

RB INVESTCO - TMG

**A report to the Secretary of State for
Culture, Media and Sport on the
acquisition by RB Investco Limited of
Telegraph Media Group**

11 March 2024

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Anticipated acquisition by RB Investco Limited of Telegraph Media Group

Report to the Secretary of State for Culture, Media and Sport on the relevant merger situation and substantial lessening of competition

ME/7082/23

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SUMMARY

1. This advice to the Secretary of State for Culture, Media and Sport (**the Secretary of State**) is in relation to the sale of Telegraph Media Group Limited (**TMG**). TMG produces the national newspapers, The Daily Telegraph and The Sunday Telegraph (and related digital content including websites, apps, podcasts, newsletters and liveblogs). The transaction also involves the acquisition of The Chelsea Magazine Company, which publishes a variety of lifestyle and sporting magazines, and The Spectator (1828) Limited, which publishes the Spectator Magazine. TMG, The Chelsea Magazine Company Limited and The Spectator (1828) Limited are together referred to as the **Target Companies**. For the reasons given in this report, the CMA believes that both RedBird Capital Partners [REDACTED] [REDACTED] (**RBC**) and International Media Investments Holdings Limited (**IMI**) are proposing to acquire the Target Companies (the **Merger**).
2. The Competition and Markets Authority (**CMA**) has responsibility for reviewing applicable mergers under the merger control provisions of the Enterprise Act 2002 (**the Act**). In reviewing mergers, the CMA decides whether the merger has caused or may cause a substantial lessening of competition (**SLC**). However, the Act also allows for the Secretary of State to assume responsibility for determining whether to refer a merger to the CMA when defined public interest considerations are potentially relevant by issuing a public interest intervention notice. The need for accurate presentation of news and free expression of opinion in newspapers are defined public interest considerations. In these cases, the Secretary of State also takes the final decision on whether the merger operates or may be expected to operate against the public interest, and on any remedies for identified public interest concerns.
3. When the Secretary of State issues a public interest intervention notice, the CMA has certain statutory obligations. It is required to provide advice to the Secretary of State on jurisdictional and competition issues (which must be accepted). The CMA is also required to pass to the Secretary of State a summary of any representations it has received that relate to the public interest matters. Ofcom too has certain statutory obligations – it will advise the Secretary of State on the public interest aspects of the case under section 44A of the Act.
4. After the Secretary of State's public interest intervention notice of 30 November 2023 (the **November PIIN**), RBC and IMI made changes to the corporate structure of the legal entities acquiring the Target Companies. Following these changes, the Secretary of State issued a second public interest intervention notice on 26 January 2024 (the **January PIIN**). This report is in relation to the January PIIN.

CMA's advice on jurisdiction and competition issues

5. In relation to the January PIIN, the CMA advises the Secretary of State that the CMA 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.
6. The CMA does not believe that it is or may be the case that the relevant merger situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom for goods or services. Although the merging parties overlap in the provision of online news and the supply of digital advertising in the UK, the overlap in both instances is negligible.
7. This report also includes a summary of the representations the CMA has received that relate to the public interest matters.
8. The following summarises the CMA's reasoning in coming to its advice on jurisdiction and competition issues.

The parties

9. RBC is a US-based private investment company with a portfolio of companies across a number of industrial sectors (eg the energy sector, financial services and sports).
10. IMI is a United Arab Emirates (**UAE**) based private investment company and focuses on investing in media assets around the world. The CMA understands that IMI's ultimate owner is Sheikh Mansour bin Zayed bin Sultan Al Nahyan who is also a deputy prime minister of the UAE.
11. In 2022, RBC and IMI established a joint venture company, RedBird IMI Media Joint Venture LLC (**RedBird IMI**) [REDACTED]
[REDACTED]
[REDACTED] RedBird IMI undertakes various investments in the media, entertainment and sports industries.
12. [REDACTED] (**the Limited Partnership**) is a partnership ultimately owned jointly by IMI ([REDACTED]) and RBC ([REDACTED]). The Limited Partnership comprises three limited partners all of which are corporate entities. One of these is ultimately owned and controlled by IMI, one is ultimately owned and controlled by RBC and one is ultimately owned and controlled [REDACTED]. The Limited Partnership has a General Partner [REDACTED] that manages and administers the Limited Partnership and that corporate entity is ultimately owned and controlled by RBC.

