

Completed acquisition by Key Publishing Limited of certain assets of Kelsey Publishing Limited

ME/6492-14

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 2 March 2015. Full text of the decision published on 20 March 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. On 17 September 2014, Key Publishing Limited (**Key**) acquired the business carried on by means of certain assets of Kelsey Publishing Limited (**Kelsey**) (the **Merger**), together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the enterprises of the Parties have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore considers that a relevant merger situation has been created.
3. The Parties overlap in the production and publishing of historic aviation, mixed aviation and military vehicles magazines in the UK. On a cautious basis, the CMA has assessed the impact of the Merger in these three segments in the UK. This narrow frame of reference was supported by both the Parties and third parties, which told the CMA that customers tend to focus on their niche area of interest.
4. The CMA considers that the Parties provide a significant competitive constraint on each other in the historic aviation and military vehicles segments. The Parties also compete in the mixed aviation segment, although less strongly. In all segments, the Parties face constraints from other titles inside and outside the relevant market and online sources to varying degrees, but in general these constraints are limited.

5. However, the CMA has decided that it does not need to conclude on whether there is a realistic prospect of the Merger having resulted or being expected to result in an SLC, as, if there were, it would in any event exercise its discretion to apply the markets of insufficient importance (the *de minimis*) exception to the duty to refer (under section 22(2)(a) of the Enterprise Act 2002 (the **Act**)). This is on the basis that the market concerned is not of sufficient importance to justify the making of a reference and there are no clear-cut undertakings in lieu in principle available.

Decision

6. The Merger will therefore **not be referred** under section 22(1) of the Act.

ASSESSMENT

Parties

7. Key is a publisher of transport and specialist leisure magazines. It is a wholly owned subsidiary of Klavis Holdings Limited. Klavis Holdings Limited also owns 70% of Rutland Media Limited (**Rutland**). The Parties submitted to the CMA that Rutland owns the intellectual property rights of the magazines produced and published by Key.
8. Kelsey is a publisher of magazines in the following segments: home and lifestyle, smallholdings and pets, motoring, commercial vehicles, tractors and machinery, ships, and, prior to the Merger, aviation and military history. The turnover of Kelsey for the last financial year was nearly £2 million in the UK.

Transaction

9. Kelsey and Rutland signed an Asset Purchase Agreement (**APA**) on 17 September 2014. Under the APA, Rutland acquired Kelsey's aviation and military history portfolio, including the titles: Jets, Aeroplane Monthly and Classic Military Vehicles, along with bookazines (one-off publications relating to aviation and military history) and a pictures archive (the **Merger**).

Jurisdiction

10. The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.¹ In making a judgment as to whether or not the activities of a business or part of a business constitutes an enterprise, the CMA considers

¹ Section 129 of the Act.

the substance of the arrangement rather than its legal form. An enterprise may comprise of any number of components, most commonly including the assets and records needed to carry on the business, together with the benefit of existing contracts and/or goodwill.²

11. Key carries out a magazine publishing business for gain or reward and is an enterprise. Under the APA, certain magazines and bookazines along with intellectual property, existing contracts³ and a pictures archive transferred to Rutland from Kelsey. One employee also transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Taking account of the assets that were transferred, the CMA considers that these assets constitute an enterprise.⁴ As Rutland gained control over these assets, Rutland and Kelsey (and therefore Key through the common ownership by Klavis Holdings Limited)⁵ ceased to be distinct for the purposes of the jurisdictional test as set out in section 23 of the Act.
12. The Parties overlap in the production and publishing of magazines in the historic aviation, mixed aviation and military vehicles segments in the UK. Key estimated that in respect of 'UK newsstand sales of aviation magazines in the UK, the combined share by retail sales value is around 65%', with a significant positive increment.⁶ On this basis, the CMA considers that the share of supply test in section 23 of the Act is met.
13. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
14. The Merger completed on 17 September 2014 and was first made public on 22 September 2014. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to Key on 17 October 2014.⁷ The four month deadline for a decision under section 24 of the Act was 22 January 2015. Following extension under section 25(2) of the Act, the four month deadline for a decision was extended to 9 March 2015.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 January 2015. The statutory 40 working day deadline for a decision under section 22 of the Act is therefore 2 March 2015.

² *Merger Assessment Guidelines*, paragraph 3.2.4.

³ These include rights under contracts with freelance writers and customer and supplier contracts.

⁴ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 4.3 and 4.6-4.11.

⁵ See paragraph 7 above.

⁶ See para 45 below, which sets out a more detailed breakdown of the market shares of the Parties and the corresponding increment as a result of the Merger.

⁷ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁸
17. In this case, there is no evidence supporting a different counterfactual for the production and publishing of magazines in the historic aviation and mixed aviation segments, and Key did not put forward arguments to suggest otherwise.
18. Key did, however, put forward an exiting firm argument in respect of the production and publishing of magazines in the military vehicles segment. Key submitted that 'only one [title] could be supported economically' and that some of [X]. Key provided evidence that Military Machines International (Key's military vehicles title) had been loss-making for over one year. Third parties also provided evidence of the volume of sales below which they would consider closing a magazine. The CMA notes that this was well above Military Machines International's volume of sales.
19. In forming a view on the exiting firm scenario, the CMA will consider, on the basis of compelling evidence:
 - (a) whether the firm would have inevitably exited (through failure or otherwise); and if so
 - (b) whether there would have been an alternative, substantially less anticompetitive purchaser for the firm or its assets to the acquirer under consideration; and
 - (c) what would have happened to the sales of the firm in the event of exit.⁹

⁸ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The Merger Assessment Guidelines have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure, Annex D](#)).

