

## Anticipated acquisition by Reed Elsevier (UK) Limited of Jordan Publishing Limited

**ME/6539/15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 10 September 2015. Full text of the decision published on 21 September 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. Reed Elsevier (UK) Limited,<sup>1</sup> trading as LexisNexis (**LexisNexis**), has agreed to acquire assets constituting the enterprise of Jordan Publishing Limited (**Jordans**)<sup>2</sup> (the **Merger**). LexisNexis and Jordans are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of legal information to legal professionals, educational institutions, governmental bodies and businesses in the UK, with an estimated combined share of supply exceeding 25%. LexisNexis has an estimated share of supply of [30–40]% and Jordans has an estimated share of supply of [0–5]%. In the supply of legal information in the family law practice area, the overlap between the Parties is larger with an estimated combined share of supply of [50–60]%.
4. The CMA, based on the evidence available to it, finds that the Parties are each other's closest competitors within specific segments of the family law

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<sup>1</sup> Owned by Relx Group plc, which is controlled by Relx plc and Relx NV.

<sup>2</sup> Owned by West of England Trust Limited.

practice area, namely children law, matrimonial property law and family court reports. The CMA finds that within these segments, the Parties exercise a material constraint on each other's publications and resources, with limited alternatives available to sufficiently constrain LexisNexis post-Merger.

5. Based on the evidence available to the CMA, including third party responses, it believes that the merged entity may have the ability and incentive to increase prices or reduce the quality of its offering, for example by discontinuing certain publications or publishing updates less frequently.
6. In summary, the CMA finds that the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to segments within the supply of legal information in the family law practice area in England and Wales, namely publications in the area of children law, matrimonial property law and family court reports.
7. The Parties have until 17 September 2015 to offer an undertaking to the CMA. If such an undertaking is offered, the CMA will consider whether to accept the undertaking under section 73 of the Enterprise Act 2002 (**the Act**). If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

## **ASSESSMENT**

### **Parties**

8. LexisNexis is part of the global firm Relx plc, which focuses on providing information solutions for professional customers across a wide range of industries, including the legal industry, which is served by LexisNexis. LexisNexis provides a wide variety of publications, including regulatory news and business information, as well as analysis to legal, corporate, government and academic customers. In the UK, LexisNexis' publications include a large number of commentary titles and legislative and case law content, including *Butterworths*, *Halsbury's Laws* and *All England Law Reports*. Its online content is available through *LexisPSL* and *LexisLibrary*. *LexisPSL* offers practical and up to date guidance together with precedents and checklists. *LexisLibrary* provides access to legislation, cases and commentary. The turnover of LexisNexis in its financial year ended December 2014 was around £[⌘] worldwide and around £[⌘] in the UK.
9. Jordans publishes a range of legal information titles and content in print and online format under two brands, Jordans and Family Law. Jordans publishes textbooks, loose-leaves, journals, court reference works and news services.

The turnover of Jordans in its financial year ended March 2015 was around £[X] worldwide and around £[X] in the UK.

## **Transaction**

10. The Merger is the proposed acquisition by LexisNexis of the assets comprising Jordans' publishing business. The asset purchase agreement, signed on 22 May 2015, provides that LexisNexis shall purchase Jordans as a going concern with effect from closing. Closing is conditional upon a number of events, including competition clearance in the UK. The Parties intend to complete the Merger as soon as all conditions to closing have been fulfilled.
11. The Parties informed the CMA that the Merger is not the subject of review by other competition authorities.

## **Jurisdiction**

12. As a result of the Merger, the enterprises of LexisNexis and Jordans will cease to be distinct.
13. The Parties overlap in the supply of legal information to legal professionals, educational institutions, governmental bodies and businesses in the UK, with an estimated combined share of supply exceeding 25%. LexisNexis has an estimated share of supply of [30–40]% and Jordans has an estimated share of supply of [0–5]%. In the supply of legal information in the family law practice area, the overlap between the Parties is larger with an estimated combined share of supply of [50–60]%. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
14. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 July 2015 and the statutory 40 working day deadline for a decision is therefore 10 September 2015.