13. RB Investco Limited (**RBI**) is the legal entity that will acquire the shares of the Target Companies. RBI is owned by the Limited Partnership but before the transaction was restructured in January 2024, RBI was owned by RedBird IMI.
14. As above, TMG, The Chelsea Magazine Company Limited and The Spectator (1828) Limited are together referred to as the **Target Companies**.
15. The Target Companies are indirect subsidiaries of Penultimate Investment Holdings Limited (**PIHL**) and Ultimate Investment Holdings Limited, which are entities ultimately owned by the Barclay family. The Barclay family and PIHL are collectively referred to as the **Sellers**.

The relevant merger situation

16. The CMA has considered whether arrangements are in progress or contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct and either the 'turnover test' is met (ie the Target Companies' annual turnover in the UK is at least £70 million) or the 'share of supply test' is met (ie the parties to merger together account for at least 25% in the supply of particular goods or services in the UK).
17. RBC and IMI submitted that a relevant merger situation does arise in this case, specifically involving RBC and the Target Companies which will cease to be distinct as a result of the Merger and therefore can be considered to be the merger parties. This is because the Target Companies will be acquired by RBI which is a subsidiary of the Limited Partnership. RBC, through the General Partner, will manage the Limited Partnership including taking full responsibility for operational decisions and therefore the Target Companies. The CMA agrees that the enterprises RBC and the Target Companies will cease to be distinct as a result of the Merger and that RBC has at least material influence (and perhaps de facto control) over the Target Companies.
18. The CMA has then gone on to consider whether IMI may also exercise control over the Target Companies and therefore would be an enterprise that would cease to be distinct from them. RBC and IMI submitted that IMI would not exercise any control over the Target Companies as a result of the Merger because:

- (a) [REDACTED]

(b) [REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]

19. Under the merger provisions of the Act, enterprise can ‘cease to be distinct’ from another where one enterprise unilaterally gains a level of control over the second enterprise or when a number of persons or enterprises act together in acquiring a business and therefore should be treated as one as ‘associated persons’.

Associated persons

20. The CMA considers that the evidence indicates that RBC and IMI are ‘associated persons’ within the meaning of the Act. Section 127 of the Act allows the CMA to treat different persons as acting together as one for the purpose of deciding whether enterprises are ceasing to be distinct as a result of a merger.
21. The CMA considers that the following evidence detailed in this report indicates that RBC and IMI have taken a series of actions in concert to secure the control of the Target Companies and are associated persons (paragraph 74). Between them, RBC and IMI arranged to [REDACTED] [REDACTED] on behalf of entities related to the Target Companies in return for certain call option rights to acquire the Target Companies. This prevented any other entity from acquiring the Target Companies even though the Target Companies were being auctioned at the time but RBC and IMI needed to coordinate the sequencing and timing of various steps to achieve this. RBC and IMI (through RBI) entered into the call option agreement that allowed the transaction to occur.
22. The CMA also believes that the evidence indicates that RBC and IMI acted together to exercise control over the Target Companies. In January 2024, RBC and IMI acted together to establish the Limited Partnership to take ownership of RBI and therefore of the Target Companies and to exercise control of the Target Companies. RedBird IMI transferred all its shares in RBI to the Limited Partnership. Given their control of, and governance roles within, RedBird IMI, RBC and IMI would have needed to consent to this transfer of shares.
23. The CMA considers, based on these facts, that IMI and RBC have acted together to secure and exercise control of the Target Companies and they can therefore be viewed as acting together as one for the purpose of deciding whether enterprises are ceasing to be distinct as a result of a merger. That RBC, via the General Partner of the Limited Partnership, has the contractual and legal responsibility for the management of the Limited Partnership (and therefore of the Target Companies) does not alter this finding. The CMA’s finds that RBC has at least

material influence over, and may have de facto control of, the Target Companies applies to RBC and IMI acting together.