⁹ [Merger Assessment Guidelines](#), paragraphs 4.3.8 to 4.3.18.

20. In the specific circumstances of this case, the CMA considers that, although it is possible that, in the absence of the Merger, one of the Parties' two titles in the military vehicles segment might have been discontinued, the CMA does not need to reach a definitive conclusion on this as the CMA has exercised its discretion to apply the markets of insufficient importance exception to the duty to refer under section 22(2)(a) of the Act (see paragraph 107).¹⁰ The CMA, has, therefore, on a cautious basis, assessed the Merger against the pre-Merger conditions.

Frame of reference

21. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹¹
22. The Parties overlap in the production and publishing of historic aviation, mixed aviation and military vehicles magazines in the UK.

Product scope

23. The CMA's approach to product market definition is to begin with the overlapping products of the parties as the narrowest plausible candidate product market and then see if the frame of reference should be widened on the basis of demand-side or supply-side substitution.¹²
24. In this case, the CMA has considered the following as the narrowest plausible candidate markets:¹³
- (i) The production and publishing of historic aviation magazines.
 - (ii) The production and publishing of mixed aviation magazines.

¹⁰ Paragraph 2.6 Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122), December 2010.

¹¹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 5.2.2. The *Merger Assessment Guidelines* were adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D).

¹² This approach is in line with the CMA's [Merger Assessment Guidelines](#), paragraphs 5.2.6ff.

¹³ The CMA has followed this approach of considering the narrowest plausible candidate markets in previous cases involving the supply of print magazines. See for instance the [Completed Acquisition by Immediate Media Company Bristol Limited of Certain Assets of Future Publishing Limited](#) (ME/6450/14) 23 October 2014.

(iii) The production and publishing of military vehicles magazines.

25. The CMA considered whether these narrow product market definitions should be widened on the basis of demand- and supply-side substitution.

Demand-side substitution

The readers' side

- *Historic aviation and mixed aviation*

26. Key submitted that 'the vast majority [of aviation enthusiasts] are, in fact, very partisan and tend to concentrate in their niche area. As a result, over the years, more specialist aviation magazines have been developed to cater for these particular interest groups', eg aviation modelling, civil aviation, flight simulation, historic aviation, mixed aviation and modern military aviation.
27. The CMA considered whether the relevant markets are wider than (i) historic aviation and (ii) mixed aviation.
28. Third parties generally indicated that there is limited substitutability between title segments as, although some readers are interested in more than one aviation segment, the majority are interested in one segment and have a preference for reading titles within that segment.
29. Based on this evidence,¹⁴ and on a cautious basis, the CMA considers that demand-side substitution is insufficient to widen the relevant frame of reference beyond the two segments of (i) historic aviation and (ii) mixed aviation magazines.

- *Military vehicles*

30. The CMA considered whether other military titles should be included in the same product market as military vehicles titles. In its submission Key did not make any reference to a possible wider definition of the relevant frame of reference. Third parties also confirmed that the appropriate market is no wider than military vehicles.

¹⁴ Key also provided cross-subscription data, which measures the proportion of subscribers to one title who also subscribe to another title. The CMA however considers that the fact that two magazines are subscribed to by the same reader cannot be regarded as clear evidence of substitution between titles, as it may show complementarity or no relationship at all between the subscribed titles. The CMA has therefore not placed any weight on this evidence.

31. Based on this evidence, and on a cautious basis, the CMA considers that demand-side substitution is insufficient to widen the relevant frame of reference beyond military vehicles magazines.

The advertisers' side

32. Responses from advertisers were mixed regarding the extent of substitution between titles within the candidate markets and titles outside these markets. While in some cases the set of choices available to advertisers appears to mirror the choices available to readers, in other cases, where advertisers are more interested in targeting a certain audience demographic group as opposed to a certain group of enthusiasts, the choices available to them are wider than those available to readers. However, given that prices and other commercial conditions are (or can be) negotiated with advertisers individually, the additional negotiation power of advertisers with a wider set of choices available may not protect advertisers with a narrower set of choices from any harm of competition.
33. Therefore, and on a cautious basis, the CMA considers that demand-side substitution by advertisers is insufficient to widen the relevant frame of reference beyond the three candidate markets identified above.

Supply-side substitution

34. The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone.¹⁵ However, the CMA may, in principle, aggregate several narrow markets into a broader one on the basis of considerations about the responses of suppliers to changes in competitive conditions.¹⁶ Supply-side substitution arguments in this case equally apply to market definition both on the readers' and on the advertisers' side.¹⁷ The CMA therefore assesses supply-side substitution on the readers' and on the advertisers' side in combination.

¹⁵ [Merger Assessment Guidelines](#), paragraph 5.2.17.

¹⁶ [Merger Assessment Guidelines](#), paragraph 5.2.17.