## **Counterfactual**

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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.<sup>3</sup>

17. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## **Frame of reference**

18. 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, segmentations 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.<sup>4</sup>

## **Product scope**

### *Introduction*

19. The Parties overlap in the supply of print and online legal information for the family law and company law<sup>5</sup> practice areas. The Parties both publish textbooks, loose-leaves, journals, court reference works and provide news services. LexisNexis' online publications and resources, such as *LexisLibrary* and *LexisPSL*, account for the majority of its legal information revenues.<sup>6</sup> In addition, LexisNexis generates some revenues from its print publications, which are also available online. Jordans generates the majority of its revenues from its print publications, which are again also provided in online

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<sup>3</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>4</sup> *Merger Assessment Guidelines*, paragraph 5.2.2.

<sup>5</sup> The CMA does not consider that the Parties strongly compete in the area of company law given the limited extent of overlapping publications and small increment as a result of the Merger. In addition no third parties raised concerns regarding the company law practice area. The switching data shows that of the [X] Jordans customers buying company law publication, [X] switched to [a competitor]. The Parties also overlap to a minimal extent in other practice areas, but these were only mentioned to a very limited extent.

<sup>6</sup> For the family law practice area, [X] of LexisNexis' revenues are generated by its online offering and [X] from its print offering.

format, whilst its online resources generate only a small share of its revenues.<sup>7</sup>

### *All legal information*

20. LexisNexis submitted that the most appropriate product scope in this case is the market for the supply of all legal information and that there is no reason to depart from the Office of Fair Trading's (**OFT**) decision in Thomson Reuters/PLC.<sup>8</sup>
21. LexisNexis submitted that the trends in the supply and demand side of this market as identified by the OFT in Thomson Reuters/PLC have continued since 2013, such that there is no longer any meaningful distinction between legal know-how and legal research,<sup>9</sup> but rather a single market for supply of legal information.
22. LexisNexis also submitted that the majority of its turnover is derived from [X], who either buy the full legal library or legal information across multiple practice areas, as the content in one particular practice area is insufficient to meet the demands of even the smallest customers. However, the CMA found that a significant number of customers were negotiating prices specific to the family law practice area.
23. LexisNexis also submitted that legal publishers move into new areas, both within areas of law and between them. In addition, LexisNexis submitted that it competes with Thomson Reuters across the legal information space as a whole.
24. The CMA notes that the OFT, in its decision in Thomson Reuters/PLC, considered that there appeared to be a lack of demand-side substitutability between legal research and legal know-how products and that the evidence did not support defining a broader market for legal research and know-how for supply-side reasons, suggesting that the acquisition should be assessed on the basis of (a) legal research and (b) legal know-how, separately. However,

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<sup>7</sup> Across all of Jordans' business, online accounted for only approximately [X] of Jordans' revenues in its financial year ended March 2015.

<sup>8</sup> ME/5885/13 Completed acquisition by Thomson Reuters of Practical Law Group Limited, 28 March 2013 ([Thomson Reuters/PLC](#)) paragraph 19.

<sup>9</sup> Thomson Reuters/PLC, paragraph 12 sets out that legal research and news products provide access to primary legal sources in the form of legislation and case law, as well as secondary legal sources, such as case summaries, academic journals and treatises, while the news offering consists of factual updated on legal developments. Legal know-how and current awareness products offer practical guidance on how to comply with the law and why particular developments matter, including practice notes, precedents, drafting notes, checklists and case studies, while current awareness updates also describe the impact of a particular development on practice areas.

the OFT did not find it necessary to conclude on market definition in that case.<sup>10</sup>