IMI's material influence

24. Under the Act, material influence is the lowest level of control one enterprise can exercise over another. In assessing whether one entity will have material influence over another, the CMA focuses on the acquirer's ability materially to influence policy relevant to the target's commercial behaviour. The CMA has found that RBC and IMI are associated persons for the purpose of deciding which enterprises are ceasing to be distinct from the Target Companies and the Act does not require the CMA further consider whether IMI on its own is acquiring control of the Target Companies. The CMA has, however, undertaken this assessment. In doing so, the CMA has taken into account the economic substance of the relevant transactions and the context in which they have been entered into, in particular the broader relationship between RBC and IMI in relation to media investments.
25. The CMA has found that:
- (a) IMI has played a crucial role in securing control of the Target Companies and putting in place the structural arrangements for the Target Companies to be managed (as discussed in the assessment of whether RBC and IMI are associated persons);
 - (b) IMI's financial importance to RBC is significant. RedBird IMI is the main vehicle that RBC and IMI use to undertake investments together. IMI is by far the most significant source of funding for RedBird IMI and for the acquisition of the Target Companies. IMI has provided █████ of the funding for both RedBird IMI and the Limited Partnership, and holds a █████ ownership interest in both these entities. Accordingly, the CMA believes that IMI's views are likely to be taken into account by RBC across a range of matters;
 - (c) IMI has considerable power in appointing managers to RedBird IMI and in enabling other media investment opportunities to proceed via the joint venture. IMI has the sole power to appoint the Chairman of RedBird IMI and can veto resolutions of RedBird IMI. This influence over RedBird IMI could enable IMI to gain influence over the Target Companies via RBC;
 - (d) senior leaders of IMI meet with RBC regularly. Even if these meetings are not arranged expressly with regard to the Target Companies, they could nevertheless give IMI the opportunity to influence the management of the Target Companies;
 - (e) in addition to IMI's importance regarding funding of the Merger, its funding of other investments made with RedBird IMI, its role in appointing managers to

RedBird IMI and the importance of the steps IMI took in securing control of the Target Companies, the CMA believes that IMI's influence could be enhanced by IMI's media industry expertise and status. The evidence indicates that IMI's involvement in the Target Companies – and IMI's CEO in particular – will be important in managing the Target Companies. [REDACTED]

[REDACTED]

they have not provided any evidence to indicate that this would prevent them from having any ability to influence the commercial policies of the Target Companies, in particular given that RBC and IMI meet regularly to discuss their mutual investments;

- (f) given its historical position of providing considerable funding for the loan arrangements and these joint companies, the CMA considers that there would appear to be a realistic possibility that IMI will continue to fund the Limited Partnership and in turn, the Target Companies. Acting as a potential gatekeeper for such funding may confer the ability to influence the commercial strategy of the Target Companies on IMI

- (g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. Although no single factor leads the CMA to conclude that IMI may have the ability to exercise material influence over the Target Companies, the CMA believes that the evidence outlined above, taken in the round, indicates that several factors in combination (listed above) may give IMI the ability to influence the management and strategic direction of the Target Companies.
27. Consequently, the CMA believes that it may be the case that IMI will have the ability to exercise material influence over the policy of the Limited Partnership, and in turn the Target Companies on completion of the exercise of the call option, for the purposes of section 26 of the Act.
28. The combined UK turnover of the Target Companies exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
29. Accordingly, the CMA believes that it is or may be that 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 section 44(4)(a) of the Act.

The CMA's competition assessment

30. The merging parties overlap in the supply of online news content and digital advertising in the UK. RedBird IMI owns 'Front Office Sports', an online news content which reports on the business of sports but not general or national news content, and IMI owns 'The National'. The CMA has considered the following theories of harm:
 - (a) horizontal unilateral effects in the supply of online news in the UK; and
 - (b) horizontal unilateral effects in the supply of digital advertising in the UK.
31. However, in both the supply of online news and the supply of digital advertising, the combined shares of the investments of RBC and IMI and the Target Companies is small and the increment arising from the Merger is negligible. No third parties raised competition concerns.
32. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC neither as a result of horizontal unilateral effects in the supply of online news in the UK nor as a result of horizontal unilateral effects in the supply of digital advertising in the UK.

ASSESSMENT

THE PUBLIC INTEREST INTERVENTION NOTICE AND THE CMA'S ROLE

33. On 26 January 2024, the Secretary of State issued the January PIIN, which stated that the Secretary of State has reasonable grounds to suspect that: the Merger would result in a relevant merger situation as defined in section 23 of the Act because two or more enterprises would cease to be distinct; and the turnover test was met. The January PIIN further stated that it may be relevant to consider the need for the accurate presentation of news and free expression of opinion in newspapers, when investigating the Merger.¹ The January PIIN required the CMA and Ofcom to investigate and report by 9:00am 11 March 2024.
34. The CMA is required to report to the Secretary of State on whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK for goods or services.
35. This report therefore assesses both the jurisdiction question and the effect on competition.

