribing and indexing the data into searchable databases. The OFT noted that the total market for online genealogy and social networking in England and Wales had been estimated by the parties to be approximately £50–£60 million.

3. The supply chain for online genealogy can be characterized as comprising four main constituent parts:

   (a) original data holders, which tend to be public bodies which may not have the resources (or remit) to digitize and retail the data sources themselves; accordingly original data holders tend to offer access to their records via partnerships with private companies that are able to digitize the data, known as digitizers.

   (b) Digitizers, which typically scan and transcribe the data source in return for a period of de facto exclusivity whereby they are the sole retailers of the data. The digitizer may also retail this data online to end users or it may partner with an online retailer or retailers or license data to other retailers.

   (c) Retailers, who market and sell the data and/or related services to end users. The OFT noted that there are currently four main 'full service' online retailers of genealogy services in the UK: Ancestry, FMP/1911, Genes and the Genealogist. Different retailers may put a different emphasis on particular services such as specialist information, core data or social networking; and on the extent to which particular data or services can be accessed for free.

   (d) End users, who obtain information by either purchasing it, accessing publicly available information or by sharing information with other end users. It is estimated that approximately 2 million individuals in the UK access genealogy websites each month.

4. There are three potential ways in which the transaction could harm competition. They are discussed below in turn. For each one we tentatively describe the market in which competition might be harmed, the counterfactual against which any loss of competition would be judged, the source of the potential loss of competition in the short term, and the limitations that potentially prevent supplier responses from restoring competition in the long run.

5. We also list, at the end of this section, some potential efficiencies.

Unilateral effects on online genealogy services

6. We will consider whether a loss of actual and potential competition between the parties to supply online genealogy services would be such as to allow the merged company profitably to raise prices, or to reduce investments in improving the quality or range of its services.

The affected market

7. We will consider the scope of the affected market, and in particular we will assess whether it is no wider than online genealogy services.

The counterfactual

8. We will investigate the counterfactual against which to assess the effects of the anticipated merger. In particular we will consider whether, in the absence of the transaction, Genes would continue to operate as an independent supplier of online genealogy services, and, in addition, whether the parties either currently compete with each other, or, if not, they would do so in the near future absent a merger as one or other of them invested in broadening their services.

The potential loss of competition in the short term

9. We will analyse the likely effects of the merger arising from the fact that, if the merger proceeds, the parties will no longer compete in online genealogy services. In particular we will assess whether any loss of competition between them would be such as to allow the merged company profitably to raise prices, or to reduce investment in improving the quality or range of its services, at least in the short term.

10. In making our assessment we will consider the following factors that affect the scale of any unilateral effects.

    (a) Closeness of competition: if the products provided by the parties are substitutes for each other and are closer substitutes for their customers than the products available from other suppliers, the merged company would find it more profitable to raise prices. Similarly, the merged entity might be able to relax its investment in improving the quality and range of its services if the parties had previously been a stronger constraint on each other than the constraint coming from other suppliers in making investment decisions.

    (b) Sensitivity of customers: if customers are less willing to switch away from the merged entity's offer in response to an increase in prices or other deterioration of the competitive offer, the merged company will find it more profitable to lower its competitive effort.

11. Evidence we may wish to consider relevant to our appraisal of the potential loss of competition in the short-term includes:

(a) Event studies: for example the effect on firms' revenues and prices of entry of Genes, FMP and third parties; addition of the 1901 or 1911 census data; and significant price and non-price changes.

(b) Analysis of parties' pricing and non-pricing decisions/reviews over time, including investment in product development.

(c) Customers' preferences and choices, including the degree of substitutability or complementarity of all parties' offers; and, possibly, evidence of diversion ratios, ie, in the event of users switching supplier, to which alternative supplier they are most likely to switch.

(d) Analysis of whether current/planned investment decisions would lead to price competition or an increase in price competition between the parties absent the merger in the foreseeable future: for example, an analysis of past innovations and other product developments, and the success of these product developments in winning new customers.

Supplier responses in the long term

12. We will consider whether responses by competing suppliers, such as repositioning or entry, are likely be sufficient to replace the loss of competition between the parties in the longer term.

13. This will involve consideration of similar evidence to that set out in paragraph 11, and of the following further evidence relevant to our assessment of whether there are any barriers to entry and expansion:

(a) Effects of other companies' offers and prices.