#### *Legal information in the family law practice area*

25. LexisNexis submitted that it would not be appropriate to differentiate separate product scopes by individual practice areas such as family law.
26. The CMA notes that, in this case, the most significant area of overlap between the Parties is in the supply of legal information in the family law practice area. The CMA therefore considers that it is appropriate to consider the impact of this Merger in this practice area. The evidence, as noted below, supports this conclusion.
27. The CMA notes that the majority of LexisNexis' turnover is generated by sales to large law firms, who either buy a full legal library or buy access to a large number of practice areas. However, many of the Parties' customers are specialist solicitor firms or barristers with expertise in family law only or a few other additional areas. These legal practices often require publications within a certain practice area or segment thereof and have limitations on the budget that they can utilise for legal information including print and online subscriptions. As a result, these customers may need to make choices regarding the publications and resources they require. For these customers, it is not feasible or economically viable to buy a full legal library.
28. In addition, in response to the CMA's market investigation, a number of third parties, including customers, Jordans' authors and competitors, raised concerns specific to the Parties' supply of legal information in the family law practice area and regarding specific family law publications and resources provided by the Parties. In addition, some of Jordans' authors told the CMA that they work with Jordans on the basis of Jordans' expertise and reputation in the family law practice area.

#### *Practice area segments*

29. Within the supply of legal information in the family law practice area, LexisNexis submitted that there is no functional substitutability across all family law titles, as individual legal information titles are highly differentiated products, giving rise to some level of competition on an individual title basis. LexisNexis gave the example that a customer wanting a practitioner's text on

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<sup>10</sup> Thomson Reuters/PLC, paragraphs 19 & 20.

financial measures on divorce could not use a practitioner's text on children law.

30. The CMA considers, and this has also been submitted by LexisNexis, that legal publications are differentiated products, with different offerings, both in terms of substance and type of information provided, as customers' needs vary according to their practice area.
31. The CMA found that the Parties provide a range of publications and resources in the family law practice area with significant overlaps within segments of that area, including children law, matrimonial property law and family court reporting. The CMA has therefore focused its assessment on these segments of that area.

### ***Geographic scope***

32. LexisNexis submitted that the geographic scope of the legal information market, and any segments within it, is national, for the reasons set out in the OFT's decision in Thomson Reuters/PLC.<sup>11</sup> In that case, Thomson Reuters submitted that the geographic scope of a legal supply market and its segments is national, because customers' needs are determined by national legal regimes and because the identity of providers and their market positions vary accordingly between countries. The OFT concluded that it had not received any evidence suggesting a different geographic scope and assessed the impact of the acquisition in the UK.
33. In this case, the CMA assessed the impact of the Merger in England and Wales given that it found this to be the narrowest geographic frame of reference in relation to the supply of legal information in the family law practice area.

### ***Conclusion on frame of reference***

34. While market definition is a useful tool for identifying merging parties' most significant competitive constraints and analysing the competitive effects of mergers, it is not an end in itself. In particular for differentiated products, such as those provided by the Parties and their competitors, it may not be possible or desirable to seek to define strictly delineated relevant markets.<sup>12</sup> The CMA has therefore focused in this case on closeness of competition between the

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<sup>11</sup> Thomson Reuters/PLC, paragraph 21.

<sup>12</sup> [Merger Assessment Guidelines](#), paragraph 5.2.1 & 5.2.2.

Parties and their competitors and on the competitive interaction between them.

35. For the purpose of assessing the impact of the Merger, the CMA has therefore focused its assessment on segments within the supply of legal information in the family law practice area where the Parties compete most closely, namely children law, matrimonial property law and family court reports in England and Wales.

## **Competitive assessment**

### ***Horizontal unilateral effects***

36. 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.<sup>13</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.

### *Theories of harm*

37. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in segments within the supply of legal information in the family law practice area.
38. The CMA considers whether there is a realistic prospect that the Merger will result in an SLC such that, following the Merger, the Parties may have the ability or incentive to:
- (a) increase the price of certain publications;
  - (b) reduce the quality of certain publications; or
  - (c) discontinue certain publications.
39. In general, the CMA recognises that there is a significant degree of differentiation between the Parties' supply of legal information in the family law practice area and segments within this market, in terms of focus, coverage, presentation or updates. However, the CMA considers that this level of differentiation does not, in and of itself, imply that the Merger is unlikely to lead to horizontal unilateral effects. Unilateral effects may arise, if a

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<sup>13</sup> [Merger Assessment Guidelines](#), paragraph 5.4.1.



significant number of the merging parties' customers regard the other party's product as their second choice. It is relevant whether, in the event of an increase in the price of one publication supplied by one of the Parties, a significant number of the customers who would stop purchasing the publication, would purchase the other party's product.