THE PARTIES

36. The CMA has considered whether RBC and IMI, whether separately or jointly, are acquiring the Target Companies.
37. RBC is a US-based private investment company. RBC's portfolio companies and investments include online news sources, for example YES Network.²
38. IMI is a UAE based private investment company and focuses on investing in media assets globally. IMI's portfolio companies and investments include online news sources, such as The National which supplies online news including in the UK.³ IMI's ultimate owner is Sheikh Mansour bin Zayed bin Sultan Al Nahyan who is also a deputy prime minister of the UAE.
39. RedBird IMI is a joint venture between companies [REDACTED]
[REDACTED]

¹ [Public Interest Intervention Notice](#), 26 January 2024.

² <https://redbirdcap.com/companies/>

³ <https://internationalmediainvestments.com/about-us/>

[REDACTED]

40. RBC and IMI submitted that RedBird IMI's primary focus is to invest in, develop, operate, and expand large scale media and entertainment entities on a global basis. The CMA understands that RedBird IMI has made five prior investments since its establishment and is currently in the process of acquiring a sixth investment.⁴
- (a) XFL, a professional American football league and entertainment property.
 - (b) Hidden Pigeon, a multiplatform kids and family content company, including television, film, digital, gaming, publishing, and consumer products.
 - (c) EverWonder Studio, a production studio focused on financing, producing, and distributing non-fiction documentary features, series, and new global formats.
 - (d) Media Res, a television studio and motion picture production company that develops, produces, and finances content for global markets in partnership with artists, networks, and streaming services.
 - (e) Front Office Sports, a digital media organisation with an online provider of news on the business of sports (with newsletters and podcasts) including in the UK. It does not provide general news content.
 - (f) The anticipated acquisition of All3Media from Warner Brothers and Liberty Global which is expected to complete in the second half of 2024 subject to regulatory approval.
41. The Limited Partnership is a partnership ultimately owned jointly by IMI ([REDACTED]) and RBC ([REDACTED]). The Limited Partnership comprises three limited partners all of which are corporate entities. One of these is ultimately owned and controlled by IMI, one is ultimately owned and controlled by RBC, and one is ultimately owned and controlled [REDACTED]. The Limited Partnership has a General Partner, [REDACTED], that manages and administers the Limited Partnership. That corporate entity is ultimately owned and controlled by RBC.
42. RB Investco Limited (**RBI**) is the legal entity that will acquire the shares of TMG. It is owned by the Limited Partnership but before the transaction was restructured in January 2024, RBI was owned by RedBird IMI.

⁴ RBC and IMI's response to Ofcom's Issues Letter, 16 January 2024, paragraph 49 and response to the CMA's section 109 request of 16 February 2024, page 3.

The Target Companies and the Sellers

43. The Target Companies are comprised of TMG, The Chelsea Magazine Company Limited and The Spectator (1828) Limited.
- (a) TMG is a British-based media company. It publishes the national news titles The Daily Telegraph as well as The Sunday Telegraph in print and also digitally via related websites, apps, newsletters, liveblogs, podcasts, videos, and social media outlets.⁵ The UK turnover of TMG in FY2023 was approximately £175 million.⁶
 - (b) The Chelsea Magazine Company has brand offerings in travel, lifestyle, education, and sport (such as English Home, English Garden, Cruise & Travel, and The London Magazine).⁷
 - (c) The Spectator Magazine is a weekly news magazine focused on politics, culture, and current affairs.
44. The Target Companies are indirect subsidiaries of PIHL and Ultimate Investment Holdings Limited, which are entities ultimately owned by the Barclay family.