(b) History and effects of entry and expansion.

(c) Costs of future entry and expansion.

(d) Analysis of advertising expenditure and concentration; costs of advertising and time required for it to impact on volumes/revenues; and possible international comparisons.

(e) Competition for digitizing data and assessment of the extent of data owners' power to impose conditions of trade on retailers.

(f) Available data sources (for retailers to license from) and implication of possible exit of other suppliers; and any exclusivity of the terms on which data sources are made available to digitizers/retailers, the terms on which they may in turn be licensed to other retailers, and the willingness of digitizers/retailers to do so.

(g) Potential for entry under different business models (eg use of family tree websites on Facebook).

(h) Consumers' switching costs.

Coordinated effects in online genealogical services

14. The merger may create two relatively symmetric firms (ie Ancestry and the merged entity) with a high combined share of the market. We will consider whether higher concentration in the supply of online genealogy services makes it likely that the firms will start coordinating, or will coordinate more effectively (we take coordination to be synonymous with collusion in this context).

15. This will be subject to the same considerations on the affected market and whether it is no wider than online genealogy services, and on the counterfactual against which to assess the effects of the merger, as in paragraphs 7 and 8 respectively above.

16. In particular we will consider whether the merger would create the conditions for coordination to be stable and market participants are likely to begin coordinating; or the merger would make pre-existing coordination more stable.

17. In making our assessment we will consider three questions. The first is whether market conditions following the merger are conducive to coordination. Factors that may point towards coordination being feasible include the following:

    (a) If there are fewer market participants then it is easier for firms to reach the terms of a collusive agreement and to monitor compliance with the agreement.

    (b) Simplicity, in terms of product characteristics, market stability, symmetry, and the dimensions on which companies compete can have an effect. If the market is simple then it is easier for firms to reach the terms of an agreement, and to monitor compliance.

    (c) A more transparent market makes it easier to detect cheating.

    (d) Other factors can facilitate coordination by making the punishment mechanism more effective. These include: symmetric capacities and market growth.

18. The second question is whether there is additional evidence that firms are coordinating already. If so then a merger can make collusion more likely to be sustained even if it has only a small effect on the conditions.

19. The third question is whether the merger makes the market more conducive to coordination compared to the counterfactual.

Supplier responses in the long term

20. We will again consider whether responses by competing suppliers, in particular entry, are likely to be sufficient to destabilize coordination in the longer term.

Customer foreclosure in the supply of digital genealogy data

21. As noted in the OFT decision document, Genes is not itself currently active in the digitization of data, but is a significant purchaser of digitized data services from sources other than Brightsolid. We intend to consider whether the merger could therefore have adverse effects on competition in supply of digitization services. Moreover, in our assessment of barriers to entry and expansion we intend to consider whether as a result of any loss of competition in the supply of digitization services the merger could also lead to higher prices, or worse services, for any suppliers of online

genealogy services, including potential entrants, that rely on independent suppliers of data, adversely affecting competition in the supply of online genealogy services.

22. This will require consideration of the relevant markets at both levels of the supply chain, what may happen in the absence of the merger and whether entry in the supply of digitization services is likely to be sufficient to replace any loss of competition at either level of the supply chain in the longer term.

Potential efficiencies

23. We will also wish to consider whether any merger-specific efficiencies would be sufficient to outweigh any loss of direct competitive constraint between the two companies in the relevant market, be passed on to users, and could thereby strengthen competition in online genealogical services. Among the points we may wish to consider are:

    (a) Projected cost savings (fixed and variable) (for example, in data acquisition and/or advertising) resulting from the merger.

    (b) Possible scope for elimination of 'double marginalization'.[1]

    (c) Whether the merged company would be able to offer a broader range of services and whether this would strengthen competition in the supply of online genealogy services.

[1]Vertical mergers may allow a merged firm to remove ('internalize') any pre-existing double mark-ups. These arise when, pre-merger, the upstream and downstream firms set their prices independently and both charge a mark-up, resulting in end prices to consumers being higher than suits the joint interests of both firms. A vertical merger may enable and provide incentives for the merged firm to internalize this double mark-up resulting in a decrease in the price of the output in the downstream market. This efficiency is known as the removal of double marginalization.