### *Shares of supply of legal information in the family law practice area*

40. As set out above, the CMA has focused its assessment in this case on closeness of competition between the Parties and on the competitive interaction between them. Nevertheless, by way of background, the CMA has considered evidence related to the Parties' share of supply of all legal information and of legal information in the family law practice area.
41. LexisNexis submitted that the Parties' and competitors' estimated shares of supply of all legal information and legal information in the family law practice area in the UK in 2014 were as follows:<sup>14</sup>

**Table 1: estimated shares of supply of all legal information and legal information in the family law practice area in the UK in 2014**

<i>Enterprise</i>	<i>All legal information</i>		<i>Legal information in the family law practice area</i>	
	<i>Estimated sales (£m)</i>	<i>Estimated share (%)</i>	<i>Estimated sales (£m)</i>	<i>Estimated share (%)</i>
Thomson Reuters	[X]	[50–60]	[X]	[20–30]
LexisNexis	[X]	[30–40]	[X]	[20–30]
Jordans	[X]	[0–5]	[X]	[20–30]
Parties combined	[X]	[30–40]	[X]	[50–60]
Other	[X]	[5–10]	[X]	[20–30]
Total	[X]	100	[X]	100

Note: The CMA understands that the Parties' combined share may be higher on the basis that third parties' turnover may have been overestimated.

Source: LexisNexis submission received on 15 July 2015.

42. The above information suggests that the size of the market may actually be smaller than estimated by the Parties, resulting in a higher market share of the merged entity in the supply of legal information in the family law practice area.

### *Closeness of competition*

43. To assess the closeness of competition between the Parties' products, the CMA reviewed the responses received from third parties, including from authors, customers and competitors, and the pricing data and publication

<sup>14</sup> The estimates for individual providers are based on the actual turnover of the Parties and on the estimated turnover of Thomson Reuters and other suppliers of legal information.

schedules as submitted by LexisNexis. The responses received from third parties, who, when asked to list the family law publications they use, mainly listed those published by the Parties. Only in a few instances, was the CMA referred to Thomson Reuters' family law resource.

44. The Parties substantially overlap in segments within the supply of legal information in the family law practice area, namely in the areas of children law, matrimonial property law and family law reports. The CMA has therefore assessed these segments in further detail below.

*Publications in the area of children law*

45. The Parties overlap in the area of children law publications, in particular in relation to Jordans' *Hershman and McFarlane Children Law and Practice (HMF)*, which is Jordans' second most successful family law publication, priced at £590,<sup>15</sup> and LexisNexis' *Clarke Hall and Morrison on Children (CHM)*, priced at £895.<sup>16</sup> Jordans' turnover for HMF, including online and print publications, was approximately £[REDACTED] for its financial year ended March 2015. LexisNexis' turnover for CHM, including online and print publications, was approximately £[REDACTED] for its financial year ended December 2014.
46. LexisNexis submitted that no publication competes directly with HMF, as other publications are either more generalist, as is the case with all the LexisNexis publications, or more specialised. LexisNexis submitted that CHM and LexisNexis' *Butterworths Family Law* are more expensive publications, reflecting the broader coverage. It further submitted that HMF is a fundamentally different type of legal information product from the *Butterworths Family Law* in terms of content functionality and market positioning. Whilst HMF is a specialist title with four volume loose-leaf focused on public and private children law alone, *Butterworths Family Law* is a generalist resource which is much broader in scope and covers the entire spectrum of family law topics, which HMF does not. LexisNexis also submitted that it considers that the very fact that it publishes CHM demonstrates that *Butterworths Family Law* does not satisfy children law demand. In this regard, LexisNexis noted that HMF and CHM are significantly more alike in content than either is to *Butterworths Family Law*. LexisNexis further submitted that HMF and *Butterworths Family Law* are complements rather than substitutes and do not exercise a competitive constraint on one another.
47. The CMA considers that HMF and CHM have a very similar size and content, with both publications covering all aspects of children law, in particular the

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<sup>15</sup> Published annually, with a periodical update provided to subscribers for £440 annually.

