

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

ME/6539/15

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

### Introduction

1. Reed Elsevier (UK) Limited, trading as LexisNexis (**LexisNexis**), has agreed to acquire Jordan Publishing Limited (**Jordans**), (the **Merger**). LexisNexis and Jordans are together referred to as the **Parties**. They overlap in segments within the supply of legal information in the family law practice area. Their publications include commentary titles and legislative and case law content, as well as practical guidance, precedents and checklists.
2. On 10 September 2015, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA case page.<sup>1</sup>
3. On 17 September 2015, LexisNexis offered undertakings to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, the Parties made this offer within five working days beginning with the day after the CMA notified them of the SLC decision under section 34ZA(1)(b) of the Act.
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are reasonable grounds for believing that the undertaking offered, or a modified version of it, might be accepted by the

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<sup>1</sup> See [CMA case page](#).

CMA under section 73(2) of the Act and that it is considering the undertakings offered by LexisNexis.

## The undertakings offered

5. Under section 73(2) of the Act, the CMA may, instead of making a reference for a phase 2 investigation, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
6. LexisNexis has offered undertakings comprising the divestment of one title in each segment identified in the SLC decision (the **Proposed Undertakings**) to an upfront purchaser (the **Nominated Purchaser**):
  - (a) in children law: either LexisNexis' *Clarke Hall and Morrison on Children* or Jordans' *Hershman and McFarlane Children Law and Practice*;
  - (b) in matrimonial property law: Jordans' *Duckworth's Matrimonial Property and Finance*; and
  - (c) in family court reports: LexisNexis' *Family Court Reports*.
7. The Proposed Undertakings include:
  - (a) the relevant intellectual property rights and licences relating specifically to the titles being transferred;
  - (b) all contracts with contributing authors and consultant editors, which will be assigned and novated on transfer as appropriate;
  - (c) the customer contracts and contacts for each title (print and online) [END NOTE 1];
  - (d) the existing tangible assets available, such as the existing stock of print copies and the digital files and archives; and
  - (e) one of the employees who has been involved in the production of one of the titles.
8. The Proposed Undertakings are intended to remove the overlaps between the Parties that resulted in the SLC finding and address any concern regarding the viability of the business and effective implementation of the remedy by

offering to sell the above described assets to an adequate Nominated Purchaser.

## **The CMA's provisional views**

9. The CMA considers that the starting point in considering remedies is to seek an outcome that restores competition to the level that would have prevailed absent the Merger. Thus, they must address any competition concerns raised by the Merger in a clear-cut manner and be capable of ready and effective implementation.
10. In terms of choice of divestment business (that is, which of the acquired business or the acquiring business should be divested), the CMA's starting point will often be to require divestment of the business that has been acquired. However, the CMA will also consider divestment of the buyer's existing business (or part of it) as an alternative, although in such cases the CMA will also need to consider the competition implications of the asset swap and will need to ensure that the divestiture of the buyer's existing business is a suitable remedy in terms of its saleability. In appropriate cases, the CMA may also leave open the choice of the specific asset(s) (that is, title(s) in this case) to be sold, with the undertakings stipulating that one of them must be sold.<sup>2</sup>
11. The SLC Decision found a realistic prospect of 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. Both Parties offer online and printed publications in the area of children law, matrimonial property law and family court reports.<sup>3</sup>
12. LexisNexis has offered to divest an overlapping title in each of these segments. The overall asset package would include titles from both LexisNexis and Jordans (see paragraph 6 above).
13. The Merger involves differentiated products. No title replicates the exact content of another title, even though users have identified a series of titles as 'overlapping titles' in specific segments of the family law practice area. In principle, the divestment of overlapping assets should address the competition concerns identified in an SLC Decision, in particular if all the target's overlapping assets are divested. However, as LexisNexis has offered to divest of titles from both LexisNexis and Jordans, the CMA is required to

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<sup>2</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, paragraph 5.22. *OFT1122* was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

<sup>3</sup> *Anticipated acquisition by Reed Elsevier (UK) Limited of Jordan Publishing Limited*, paragraph 6.

examine to what extent a 'mix and match' approach meets the requisite standards for the CMA to accept the Proposed Undertakings.