¹⁷ Supply-side substitution, in fact, concerns the ability and incentive of publishers of titles that are not demand-side substitutes of the Parties' titles to launch new titles in competition with the Parties' titles. To the extent that such new titles offer advertising space on their pages, they would represent new alternatives both for readers and for advertisers.

Historic and mixed aviation

35. Key did not make any submission as to the degree of supply-side substitution between the different aviation segments. The CMA also did not receive any evidence that suppliers shift capacity across aviation segments.
36. [X]. Some third parties indicated that there are barriers to launching new aviation titles because reputation and brand recognition are important.
37. Based on this evidence, and on a cautious basis, the CMA considers that supply-side substitution is insufficient to widen the relevant frame of reference beyond the two segments of (i) historic aviation and (ii) mixed aviation magazines.

Military vehicles

38. Key submitted that demand cannot support more than one title in this segment. The CMA considers that this would suggest that it would not make it an attractive segment for new providers. Third parties confirmed that, below a certain volume of sales, a title would not be profitable and on all estimates provided, the threshold for profitability was well above each party's actual sales in this segment, and even above both Parties' combined sales from (at least) January 2013 onwards. As a result, a small but significant deterioration of the existing commercial offerings in this segment would be unlikely to induce other publishers to shift capacity into it.
39. Based on this evidence, and on a cautious basis, the CMA considers that supply-side substitution is insufficient to widen the relevant frame of reference beyond military vehicles magazines.

Geographic scope

40. Key submitted that the relevant geographic market is national in scope. Previous CMA and OFT¹⁸ print magazine merger decisions¹⁹ have considered that competition takes place at a UK level, reflecting the fact that print magazines are retailed primarily through UK-wide retail chains. Third parties did not submit any evidence suggesting that the geographic market should be anything but UK-wide.

¹⁸ The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the OFT's merger control functions were transferred to the CMA on 1 April 2014.

¹⁹ For example, this conclusion was reached in Immediate Media/Future Publishing, paragraph 64, and in the following OFT decisions: Exponent/BBC Worldwide (2011); Hearst/Lagardère (2011); Magicalia Publishing/Future Publishing (2007); IPC Media/Horse deals (2006); Future/Highbury House (2005).

41. Based on this evidence the CMA considers, on a cautious basis, that the geographic frame of reference in this case is the UK.

Conclusion on frame of reference

42. The CMA has assessed the Merger on the basis of a narrow frame of reference within three markets: the production and publishing in the UK of (i) historic aviation magazines, (ii) mixed aviation magazines, and (iii) military vehicles magazines for both readers and advertisers. The CMA has, however, not found it necessary to reach a firm conclusion on the product frame of reference in this case as it has, for the reasons set out below, exercised its discretion to apply the markets of insufficient importance exception to the duty to refer under section 22(2)(a) of the Act.²⁰

Competitive assessment

Horizontal unilateral effects

43. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.²¹
44. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the production and publishing in the UK of historic aviation magazines, mixed aviation magazines and military vehicles magazines.

Market shares

45. The Parties estimated their revenues and their main competitors' revenues from newsstands sales, subscriptions, and sale of digital titles (see Table 1), as well as their own and their competitors' revenues from advertising (see Table 2).²²

²⁰ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference* (OFT1122), Paragraph 2.6.

²¹ *Merger Assessment Guidelines*, from paragraph 5.4.1.

²² CMA's elaboration from the data submitted to the CMA by the Parties.

Table 1: 2013 readers' revenue shares across overlapping segments

| | % | | |
|--|--------------------------|-----------------------|--------------------------|
| <i>Publisher</i> | <i>Historic aviation</i> | <i>Mixed aviation</i> | <i>Military vehicles</i> |
| Key | [50-60] | [80-90] | [30-40] |
| Kelsey | [30-40] | [10-20] | [60-70] |
| <i>Combined</i> | [80-90] | [90-100] | [90-100] |
| Mortons Media Group (Aviation Classics) | [0-5] | - | - |
| The Aviation Historian | [5-10] | - | - |
| Weider History | 0 | - | - |
| Air Age Media | [0-5] | - | - |
| Smithsonian | - | [0-5] | - |
| <i>Total</i> | 100 | 100 | 100 |

Source: CMA analysis.

Table 2: 2013 advertisers' revenue shares across overlapping segments

| | % | | |
|--|--------------------------|-----------------------|--------------------------|
| <i>Publisher</i> | <i>Historic aviation</i> | <i>Mixed aviation</i> | <i>Military vehicles</i> |
| Key | [60-70] | [90-100] | [30-40] |
| Kelsey | [30-40] | [0-5] | [60-70] |
| <i>Combined</i> | [90-100] | [90-100] | [90-100] |
| Mortons Media Group (Aviation Classics) | 0 | - | - |
| The Aviation Historian | [0-5] | - | - |
| Weider History | 0 | - | - |
| Air Age Media | 0 | - | - |
| Smithsonian | - | 0 | - |
| <i>Total</i> | 100 | 100 | 100 |

Source: CMA analysis.

46. The CMA considers that the significant shares of supply as indicated in Tables 1 and 2 raise *prima facie* concerns in the three segments. However, the CMA considers that where products are differentiated, as in this case, market shares may not reflect fully the closeness of competition between suppliers.²³

Closeness of competition

Historic aviation

47. The historic aviation segment includes Aeroplane Monthly (Kelsey title acquired through the Merger) and FlyPast (Key title). Key submitted that this

²³ [Merger Assessment Guidelines](#), paragraph 5.4.6

segment also includes The Aviation Historian, Aviation Classics, Aviation History and Flight Journal.