<sup>16</sup> Price includes first year of updates.

content of the Children Act 1989. HMF is a four volume publication and includes checklists, procedural tables and relevant statutory materials. CHM is a five volume publication and also includes the relevant statutory materials, checklists, guidance and precedents that relate to children law. Regarding price, the CMA considers that if subscribers of CHM receive their first year of updates as part of the purchase price, the initial cost of an up to date version is similar.

48. Regarding publication updates, both HMF and CHM are updated three times a year, with a similar time period between the updates for each publication. In addition, both publications appear to have a similar content, also referred to as 'considerable overlapping' content by an author, who noted that CHM had been adapted and re-written differently to challenge HMF's share of the market, to which HMF responded by including new areas, which had previously only been covered by CHM and that there is a healthy degree of competition between the products.
49. LexisNexis also submitted that Thomson Reuters' *Encyclopaedia of Social Services (Encyclopaedia)* is a more suitable alternative to HMF than any of the LexisNexis publications. However, this has not been confirmed by third parties, as only one competitor noted that the Encyclopaedia would be an alternative to HMF. Other third parties noted that the Encyclopaedia was not used in court and was not a suitable alternative to the Parties' publications. Third parties also noted that Oxford University Press' *Children and the Law* was not a suitable alternative to HMF and CHM, as it was more an academic publication and used as a student textbook.<sup>17</sup> One competitor also noted that Thomson Reuters' *Heywood & Massey* was, in its view, the second best alternative to HMF and CHM. However, that publication appears to relate to the Mental Capacity Act 2005 rather than the Children Act 1989.
50. Two third parties noted that LexisNexis *Butterworths Family Law* would be their best alternative to HMF, with CHM as their second best alternative. However, as submitted by LexisNexis, *Butterworths Family Law* includes eight binders covering the entire spectrum of family law and only has one of its eight (print) volumes focused on children law, although it is often accessed online where children law content can be accessed separately. Further, HMF is used in court and often in hard copy, with the only similar publication being CHM and not *Butterworths Family Law*. The CMA considers it plausible that a decision to switch to purchasing *Butterworths Family Law* would take into

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<sup>17</sup> Priced at £81 and last published in 2012.

account the wider content offered by *Butterworths Family Law* and would be unlikely to be based entirely on the offering in children law.

51. The CMA has not been referred to any other publisher providing similar publications or to any evidence suggesting that other publishers are considering entry or expansion in the area of children law.
52. In summary, those third parties that had concerns in this area raised that the only credible publications and online resource in the area of children law were provided by the Parties. The CMA therefore considers that HMF and CHM closely compete, such that LexisNexis would have the ability or incentive to increase prices or reduce the quality of either or both publications as a result of the Merger. Accordingly, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to publications in the area of children law.

