



Department
for Culture,
Media & Sport

By email

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Ultimate Investment Holdings Limited
[REDACTED]

22 November 2023

Proposed loan repayment agreement and Redbird IMI 'rescue package' for Telegraph Media Group - Notice of a Potential Intervention Notice

I refer to the proposal from the Barclay family, via entities they directly or indirectly control, to pay in cash to the Bank of Scotland an aggregate amount [REDACTED] in full and final settlement of the loans outstanding to the Bank from Penultimate Investments Holding Limited (PIHL) and Press Acquisitions Limited (PAL), parent companies of Telegraph Media Group (TMG), which owns the Telegraph and Sunday Telegraph newspapers. We understand from the information provided by you that the funds for such repayment are being provided by way of a loan from third-party funders, with RedBird IMI and IMI as the ultimate source of funding. I also refer to RedBird IMI's option to convert its debt into equity for these assets at a point after PIHL and PAL's debt redemption to the Bank of Scotland, which, if exercised, would result in ownership and control of TMG passing to RedBird IMI.

Please note that references to sections in this letter are to sections of the Enterprise Act 2002.

The Secretary of State for Culture, Media and Sport ("the Secretary of State") has considered the proposed loan repayment arrangements, and RedBird IMI's option to purchase TMG by converting its debt into equity and is currently minded to issue a Public Interest Intervention Notice (PIIN) under section 42(2) as:

- (i) she considers she has reasonable grounds for suspecting that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation as defined in section 23; and

(ii) she believes it is or may be the case that one or more than one public interest consideration specified in section 58 is relevant to a consideration of the relevant merger situation concerned.

The public interest considerations that the Secretary of States considers are or may be relevant are:

- The need for: (a) accurate presentation of news; and (b) free expression of opinion in newspapers (section 58(2A)).
- The need for, to the extent it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or part of the United Kingdom (section 58(2B)).
- The need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (section 58(2C)(a)).

Sections 44 and 44A provide that when a PIIN has been issued, the CMA and Ofcom must, respectively, provide reports on certain issues relevant to the merger and on the specified public interest considerations, and for each to summarise any representations received about the case, within such period as the Secretary of State may require.

Creation of a relevant merger situation

The Secretary of State considers that there are reasonable grounds for suspecting that it is given what she understands about the security arrangements for this loan, or may be the case that arrangements are in progress or in contemplation which, if carried out, will result in the creation of two relevant merger situations (as defined in section 23) which I will refer to as Transaction 1 and Transaction 2.

Transaction 1

- a. On completion of the debt repayment arrangements, the appointment of a fixed charge receiver, and their appointment of new directors to the boards of companies within the TMG group, would end. This would result in the Barclay family, via entities they control, regaining control of Press Acquisitions Limited, TMG's parent company and TMG, resulting in two or more enterprises ceasing to be distinct enterprises by being brought under common control;
- b. The reported turnover of TMG (£254.2m in 2022) exceeds the threshold of £70m set out in section 23 of the Enterprise Act 2002.

Transaction 2

- a. The Secretary of State understands that the debt repayment arrangements in Transaction 1, include an option for RedBird IMI to acquire TMG. The exercise by Redbird IMI of this option would result in two or more enterprises (TMG and RedBird IMI) ceasing to be distinct enterprises by being brought under common control.
- b. The reported turnover of TMG (£254.2m in 2022) exceeds the threshold of £70m set out in section 23 of the Enterprise Act 2002.

The Secretary of State therefore considers that in respect of both Transaction 1 and Transaction 2, there are reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried out, will result in the creation of relevant merger situations.

Public interest considerations

The Secretary of State notes from information provided that Transaction 1 will ultimately be facilitated by IMI or RedBird IMI, a joint venture company linked to IMI. These loans will be secured against the TMG Group as well as against other Barclay business interests on commercial terms.

The Secretary of State notes from information provided that Transaction 1 - the debt repayment arrangements - will ultimately be facilitated by IMI or Red Bird IMI, a joint venture company linked to IMI. These loans will be secured against TMG as well as against other Barclay business interests on commercial terms.

She also notes that in Transaction 2, upon redemption of the Bank of Scotland loan, Redbird IMI may exercise its option over the shares of TMG. From the information provided, she has reason to believe that Redbird are intending to exercise their option at the earliest opportunity. If Transaction 2 transpires, control of TMG may pass to Redbird IMI.

The need for accurate presentation of news and freedom of expression in newspapers

The Secretary of State has carefully noted representations she has received, but in relation to Transaction 1, she remains concerned about the potential for influence over the Telegraph newspaper's operations, including editorial operations, by those providing the loan finance to the parent companies of TMG. Furthermore, she believes there may be a possibility that RedBird IMI will gain control of TMG in the event of default. In relation to Transaction 2, she notes that if RedBird IMI exercises its option, control of TMG could pass to RedBird IMI. The Secretary of State notes that RedBird IMI is a joint venture between RedBird and IMI. The Secretary of State understands from the representations made to her that IMI is privately owned by a member of the UAE government.

The need for sufficient plurality of views in newspapers

The Secretary of State believes there may be a possibility that RedBird IMI will gain influence over TMG, or gain control of TMG in both transactions. She is aware that RedBird IMI have links to media organisations that have been critiqued for partisan views and therefore believes there may be an impact on the plurality of views of newspapers in the UK, if RedBird IMI gain influence over TMG.

The need for a sufficient plurality of persons with control of the media enterprises serving that audience

The Secretary of State is aware that IMI owns broadcasting assets which have a presence in UK markets (e.g. Sky News Arabia, amongst others). Therefore the Secretary of State considers that both potential mergers may cause there to be fewer persons with control of media enterprises (defined as newspapers and broadcasters) in the UK, as IMI, as part of

RedBird IMI, could gain control of TMG in the event that PIHL default on the loan, in addition to its existing broadcasting assets in the UK, and thus this consideration may be relevant in this case.

The Secretary of State therefore considers that the need for accurate presentation of news, freedom of expression in newspapers, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or part of the United Kingdom, and for there to be a sufficient plurality of persons with control of the media enterprises serving that audience may be relevant to this relevant merger situation.

Conclusion

The Secretary of State is accordingly minded to conclude that the public interest considerations specified in this letter may be relevant to a consideration of the merger, and that the appropriate course is for her to receive reports from the CMA and Ofcom before deciding whether to make a reference under section 45 for a more detailed consideration of these matters by the CMA.

You now have the opportunity to provide further representations in writing. Any such representations should be sent to me by email at [REDACTED] by 3pm GMT on 23 November 2023. The Secretary of State will consider these representations before taking a final decision on whether to issue a PIIN in respect of the merger.

We request that by return you provide an undertaking to give us two business days notice of taking any action that will lead to completion of the loan repayment; and if relevant, the exercise by RedBird IMI of its option to acquire TMG. Please confirm your agreement immediately.

Yours sincerely

Signed

[REDACTED]