- *Competition between the Parties*

48. Key submitted that Aeroplane Monthly and FlyPast were not close competitors. Key said that the two titles differed in their editorial content, paper quality and their customer positioning. Key said that the two magazines have different audiences, with Aeroplane Monthly having an older and more 'high-brow' readership than FlyPast.
49. However, Key submitted that, over the last couple of years, Aeroplane Monthly had been repositioned by Kelsey to be closer to FlyPast.²⁴ Key submitted that Kelsey's repositioning of Aeroplane Monthly had not been a success, as sales had significantly decreased. Key provided its sales data for Flypast which suggested that, if readers switched away from Aeroplane Monthly because of the repositioning, very few of them had switched to FlyPast as its sales had only slightly increased in the same period. Key said that the decline in sales of Aeroplane Monthly was not likely to represent customers switching to FlyPast. Key stated that this evidence suggested that Aeroplane Monthly and FlyPast were not close competitors.²⁵
50. In the CMA's view, the decrease in Aeroplane Monthly's sales and limited increase in FlyPast's sales is not sufficient to prove limited competition between the Parties. Prior to the repositioning of Aeroplane Monthly in 2010, the sales of both Aeroplane Monthly and FlyPast were decreasing, which makes it difficult to estimate how many customers switched to FlyPast as a result of the repositioning of Aeroplane Monthly. Assessing the extent of competition between the titles in the context of fluctuating sales generally is difficult, because it is difficult to establish with reasonable confidence the level of sales in future years based on the level of sales in previous years.
51. Nevertheless, the CMA notes the fact Aeroplane Monthly was repositioned to be closer to FlyPast suggests that the Parties were competing. On the basis of this evidence and their shares of supply within this segment, the Parties appear to have been each other's closest competitor.
52. The CMA also notes that the Parties' titles in this segment are very similar in terms of:

²⁴ Key submitted that, before the repositioning, Aeroplane Monthly and FlyPast traditionally had different positions whereby Aeroplane Monthly focused more on the years of 1904-1945 whereas FlyPast focused on more popular subjects of WWII Warbirds and modern day restoration of these aeroplanes.

²⁵ Key submitted that this was consistent with the magazines' different audiences.

- (a) Price: both around £4.30, although the prices have varied in the past for Aeroplane Monthly between £4.99 and £6.95 for special editions.
- (b) Pagination: both Aeroplane Monthly and FlyPast have around 100 pages.
- (c) Availability: Aeroplane Monthly and FlyPast are typically the only historic aviation titles available at newsstands.²⁶
53. Third parties (readers, individuals active in the industry, advertisers, competitors and retailers) confirmed that Aeroplane Monthly and FlyPast are close competitors in the historic aviation segment. One retailer submitted that there was ‘significant intra-category competition within the listed historic aviation titles’.²⁷ This retailer said that if the retail price of Aeroplane Monthly increased by 5% then more customers would purchase FlyPast or Aviation Classics instead.
54. On the basis of this evidence, the CMA considers that Aeroplane Monthly and FlyPast compete closely in the historic aviation segment.
- *Constraints from other historic aviation titles*
55. The CMA has considered which other competitors would constrain the Parties post-Merger.²⁸
56. Key submitted that there are several titles, in addition to FlyPast and Aeroplane Monthly, which compete in the historic aviation segment:
- (a) **Aviation Classics** is an A4 sized bookazine (a type of book but in a magazine format) of around 132 pages, priced at £6.99. Each issue is devoted to a specific type of aircraft (in contrast with the Parties’ titles, which cover several aircrafts in each issue). Aviation Classics is available at newsstands.
- (b) **The Aviation Historian** was launched in 2012 and it is a quarterly title (the Parties’ titles are issued monthly). It is smaller than A4 but has around 130 pages and is priced at £8.99.²⁹ This title covers ‘aeronautical history from its beginnings to modern jets and the birth of spaceflight’³⁰ and ‘encompasses content such as military and civil flying, the “golden

²⁶ However, Key submitted that Aviation Classics is available as a direct exclusive to WHSmith.

²⁷ The listed historic aviation titles are: Aeroplane Monthly, FlyPast, Aviation Classics, The Aviation Historian, Aviation History and Flight Journal.

²⁸ [Merger Assessment Guidelines](#), paragraph 5.4.5.

²⁹ See [The Aviation Historian](#).

³⁰ See [The Aviation Historian](#).

era” between the World Wars, the Cold War...’.³¹ The Aviation Historian is available on subscription and in a digital format, but not at newsstands.

(c) **Aviation History** is a bi-monthly American aviation magazine of around 68 pages, priced at £5.34. It covers the history of aviation from its beginnings to the space age. It puts the reader in the ‘cockpit with pilots and military aviators’.³²

(d) **Flight Journal** is a bi-monthly American aviation magazine of around 76 pages, priced at £5.64,³³ which covers aviation history from its beginnings to its ‘high-tech, no-holds-barred future’.³⁴ It captures aviation history ‘through the eyes of those who made it’.³⁵

57. Some third parties submitted that Aeroplane Monthly and FlyPast are in competition with Aviation Classics and The Aviation Historian for both readers and advertisers. A retailer also submitted that Aviation Classics was a competitor in the historic aviation segment.