#### *Publications in the area of matrimonial property law*

53. The Parties overlap in the area of matrimonial property law, in particular in relation to Jordans' *Duckworth's Matrimonial Property and Finance (DM)*, which is priced at £500,<sup>18</sup> and LexisNexis' *Rayden and Jackson on Divorce and Family Matters (RJ)*, which is priced at £985<sup>19</sup> and LexisNexis' *Jackson's Matrimonial Finance (JM)*, which is priced at £260.<sup>20</sup> Jordans' DM generated a turnover of approximately £[REDACTED] from online and print sales in its financial year ended March 2015. LexisNexis' RJ generated a turnover of approximately £[REDACTED] and LexisNexis' JM generated a turnover of approximately £[REDACTED] from online and print sales in its financial year ended December 2014.
54. LexisNexis submitted that RJ has a wider coverage than DM as it covers financial law, but also divorce and children. LexisNexis further submitted that Thomson Reuters' *Financial Provision in Family Matters*, priced at £528, is a closer competitor in terms of price, interval of updates (twice a year) and coverage (three volume loose-leaf, including commentary, case analysis tables, precedents, source material, rules of the court and financial tables).
55. The CMA considers that DM and RJ have a very similar content. DM includes commentary, statutory materials, precedents and financial tables. RJ also includes authoritative text/commentary, statutory materials and precedents. JM includes commentary of the major developments in case law and guidance on new and current legislation. Although DM, RJ and JM are not

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<sup>18</sup> £435 is the list price for subscription, risen by about 10% in two years.

<sup>19</sup> Risen by 16% in two years (text book not loose-leaf and price includes one year's supplements).

<sup>20</sup> Risen by 16% in two years.

published in parallel, with DM published twice a year and RJ published four times a year, whilst JM has not been updated since 2012, the CMA considers that the LexisNexis publications very much complement each other and provide the closest alternative to Jordans' DM. A number of third parties, including customers, told the CMA that they see RJ and JM as being the next best alternative to DM and some authors noted that they see DM in direct competition with JM, as it focuses on the financial aspects of matrimonial law.

56. A small number of third parties referred to Thomson Reuters' *Financial Provision in Family Matters* as the next best alternative to Jordans' DM. On balance, the evidence available suggests that the Parties' publications are the most closely competing products available in the area of matrimonial property law. The CMA therefore considers that LexisNexis would have the ability or incentive to increase prices or reduce the quality of any or all publications as a result of the Merger. Accordingly, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to publications in the area of matrimonial property law.

#### *Family law reports*

57. The Parties overlap in the area of family law reporting, in particular in relation to Jordans' *Family Law Reports (FLR)*, priced at £423, and LexisNexis' *Family Court Reports (FCR)*, priced at £382. Jordans' turnover for FLR, including online and print publications, was approximately £[REDACTED] for its financial year ended March 2015. LexisNexis' turnover for FCR, including online and print publications, was approximately £[REDACTED] for its financial year ended December 2014.
58. LexisNexis submitted that FCR is much less comprehensive than FLR in terms of coverage of cases (approximately 50% of the coverage). It also submitted that FCR focuses on in-depth analysis of a smaller number of key cases, whilst FLR focuses on comprehensive case reporting. LexisNexis submitted that FLR's next best alternative is Law Week's *Family Law Week* and Class Legal's *Family Law Hub*.
59. The CMA considers that the two publications have a very similar size and content. Both family law reports contain transcripts and law reports for important Family Division, Court of Appeal, Supreme Court and European courts cases and also include practice directions. Both reports are published fortnightly and include headnotes summarising points of law decided. In addition, both reports are priced similarly. Third parties, the majority of which were customers, considered the Parties' publications to be the closest alternatives available. The other two competitors' publications referred to by

LexisNexis were not listed by any third party as being the next best alternative to FLR or FCR.

60. Two customers also noted that LexisNexis' *All England Law Reports* was the second best alternative to FLR.
61. Overall, the evidence available to the CMA on family law reports suggests that the Parties' publications are the most closely competing publications available in the area of family law reporting. The CMA therefore considers that LexisNexis would have the ability or incentive to increase prices or reduce the quality of either or both publications as a result of the Merger. Accordingly, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to publications in the area of family law reports.

