



Department
for Culture,
Media & Sport

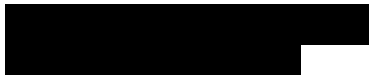
By email

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Ultimate Investment Holdings Limited



18 March 2024

ANTICIPATED ACQUISITION OF THE TELEGRAPH MEDIA GROUP LIMITED PHASE 2 REFERRAL

I refer to the Public Interest Information Notice issued on 30th November (“the November PIIN”) under section 42 of the Enterprise Act 2002 (“the Act”) in relation to the anticipated acquisition of Telegraph Media Group Limited by Redbird IMI Media Joint Venture, LCC.

I also refer to the Public Interest Information Notice issued on 26th January 2024 (“the January PIIN”) under section 42 of the Act in relation to the anticipated acquisition of Telegraph Media Group Limited (“TMG”) and/or Telegraph Media Group Holdings Limited by RB Investco Limited.

As you are aware, both PIINs required the Competition and Markets Authority (“CMA”) to report to the Secretary of State on jurisdictional and competition matters, and Ofcom to report on the following two media public interest considerations:

- the need for accurate presentation of news in newspapers (s.58(2A)(a) of the Act); and
- the need for free expression of opinion in newspapers (s.58(2A)(b) of the Act).

These reports have now been received by the Secretary of State.

In light of those reports, the Secretary of State is considering whether or not to make a reference to the CMA¹ under s.45 of the Act to undertake a more detailed consideration in relation to the arrangements in question.

The November PIIN:

The CMA has concluded in relation to the arrangements set out in the November PIIN that arrangements are no longer in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

The Secretary of State is required by s.46(2) of the Act to accept the CMA's decision as to whether a relevant merger situation is in progress or in contemplation. Accordingly, the Secretary of State has decided not to refer this matter for further investigation by the CMA under s.45 of the Act.

The November PIIN therefore ceases to be in force.

The January PIIN:

In relation to the January PIIN, for the reasons set out below, the Secretary of State is currently minded to make a reference to the CMA under s.45 of the Act in respect of both of the public interest considerations specified in the January PIIN, namely the need for accurate presentation of news in newspapers, and the need for free expression of opinion in newspapers.

This is because the Secretary of State 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;
- the creation of that situation may be expected not to result in a substantial lessening of competition ("SLC") within any market or markets in the United Kingdom for goods or services;
- the two media public interest considerations specified in the January PIIN are relevant to a consideration of the relevant merger situation concerned; and that
- taking account only of the relevant public interest considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.

The Secretary of State notes the CMA's finding that the creation of that situation may be expected not to result in a substantial lessening of competition ("SLC") within any market or markets in the United Kingdom for goods or service.

Relevant merger situation and impact on competition

In its report on the January PIIN, the CMA has concluded that (relevant paragraph numbers from the report shown in square brackets):

¹ Specifically, to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

- it believes that both RedBird Capital Partners Fun IV GenPar LLC (“RBC”) and International Media Investments Holdings Limited (“IMI”) are proposing to acquire the Target Companies (i.e. TMG, The Chelsea Magazine Company Limited and The Spectator (1828) Limited) (“the Merger”); [1]
- it believes that it is or may be the case that, as a result of the merger, arrangements are in progress or contemplation which, if carried into effect, will lead to enterprises carried on by or under the control of RBC and IMI respectively ceasing to be distinct from the Target Companies; [117]
- the combined UK turnover of the Target Companies exceeds £70 million, so the turnover test in s.23(1)(b) of the Act is satisfied; [118] and
- accordingly, it 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 for the purposes of s.44(4)(a) of the Act. [119]

The CMA has also concluded that the merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to either online news in the UK or digital advertising in the UK. [148,153]

Having considered the CMA’s report, and in accordance with section 46(2) of the Act, the Secretary of State accepts the decision of the CMA on these points. Accordingly, the Secretary of State believes that it is or may be the case that the conditions in s.45(5)(a) and (b) of the Act are satisfied.