58. An advertiser submitted that, in the case of a price increase by FlyPast, Pilot, a general aviation magazine, was the best alternative. This suggests that, at least for some advertisers, other aviation magazines outside of the historic aviation segment may be alternatives.

59. On the basis of this evidence, the CMA considers that the Parties may face some constraint from other historic aviation titles, both for readers and advertisers, though, given that over 50% of the Parties’ sales are at newsstands, this constraint will be more limited where the alternative title is not available to consumers in this way.

- *Constraints from titles in other segments*

60. Some third parties submitted that there is some overlap between mixed and historic aviation. However, little evidence was provided in support of these views.

61. The CMA considers that although titles in different segments might represent an alternative for some readers, such titles would represent a weaker substitute than titles in the same segment.

³¹ See [The Aviation Historian](#).

³² See [Aviation History](#).

³³ See [Flight Journal](#).

³⁴ See [Flight Journal](#) (digital edition).

³⁵ See [Flight Journal](#) (digital edition).

62. The CMA considers that, although the Parties may face some degree of constraint from titles in other segments, such constraint is likely to be weak.

- *Constraints from websites*

63. Key submitted that the Parties face 'strong competition from electronic magazines and other online content, such as specialist blogs'. Key stated that because online sites are competitors, it does not accept advertising from them. Key said that it monitors online sites and has responded to online competition, eg by adapting its news section so that it now covers less stories more in depth.

64. Third parties confirmed that webpages are a good source of information in this sector and may provide some constraint. One third party commented that magazines would sell more if the internet had not been invented and another third party indicated that websites represent a good alternative to magazines for news. This same third party also submitted that magazines are edited and therefore offer content that is more reliable, filtered and organised, whereas content that is available on the web is not. Another third party submitted that websites represent more of a complement than a substitute to magazines as they carry different content.

65. On the basis of this evidence, although the CMA recognises that there may be some limited constraint on the Parties' historic aviation titles from website content, there is insufficient evidence that a large number of readers and advertisers consider online resources a good substitute to the Parties' magazines.³⁶

- *Conclusion on historic aviation*

66. For the reasons set out above, the CMA considers that Aviation Monthly and FlyPast are each other's closest competitor and, although they face some constraints from inside and outside the relevant market, and from online sources, these constraints are limited.

³⁶ The CMA (or Office of Fair Trading) has not found that the internet is a good substitute for print magazines in previous cases. See for example, Hearst/Lagardère (2011) and Magicalia/Future (2007) and Immediate Media/Future Publishing (2014).

Mixed aviation

67. Key submitted that Jets (Kelsey title, acquired through the Merger), Aviation News (Key title) and AIR International (Key title) are part of the mixed aviation category.

(a) **Jets** is a bi-monthly mixed aviation title priced at £4.25. It covers civil, military and historic jets since 1945 as well as restoration and preservation and reports from the cockpit. The magazine includes both in-depth pieces and a short news section.

(b) **Aviation News** is a monthly mixed aviation title that is described as covering 'every branch of aviation'³⁷ and is priced at £4.30. The magazine includes both news and in-depth pieces and regularly covers civil, military and preservation news, airport and air base movements, a roundup of the latest aviation models and reports from the cockpit.

(c) **AIR International** is a monthly mixed aviation title that is described as covering 'the full spectrum of aviation subjects',³⁸ priced at £4.60. The magazine covers both modern military and commercial aviation in the format of news and in-depth articles.

- *Competition between the Parties and other titles in the mixed aviation segment*

68. Key submitted that Jets and Aviation News are not close competitors as Jets is a unique title and is in a 'niche of its own'. Key submitted that Jets is not classified by Seymour in a specific category but in a category termed 'General/Business' and therefore it does not compete significantly with other aviation titles. Key also submitted that the launch of Jets in March 2011 did not appear to impact the sales of Aviation News, which increased the following year. Key said [redacted] and, as a result, Kelsey had reduced its frequency from monthly to bi-monthly. The CMA considers that this is likely to have reduced the extent to which Jets could compete with Aviation News. Key did not make any submission as to the degree of substitution between Jets or Aviation News and Air International.

69. Third parties generally confirmed that Jets and Aviation News only compete with each other to a limited extent. One publisher explained that Jets and Aviation News only partially overlap in terms of content, as Jets only covers jets but Aviation News covers other types of aircraft. The same publisher

³⁷ See [Aviation News](#).

³⁸ See [AIR International](#).

acknowledged that their target readership is similar, although it said that Aviation News partly targets readers who are interested in aircraft modelling which Jets does not.³⁹ Another publisher told us that Jets and Aviation News had different readership.