*Family Court Practice and information on court procedures (the Red Book)*

62. Jordans' *Family Court Practice*, also referred to as the *Red Book*, is priced at £433.<sup>21</sup> Jordans' turnover for the *Red Book*, including online and print publications, was approximately £[§] and generated approximately [20–30]% of Jordans' turnover for its financial year ended March 2015.
63. The *Red Book* is updated annually, together with an annual supplement. It includes statutory materials, procedural rules and practice guidance, bringing together materials regarded as necessary on family law matters, including family law matters in courts.
64. LexisNexis submitted that there is no overlap between the Parties, as the *Red Book* has no meaningful competitor. Its sales remain heavily dominated by the print format, in part because it is used as a portable resource to take to court.
65. LexisNexis submitted that there is no evidence that a combination of LexisNexis products would constitute a constraint on the *Red Book*, nor that the *Red Book* would constitute such a constraint on the LexisNexis products. Rather, sales of the *Red Book* have been influenced by [§] in the light of legislative changes, and sales of LexisNexis more general publications are constrained by Thomson Reuters' PLC.
66. LexisNexis further submitted that to the extent that other products taken together, offer content similar to the *Red Book*, the LexisNexis publications are not the closest alternative.

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<sup>21</sup> Risen by 17% in the last two years.

67. LexisNexis' view, that the *Red Book* has no meaningful competitor, was generally shared by third parties, who told the CMA that the *Red Book* is a 'must buy' publication. [✂]
68. When the CMA asked third parties what publication or resource they would use, if the *Red Book* was unavailable, a small number of customers ranked Jordans' HMF as the next best alternative and LexisNexis *Butterworths Family Law* as their second next best alternative. The third next best alternative mentioned was LexisNexis' CHM, together with LexisNexis' RJ. Thomson Reuters' PLC family law module and Westlaw were also referred to. However, the majority of third parties considered that the *Red Book* has no competing publication or resource.
69. Considering the content of the *Red Book*, there is very little overlap between the *Red Book* and the publications and resources produced by LexisNexis. The *Red Book* contains 95 procedural guides whereas LexisNexis regularly produces only 27 guides related to family law.<sup>22</sup> Thomson Reuters has a stronger offering in this area and produces around 30 procedural guides. The *Red Book* contains an annotated version of the family procedure rules 2010, but this is not available from LexisNexis. The Law Society and Resolution<sup>23</sup> both published titles on this topic in 2011. The *Red Book* further contains annotated extracts from relevant legislation. LexisNexis produces some commentary on legislation as part of the much more expensive generalist *Halsbury's Laws*. Thomson Reuters however produces annotated statutes as part of the Westlaw service.
70. LexisNexis, and other publishers, do not produce any resource that matches the full content of the *Red Book*. Although LexisNexis offers content that could be used to substitute some of the *Red Book*, in many of these areas other publishers appear to offer similar or better products and resources.<sup>24</sup>
71. In addition, the small number of customers that raised concerns regarding the *Red Book* and listed the LexisNexis' publications as the closest alternative, noted that the alternative publications are different and that they would not substitute one for the other.
72. On balance, the CMA does not consider that any LexisNexis publication or resource closely competes with the *Red Book*, such that LexisNexis would have the ability or incentive to increase prices or reduce the quality of the *Red Book* as a result of the Merger. Accordingly, the CMA found that the Merger

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<sup>22</sup> LexisNexis produces about 11 other family law guidance as well, but these are not updated regularly.

<sup>23</sup> [Resolution website](#).

<sup>24</sup> The *Red Book* is the reference source for the procedure in family courts. In other procedures, the most prominent book used is the *White Book* produced by Thomson Reuters.

does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the *Red Book*.