The public interest considerations

In relation to the accurate presentation of news and free expression of opinion grounds, the Secretary of State notes Ofcom’s advice and recommendation, namely that (relevant paragraph numbers from the report shown in square brackets):

“Overall, based on the analysis that we have undertaken, we have concluded that:
(a) it is or may be the case that the merger may be expected to operate against the public interest, having regard to the need for accurate presentation of news in newspapers; and
(b) it is or may be the case that the merger may be expected to operate against the public interest, having regard to the need for free expression of opinion in newspapers.” [8.1]

Ofcom also states:

“We have concluded that it is or may be the case that the proposed transaction may be expected to operate against the public interest. We consider that these concerns may justify a reference to the Competition and Markets Authority for further analysis on the grounds of accurate presentation of news and free expression of opinion.”²

Taking into account all of the evidence and analysis on which it is based, the Secretary of State considers Ofcom’s advice and recommendation to be persuasive. In particular, based on Ofcom’s findings, she believes that it is or may be the case that both of the public interest considerations specified in the January PIIN are relevant to a consideration of the relevant merger situation concerned and that, taking account only of those public interest

² Ofcom, Public Interest test on the proposed acquisition by RB Investco of the Telegraph Media Group, Ofcom’s advice to the Secretary of State, 11 March 2024 (“Ofcom Public interest test report on RB Investco/TMG”), p4

considerations, the creation of that situation may be expected to operate against the public interest. Accordingly, the conditions in s.45(5)(c) and (d) of the Act are satisfied.

Minded to decision to refer

The Secretary of State has a discretion to make a reference to the CMA where the conditions in s.45(5) are satisfied. In deciding whether to exercise that discretion, the Secretary of State has considered all of the evidence and analysis contained in Ofcom's report, including the following key findings:

- there are notable differences between the incentives of a powerful private individual or corporation and those of a state. Any government, and any individual member of a government, has an incentive to influence opinion where they can. All else equal, a state or government owning, or holding a majority interest in, a newspaper would put it in a position to use its influence on that paper to further its foreign policy, commercial, reputational, or other ambitions; [6.20]
- there are substantial connections between the individuals with an interest in and/or who are representatives of IMI, RedBird IMI Joint Venture and the IMI Limited Partner on the one hand, and members of the UAE government and other state-owned undertakings on the other; [6.26]
- there is evidence of the UAE government's approach to freedom of expression which, given its close ties with IMI, may indicate IMI's propensity to exercise influence to curtail freedom of expression in the Telegraph Titles; [6.59]
- there could be a viable commercial incentive to purchase, and then to maintain the prestige and commercial performance of the Telegraph Titles. However, IMI may have other incentives. Based on the limited information available, [REDACTED]. Accordingly, while RedBird Capital may have a solely financial incentive to undertake the transaction, IMI could be motivated by additional incentives, beyond financial returns; [6.92]
- IMI has clear political and broader commercial incentives to influence the editorial line of the Telegraph Titles, particularly in matters relating to the UAE and its broader political and commercial interests; [6.93]
- Ofcom previously made breach findings against ADMC (a state-owned media enterprise under the control of the same royal family as IMI) under the UK Broadcasting Code. On three separate occasions, ADMC broadcast programming in the UK that appeared to align with the interests of the UAE Government but did not comply with ADMC's regulatory obligations as a licensed broadcaster; [6.60, 6.94]
- overall, IMI has a significant incentive to intervene editorially in a way which could negatively affect the accurate presentation of news and free expression of opinion in the Telegraph Titles, if such influence may be effective; [6.95]
- the formal arrangements established by the Limited Partnership Agreement do not give IMI the ability to influence matters concerning the operation of TMG. However, the formal restrictions on the IMI Limited Partner [REDACTED]. Should another IMI entity or its representatives seek to exercise influence over the General Partner's management of TMG, this would not

engage the limited partner restrictions in the [REDACTED] and LPA 1907; [7.29 - 7.30]