70. The CMA notes two significant differences between Jets and Aviation News:
- (a) Content – Jets, as its title suggests, focuses on jets and appears to focus more on military aviation, while Aviation News appears to cover more civil aviation such as commercial airlines and has some content aimed at aviation modelling.
 - (b) Frequency – Jets is a bi-monthly publication while Aviation News is a monthly magazine.
71. Third parties submitted that Jets and Aviation News were more similar to each other than to AIR International.
72. On the basis of this evidence, the CMA considers that, although the Parties may compete against each other in the mixed aviation segment, the constraint they pose on each other may not be strong.
- *Constraint from other titles in mixed aviation*
73. Key submitted that a US title named Air & Space is amongst its competitors in mixed aviation. However, one third party explained that this is a US-based title published by the Smithsonian National Air and Space Museum which has limited presence in the UK. The same third party further explained that it is different from the Parties' titles in terms of content.
74. On the basis of this evidence, the CMA considers that the Parties' titles do not appear to face a significant constraint from other mixed aviation titles.
- *Constraint from titles in other aviation segments*
75. The CMA also considered the constraint faced by the Parties from titles in other segments, on the basis that some readers who are interested in aviation in general may consider them as substitutes.
76. One third party submitted that there was some overlap in readership between mixed aviation and historic aviation. Another third party submitted that, as titles are less specialised in mixed aviation, readers may switch more readily

³⁹ As demonstrated by the fact that it publishes a scale plan of an airplane in some issues.

from this segment to another aviation segment. For example, one third party submitted that Aviation Classics has some similarity to Jets and Aviation News. However, the CMA also notes that this title only covers one aeroplane per issue.

77. The CMA considers that the Parties' mixed aviation titles may face some degree of constraint from titles in other segments, in particular because mixed aviation is a more generalist aviation category. However, there are no clear competitors in other segments which constrain the Parties' mixed aviation titles, and so such constraint is still likely to be quite weak.

- *Constraints from websites*

78. Key submitted that the Parties face strong competition from online sources. In particular, Key submitted evidence of an email exchange regarding the monitoring of an online magazine which appeared similar to Aviation News.

79. However, although the CMA recognises that there may be some limited constraint on the Parties' mixed aviation titles from website content, there is insufficient evidence that a large number of readers and advertisers consider online resources as a good substitute to the Parties' magazines.

- *Conclusion on mixed aviation*

80. For the reasons set out above, the CMA considers that the Parties' mixed aviation titles provide some degree of competitive constraint on each other. However, the evidence suggests that they do not compete strongly. Moreover, there appears to be some limited competition on the Parties' titles from other titles inside and outside the relevant market and online sources.

Military vehicles

81. Classic Military Vehicles (Kelsey title, acquired through the Merger) and Military Machines International (Key title) both cover military vehicles and feature a significant number of pictures as well as articles. Military Machines International is offered at £4.30 for around 100 pages, whereas Classic Military Vehicles is offered at £4.30 for around 84 pages.

- *Competition between the Parties*

82. The Parties are the only suppliers of titles in the military vehicles segment and are, therefore, each other's closest competitors. The CMA has not received any evidence from third parties that suggests otherwise or that indicates the Parties face significant competition from titles in other military segments.

83. However, Key submitted that the Parties' titles were not exerting a significant competitive pressure on each other as the market for military vehicles magazines was shrinking and could only support one title. The CMA examined these arguments as part of its assessment of the counterfactual (see paragraphs 16 to 20). The CMA recognises that it is possible that, in the absence of the merger, Key's title in the military vehicles segment might have been discontinued, but it did not conclude on this issue. However, the CMA recognises that the sales of both titles have been in decline. Moreover the CMA notes that Key's title has been loss-making and has sales significantly below the threshold suggested to us by third parties as a number below which a publisher would consider discontinuing a title.

- *Competition from publishers in other segments*

84. Key did not provide any evidence of competition from other military magazine segments. However, the CMA received responses from advertisers, indicating that, depending on the specialised nature of the product or service advertised, advertisers may choose to place their adverts in magazines in other military segments.

- *Competition from websites*

85. Key submitted that the Parties face competition from electronic magazines and other online content such as specialist blogs. Key identified six military vehicles websites.⁴⁰

86. The CMA considers that, although these websites might provide an alternative source of content for some consumers, none of them are comparable in their content to the Parties' titles. The CMA therefore considers that the competitive constraint from these websites is limited.

- *Conclusion on military vehicles*

87. For the reasons set out above, the CMA considers that the Parties' military vehicles titles provide some competitive constraint on each other and will continue to do so while they are both in operation. However, the extent of this competitive constraint may be limited by one title being loss-making and both appear to be experiencing declining sales. The evidence suggests that there is limited competition on the Parties' titles from other titles outside the relevant market and from online sources but these constraints are weak.

⁴⁰ One is a forum, two are 'military vehicle preservation societies', one is a 'military vehicle marketplace' and one is a 'news website for military vehicles, arms and armour', and another is Wikipedia.

Conclusion on horizontal unilateral effects

88. Overall, the CMA considers that the Parties provide a significant competitive constraint on each other in the historic aviation and military vehicles segments. The Parties also compete in the mixed aviation segment, although less strongly. In all segments, the Parties face constraints from other titles inside and outside the relevant market and online sources to varying degrees, but in general these constraints are limited. As a result, the CMA cannot rule out that there is a realistic prospect that the Merger will result in an SLC. However, in light of paragraphs 107 to 117 below regarding the *de minimis* exception, the CMA does not find it necessary to conclude on this point in this case.