#### *Online resources*

73. In addition to the Parties print and online publications, the CMA also considered whether there was any substantial overlap between the Parties' online platforms.
74. LexisNexis submitted that in June 2011, Jordans started to develop an online platform<sup>25</sup> [REDACTED]. Due diligence undertaken by LexisNexis showed that [REDACTED].
75. LexisNexis' turnover for legal information in the family law practice area was approximately £[REDACTED], of which approximately £[REDACTED] derived from print revenues and approximately £[REDACTED] derived from online resources, including the online version of LexisNexis family law print publications, which are available on *LexisLibrary*, and online guidance content, which is available on *LexisPSL modules for family law*. Jordans' turnover for legal information in the family law practice area was approximately £[REDACTED]. For example, across all of Jordans' business, online accounted for only approximately [REDACTED] of Jordans' revenues in its financial year ended March 2015.<sup>26</sup>
76. The CMA considered that many of Jordans' customers buy print and online, but that on average, in the family law practice area, [REDACTED] of customers buy only print and that Jordans' revenues from online publications are [REDACTED]. In response to the CMA's market investigation, only a very limited number of third parties told the CMA that they used Jordans' online platform and no third party rated Jordans' highly for innovation or valued Jordans for its online platform, but noted that Jordans' online offering was either just another way of accessing e-books of its printed content or a service that LexisNexis does not replicate, as it integrates with the *Red Book*.
77. On balance, the CMA does not consider that Jordans' online offering closely competes with *LexisLibrary* or *LexisPSL*, such that LexisNexis would have the ability or incentive to increase prices, reduce the quality or innovations of its online offering as a result of the Merger.

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<sup>25</sup> There are no vertical issues in this case because there were no concerns from retailers or other sales channels and Jordans does not sell third party content.

<sup>26</sup> Jordans family law online: £[REDACTED] in FY 2014 and £[REDACTED] in FY 2015. Jordans practice plus: £[REDACTED] in FY 2014 and £[REDACTED] in FY 2015. These exclude revenues from the print titles that may come with a free e-book/online version in some cases but seem to be online-only services.



### *Conclusion on horizontal unilateral effects*

78. As set out above, the CMA considers that the Parties are each other's closest competitor within segments of the family law practice area, namely children law, matrimonial property law and family court reports.
79. The CMA therefore believes that there is a realistic prospect that the merged entity would have the ability and incentive to increase prices or reduce the quality, for example by discontinuing certain publications or publishing updates less frequently. This concern was supported by third party responses to the Merger.
80. Accordingly, the CMA finds that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to segments within the supply of legal information in the family law practice area in the UK, namely children law, matrimonial property law and family court reports.
81. The CMA has not needed to conclude on competition concerns in the wider family law practice area, because any issues are reflected in these segments. There are no competition concerns in any other practice areas.

### ***Barriers to entry and expansion***

82. 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 SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>27</sup>
83. Some third parties suggested that digital printing or e-books were reducing barriers to entry in the supply of legal information. However, no third parties said that they were planning to expand into the family law market apart from some limited plans in relation to legal reporting. Therefore, the CMA considers that it has not been provided with evidence of sufficiently timely and likely entry or expansion to prevent a realistic prospect of an SLC as a result of the Merger.

### **Third party views**

84. The CMA contacted customers, including those who were most likely to be affected by the Merger as they buy the Parties' family law product, competitors and authors of the Parties. In total, the CMA contacted over 61

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<sup>27</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

third parties, of which 31 responded and 17 raised concerns regarding the reduction of choice for family law publications.

85. Third party comments have been taken into account where appropriate in the competitive assessment above.

## Conclusion on substantial lessening of competition

86. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to segments within the supply of legal information in the family law practice area in England and Wales, namely children law, matrimonial property law and family court reports.

## Exceptions to the duty to refer

87. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(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 (the ***de minimis* exception**). The CMA's general policy, regardless of the size of the affected market, 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.<sup>28</sup> In this case, clear-cut undertakings in lieu will involve a structural divestment. The CMA considers that undertakings in lieu are in principle available, as LexisNexis can sell off stand-alone publications.

## Decision

88. Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
89. The CMA therefore considers that it is under a duty to refer under section 33(1) of the Act. The Parties have until 17 September 2015 to offer an undertaking to the CMA. If such an undertaking is offered, the CMA will consider whether to accept the undertaking under section 73 of the Act. If the Parties do not offer an undertaking by this date or if pursuant to section 73A(2) of the Act the CMA decides by 24 September 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered

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<sup>28</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.2 & 2.18–2.27.

by the Parties, or a modified version of it, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

**Sheldon Mills**  
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**Competition and Markets Authority**  
**10 September 2015**