- the Services Agreement (under which RedBird Capital provides the RB General Partner with certain services) may provide scope for IMI to exercise influence over TMG; [7.31, 7.40]
- whatever the final formal arrangements are, they will take effect within the context of the overall relationship between RedBird Capital and IMI, covering both the Partnership and RedBird IMI Joint Venture, in which we consider that there could be a material risk that the parties' relative positions would give IMI more influence over RedBird Capital and TMG than the formal arrangements in relation to the Partnership would suggest; [7.43]
- the prospect of future acquisitions by the RedBird IMI Joint Venture, [REDACTED] could be a particularly relevant factor in the behaviour of the parties and the influence exercised by IMI with regard to the Partnership and its ownership of TMG. Specifically, this could impact RedBird Capital's incentive in the relationship, since concessions in relation to the management of TMG may enable it to secure what it thinks is desirable in relation to other, possibly more commercially important, and lucrative investments; [7.49]
- notwithstanding the restructuring of the ownership of TMG, there remain contact points between IMI representatives and the RedBird Capital entities and their representatives that will manage the Partnership and its investment in TMG; [7.73]
- the formal agreements underpinning the RedBird IMI Partnership, overall, limit the formal routes that would give IMI the ability to influence TMG in a manner that would act contrary to the public interest. However, there are certain weaknesses in the arrangements, which could be exploited by IMI should it wish; [7.82- 7.83]
- even if these weaknesses were to be addressed, IMI's ability to exercise influence over TMG has to be considered within the context of potential substantial future investments by the Joint Venture, the substantial imbalance between the financial contributions of the two parties in the Partnership, IMI's access to vast economic resources and RedBird Capital's own commitment to the success of both the Partnership and more broadly, the Joint Venture. These factors alone could give IMI the ability to exercise influence over editorial decisions by TMG so as to adversely impact the accuracy of news and free expression of opinion; [7.85]
- the parties stated good intentions as regards maintaining the editorial independence of the Telegraph Titles do not appear to Ofcom to be sufficient, at this first stage investigation, to allay concerns about the possible future behaviour given our findings about IMI's incentives to influence TMG's editorial line in favour of UAE interests and its ability to do so; [7.86]

The Secretary of State has also considered the summary of responses received by Ofcom, as set out in Annex 1 to its report, and notes the concerns raised in those responses.

Overall, the Secretary of State considers that the evidence and findings contained in Ofcom's report raise serious public interest concerns warranting a Phase 2 reference in order to allow the CMA to investigate these matters further. In the circumstances, the Secretary of State is currently minded to exercise her discretion to make a reference to the CMA under s.45(5) of the Act.

Undertakings

The Secretary of State notes that RedBird IMI proposed undertakings to Ofcom with regards to the PIIN issued on 30 November 2023.³ However, this proposal was not revised to take account of the new ownership structure and Ofcom has not considered the merits of the proposed undertakings for the purposes of its report (see paragraph 8.4 of the Ofcom report).

We also note the letter dated 8th March 2024 from Jeff Zucker, CEO of Redbird IMI, addressed to the DCMS Secretary of State setting out commitments and assurances that Redbird IMI would propose to make if required.

If, following receipt of representations from you (see below), the Secretary of State is still of the view that she would otherwise intend to make a reference for further investigation of this merger under s.45 of the Act, she will at that point consider whether to accept the undertakings that you propose in lieu of such a reference, under paragraph 3 of schedule 7 to the Act. The Secretary of State has sought advice from Ofcom and the CMA in the interim on Mr Zucker's letter of 8th March.

Conclusion

In relation to the January PIIN, the Secretary of State makes no final determination on this transaction, but is minded to refer the merger to the CMA for further investigation on the basis that she believes that the conditions for her to make a reference as set out in s.45(5) of the Enterprise Act 2002 are met and a reference would be appropriate in the exercise of her discretion.

Before taking her final decision on these issues, however, and in accordance with section 104(2) of the Enterprise Act 2002, the Secretary of State invites you to provide representations in writing. Any such representations should be sent to me via email [REDACTED] by 9.00am on Monday, 25th March.

The Secretary of State will then consider any relevant representations from you or interested third parties on these matters before taking her final decision on the reference.

Yours sincerely,

Signed

[REDACTED]

³ Ofcom, Public Interest test on the proposed acquisition by RB Investco of the Telegraph Media Group, Ofcom's advice to the Secretary of State, 11 March 2024 ("Ofcom Public interest test report on RB Investco/TMG"),p4