Barriers to entry and expansion

89. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁴¹
90. Key submitted that the main factors affecting entry and/or expansion in the area of historic aviation, mixed aviation and military vehicles are the following: subject knowledge and expertise, availability of writers, availability of images, availability of paper and print (if printed product), newstrade acceptance (if newsstands product) and availability of finance. The Parties further claimed that there was scope for competitors to expand within the historic aviation segment.
91. In the CMA's view, the barriers to entry into the three segments identified in the frame of reference appear significant due to the need for a recognisable brand and newstrade acceptance. However, the barriers to expansion appear lower as established publishers may expand into different segments more easily, with an existing brand and newstrade acceptance.
92. The CMA found no examples of successful recent entry or expansion in either the historic aviation, mixed aviation or military vehicles segments and was provided with [✂]. The CMA notes that the market for military vehicles magazines is shrinking, making entry or expansion more unlikely.

⁴¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

93. Overall, the CMA considers that there are barriers to entry and some barriers to expansion which make it difficult to rely on such activity mitigating any concerns which may arise from the Merger.

Third party views

94. The CMA contacted advertisers, competitors and retailers of the Parties and also received unsolicited submissions from other third parties. Approximately half of the third parties raised some concern regarding the Merger, mostly about the historic aviation segment. In particular, third parties were concerned about the diminished ability of advertisers to reach their target audience if the two historic aviation titles were combined, the strength of Key in the historic and mixed aviation segments, and the possible effects on prices, quality and access to Kelsey's large image archive.
95. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

96. The CMA's investigation cannot rule out that there is a realistic prospect that the Merger has resulted or may be expected to result in an SLC in one or more of the segments: historic aviation, mixed aviation and military vehicles. The CMA therefore cannot rule out that the test for reference may be met in this case. However, it has not been necessary for the CMA to reach a definitive conclusion on this point because the CMA has, for the reasons set out below, exercised its discretion to apply the markets of insufficient importance exception to the duty to refer under section 22(2)(a) of the Act.

Efficiencies and relevant customer benefits

97. While mergers can harm competition, they can also give rise to efficiencies. The CMA may take into account efficiencies in the competitive assessment of mergers in two different ways.⁴² Firstly, efficiencies arising from a merger may enhance rivalry, with the result that the merger does not result in a substantial lessening of competition.⁴³ Secondly, efficiencies may be taken into account in the form of relevant customer benefits (RCBs).^{44,45}

⁴² [Merger Assessment Guidelines](#), section 5.7.

⁴³ [Merger Assessment Guidelines](#), paragraph 5.7.4.

⁴⁴ These are defined in section 30(1) of the Act as benefits to relevant customers in the form of lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom, or greater innovation in relation to such goods or services and they are not limited to efficiencies affecting rivalry.

⁴⁵ [Merger Assessment Guidelines](#), section 5.7.

98. In order to be able to take into account any claimed efficiencies or RCBs, the CMA has to be satisfied that, on the basis of compelling evidence:
- (i) the efficiencies are timely, likely and sufficient to prevent an SLC from arising; and
 - (ii) the efficiencies must be merger-specific.⁴⁶
99. Key submitted that the Merger gives rise to a number of potential efficiencies and RCBs, which it attempted to estimate.

Cost reductions

100. Key submitted that the Merger would give rise to various variable cost savings.
101. The variable cost reductions arise from reduced printing costs, reduced mailing costs and improved distribution terms as a result of the Parties' increased buyer power. Key estimated the overall variable cost savings to be about [X]%⁴⁷ of the Parties' combined total 'most likely short-term variable costs'.⁴⁸
102. Key provided evidence relating to a reduction in its printing costs. However, while the CMA accepts that Key might have received some rebates due to additional volumes created by the Merger, it is not clear that these rebates go beyond a typical annual rebate.
103. Key submitted that the Parties would achieve considerable variable cost savings in postage and fulfilment due to moving the mailing for the acquired titles into Key's contracts. However, the CMA considers that this benefit is not clearly merger-specific as Kelsey might have been able to achieve similar prices.
104. Key submitted that it expected to achieve a [X]% reduction in distribution costs by virtue of Key's stronger negotiation position when the contract with Key's current distributor is renegotiated. Key showed that in the past the addition of a (larger) portfolio of extra titles had generated a reduction in distribution costs of [X]%. However, in the CMA's view, while this saving is

⁴⁶ [Merger Assessment Guidelines](#), paragraph 5.7.4.

⁴⁷ Key estimated the variable cost savings in relation to the specific titles: Aeroplane Monthly: [X]%; Jets: [X]%; Classic Military Vehicles: [X]%.

⁴⁸ These include retail listing costs, paper (varies with print order), print (varies with print order), subscription postage (varies with subscription), subscription fulfilment (varies with subscription), and subscription service (varies with subscription).

possible, there is some considerable uncertainty around it, making it difficult to include as a merger benefit.

RCBs from title repositioning

105. Key submitted that a key reason for the Merger was to reposition Aeroplane Monthly and FlyPast in order to broaden their appeal for both readers and advertisers. Key said that advertisers will benefit from covering a larger demographic and readers will benefit from less duplication of content and therefore will receive more value for money.
106. In accordance with the Merger Assessment Guidelines, the CMA does not consider that this is an RCB because it is not a direct consequence of the Merger.⁴⁹ The CMA has therefore not placed any weight on this evidence.