14. In particular, in assessing the Proposed Undertakings, the CMA considered whether the LexisNexis title in relation to family court reports, *Family Court Reports*, is a separable and stand-alone business. [✂] As such, the CMA considers that a successful transfer of *Family Court Reports* will depend on the identity of the Nominated Purchaser, and in particular the Nominated Purchaser's portfolio and overall service offering, including its online offering.
15. Further, in print format, *Family Court Reports* appear to have been a weaker competitor to Jordans' *Family Law Reports* than vice-versa. The Nominated Purchaser may therefore require an online platform, offering attractive content in the family law practice area to the legal sector, in order to market the *Family Court Reports* effectively and to attract sufficient customers to be commercially viable.
16. In summary, the CMA considers that its final decision on the acceptability of the Proposed Undertakings will depend on the identity of the Nominated Purchaser and whether the Nominated Purchaser will be in a position to offer an attractive package of content and service in the relevant law practice areas in order to restore competition to the level that would have prevailed absent the Merger. To the extent that a Nominated Purchaser, to be approved by the CMA, satisfies these requirements, the Proposed Undertakings, or a modified version of them, are likely to provide as comprehensive a solution as is reasonable and practicable to the competition concerns identified by the CMA in its SLC Decision.<sup>4</sup>

## **Upfront purchaser condition**

17. The upfront purchaser condition means that the CMA will only accept the Proposed Undertakings once LexisNexis has entered into an agreement with a purchaser that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the Nominated Purchaser, as well as other aspects of the proposed agreement.
18. The CMA will only accept undertakings that are capable of ready implementation.<sup>5</sup> The CMA usually seeks an upfront purchaser where the divestment package is not an existing standalone business and/or where the risk profile of the remedy requires it, for example, if there are only a small

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<sup>4</sup> See [OFT1122](#), paragraph 5.14.

<sup>5</sup> See [OFT1122](#), paragraph 5.7.

number of suitable candidate purchasers. In this case, the CMA considers that an upfront purchaser condition is necessary to ensure the ongoing commercial viability of the assets to be divested. It also considers that there are only a small number of suitable purchasers who, with an adequate set of undertakings, would be capable of implementing the Proposed Undertakings in a manner that would resolve the identified SLCs in a clear-cut, effective and timely manner.<sup>6</sup>

19. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version thereof, might be accepted by the CMA under section 73(2) of the Act.
20. The CMA's decision on whether ultimately to accept the Proposed Undertakings or to refer the Merger for a phase 2 investigation will be informed by, among other considerations, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the Nominated Purchaser will be able to replace the competitive constraint that Jordans would have continued to provide absent the Merger.

## **Consultation process**

21. Full details of the Proposed Undertakings will be published in due course when the CMA consults on them as required by Schedule 10 of the Act.<sup>7</sup>

## **Decision**

22. The CMA considers that there are reasonable grounds for believing that the Proposed Undertaking offered by LexisNexis, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 19 November 2015 pursuant to section 73A(3) of the Act to decide whether to accept the Proposed Undertaking, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 19 January 2016 if it considers that there are special reasons for doing so. If no undertaking is accepted, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

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<sup>6</sup> See [CMA2](#), paragraph 8.34 and [OFT1122](#), paragraph 5.25.

<sup>7</sup> [CMA2](#), paragraph 8.29.

**Sheldon Mills**  
**Senior Director of Mergers**  
**Competition and Markets Authority**  
**24 September 2015**

END NOTE 1: the CMA clarifies that paragraph 7(c) refers to the following customers:

With respect to LexisNexis titles:

- (i)* customer contracts and contact lists with respect to print customers;
- (ii)* in light of the fact that LexisNexis has not sold these titles online on an individual basis, LexisNexis will seek to procure that all customers of its family law menu will continue to have access to the divested title for the duration of their current contract (where possible by assigning in part the relevant contract) and will make a commensurate revenue contribution to the purchaser. It will provide contact details for all such customers.

With respect to the Jordans titles all customer contracts and contact lists.