Exceptions to the duty to refer

107. Where the CMA's duty to refer is engaged under section 22(1) of the Act, the CMA may, pursuant to section 22(2)(a) of the Act, decide not to refer the merger under investigation for a phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference. As set out above the CMA cannot rule out that its duty to refer in this case may be met in respect of one or more of the three segments: historic aviation, mixed aviation and military vehicles. The CMA has therefore considered whether it is appropriate to apply the *de minimis* exception to the duty to refer should there be a realistic prospect of the Merger having resulted or being expected to result in an SLC in this case.
108. In the circumstances of this case, the CMA considered that it would be more efficient to determine that the *de minimis* discretion would be applied than it would be for the CMA to reach the requisite level of belief that the transaction in question does not in fact trigger the duty to refer. Given this view, the CMA did not conclude on whether there is a realistic prospect that the Merger has resulted or may be expected to result in an SLC. Key confirmed that it was willing to waive its procedural rights to a full investigation, including the receipt of an Issues Letter and an Issues Meeting, in the event that the CMA found that its duty to refer might be met but that it would exercise its discretion not to refer given the markets concerned were of insufficient importance. This statement was provided without prejudice to Key's views on whether the duty

⁴⁹ [Merger Assessment Guidelines](#), paragraph 5.7.4.

to refer was in fact met.⁵⁰ Given that, on the basis of the discussion below, the CMA decided to apply this discretion, it did not send an Issues Letter to Key.⁵¹

Markets of insufficient importance

109. In considering whether to apply the *de minimis* exception, the CMA will consider the likely level of consumer harm arising from the merger by reference to a number of factors: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost, and the likely durability of this impact.⁵² The CMA will also consider the wider implications of a *de minimis* decision.⁵³

'In principle' availability of undertakings in lieu

110. The CMA's general policy is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.⁵⁴

111. In order for an undertaking in lieu to be available in principle it must be:

- (i) sufficiently clear-cut; and
- (ii) not wholly disproportionate in relation to the concerns identified.⁵⁵

If the competition concerns arising from a merger relate to such an integral part of the transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether, then clear-cut undertakings in lieu are not in principle available.⁵⁶

112. The CMA considers that the divestment of the Aeroplane Monthly title would be tantamount to prohibiting the Merger as it would amount to divesting the major part of the acquired business (Aeroplane Monthly makes up around 83% of the transaction price).⁵⁷ Accordingly, the CMA considers that because it would be tantamount to prohibition there are no clear-cut undertakings in lieu available in principle in this case.

⁵⁰ This procedural approach is in line with the [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#) guidance (OFT1122), December 2010 – see paragraphs 2.52- 2.53.

⁵¹ The CMA recognises that Key's offer to waive the receipt of an Issues Letter and an opportunity to submit its views to the CMA does not constitute acceptance on Key's part of the CMA's findings with regard to the definition of markets and competitive assessment.

⁵² [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraph 2.28.

⁵³ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraph 2.40-43.

⁵⁴ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraphs 2.2 and 2.18-27.

⁵⁵ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraphs 2.22-2.27.

⁵⁶ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraph 2.25.

⁵⁷ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraphs 2.22 and 2.25.

113. On this basis the CMA therefore proceeded to consider whether to exercise its discretion to apply the *de minimis* exception.

Consideration of factors

114. Where the total annual value in the UK of the markets concerned are, in aggregate, less than £3 million and where the CMA considers there are no clear-cut undertakings in lieu available in principle, a reference will generally not be justified.⁵⁸ In this case, the aggregate market size, based on aggregating the three market segments, is approximately £2.8 million.⁵⁹ On this basis, a reference for a phase 2 investigation would therefore not generally be justified.⁶⁰
115. The CMA believes that it may be the case that there is a realistic prospect that the Merger has resulted or may be expected to result in a substantial lessening of competition as a result of horizontal unilateral effects in one or more of the three segments: historic aviation, mixed aviation and military vehicles. However, in each case the extent of the CMA's concerns are mitigated by some degree of remaining competition from other titles inside and outside of the market segments, and online sources.
116. The CMA believes that the risk of replicability from applying the *de minimis* exception in this case is limited given the very specific facts of this case.

Conclusion on the application of the de minimis exception

117. Taking all the above factors into consideration, the CMA considers that, were it to be the case that it found a realistic prospect of a substantial lessening of competition, the markets concerned in this case would not be of sufficient importance to justify the making of a reference and no clear-cut undertakings in lieu are in principle available. The CMA therefore considers that, to the extent that its duty to refer may be met in this case, it is appropriate to exercise its discretion to apply the *de minimis* exception, in accordance with section 22(2)(a) of the Act.

⁵⁸ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraphs 2.2, 2.15.

⁵⁹ The size of the historic aviation segment is approximately £2m, the mixed aviation segment was estimated at around £530,000, and the estimated size of the military vehicles market was £270,000.

⁶⁰ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference](#), paragraphs 2.2, 2.15.

Decision

118. Consequently, the CMA has not had to conclude on whether it 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 a market or markets in the United Kingdom as, pursuant to section 22(2)(a) of the Act, the CMA believes that the markets concerned would be of insufficient importance to justify the making of a reference.
119. The Merger will therefore **not be referred** under section 22 of the Act.

Andrew Wright
Director, Mergers
Competition and Markets Authority
2 March 2015