THE TRANSACTION

45. The transaction to acquire the Target Companies was interrelated with the repayment of debt owed by the Target Companies' parent company by corporate entities owned by RBC and IMI. The details of the steps involved were as follows.
46. Shortly before the transaction, PIHL held outstanding loans of approximately [REDACTED] from the Lloyds Banking Group via the Bank of Scotland. In June 2023, the Bank of Scotland appointed receivers in an attempt to recover the debt owed by PIHL. In August 2023, the Bank of Scotland filed an application in the Eastern Caribbean Supreme Court for the appointment of joint liquidators to PIHL. To raise money to repay the debt, in October 2023 PIHL instigated a sales process of the Target Companies that included an auction which was to run throughout November 2023.
47. However, in November 2023, before any non-binding bids were received, the Bank of Scotland, PIHL and entities owned by RBC and IMI agreed to refinance amounts owed by PIHL under the Bank Loan Agreement (the debt).⁸ The auction process was therefore stopped. The details of the steps pertaining to the repayment of the loan and the sale of the Target Companies are set out below.

⁵ RBC and IMI's response to question 11 of s109 Notice dated 1 December 2023.

⁶ Target Companies' response to CMA's questions dated 7 December 2023.

⁷ RBC and IMI's response to question 11 of s109 Notice dated 1 December 2023.

⁸ Ultimate Investment Holdings Limited's response to s.109 Notice dated 12 February 2024.

48. In the four days between 1 December 2023 and 4 December 2023 inclusive, various steps were taken to repay the loan and to agree the sale of the Target Companies.
49. On 1 December 2023, entities including PIHL, Bank of Scotland, [REDACTED] (which RBC and IMI submitted is being funded by IMI),⁹ and RBI entered into an Implementation Deed. The Implementation Deed sets out the terms on which RBI and [REDACTED] would provide funding to facilitate repayment of the loans owed by PIHL to the Bank of Scotland and describes the various arrangements and processes to be followed as the **Transaction Steps**. In summary, the Transaction Steps include the dismissal of the liquidation application in relation to PIHL, the establishment of new loan facilities, the end of the receivership, and the reinstatement of the constitutional documents relating to the Barclay family companies.
50. On 2 December 2023, TMG, PIHL and May Corporation¹⁰ entered into an agreement (**Option Agreement**) with RBI that gave RBI the option to acquire the entire issued share capital of the Target Companies (**the Call Option**) for a consideration of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
51. RBI exercised the Call Option on the same day (2 December 2023). Completion of the acquisition under the Call Option is subject to approvals, including approval of the transaction by the CMA and the Secretary of State. If approval is not obtained before 22 May 2026, the Option Agreement will automatically and immediately terminate.
52. The Option Agreement requires that all of the Transaction Steps under the Implementation Deed have been completed for the terms of the Call Option to be met.¹¹
53. Further to the Implementation Deed and Option Agreement, on 4 December 2023, PIHL entered into a new facility agreement with RedBird IMI as lender, which comprises two tranches: [REDACTED]
[REDACTED]
[REDACTED]

⁹ RBC and IMI's letter to DCMS 11 December 2023, RBC and IMI describe [REDACTED] as being funded by IMI,

¹⁰ May Corporation is a subsidiary of PIHL that held the shares in the Spectator before the company hive down set out in paragraph 50 above.

¹¹ [REDACTED]

[REDACTED]

54. Consequently, the auction and the liquidation proceedings were terminated, receivership ended, and the Barclay family-controlled companies are now capable of entering into terms with RBC and IMI. This has occurred through the Option Agreement and the exercise of the Call Option.

Amended structure of the transaction

55. The above steps relating to the transaction took place between October 2023 and December 2023. It was initially envisaged by RBC and IMI that RedBird IMI, which owns RBC and IMI's other joint media investments would acquire the share capital of the Target Companies. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹²

56. On 23 January 2024, [REDACTED]
[REDACTED]
[REDACTED] entered into a limited partnership agreement to establish the Limited Partnership (the **Limited Partnership Agreement**).

57. Pictorially, RBC and IMI set out the proposed structure of the transaction as follows. RBC and IMI form the Limited Partnership that acquires the Target Companies [REDACTED]

¹² [REDACTED]
[REDACTED]

[REDACTED]

58. The limited partners to the Limited Partnership are owned and controlled by either IMI ([REDACTED]), or RBC ([REDACTED]), or jointly by both RBC and IMI [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

59. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹³ [REDACTED]

[REDACTED]

60.

[REDACTED]

61.

[REDACTED]

62.

The CMA requested all agreements and transaction documents that are relevant to the new corporate structure. RBC and IMI responded providing the following documents to evidence the new structure:¹⁵

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(e) [REDACTED]

¹⁴ [REDACTED]

¹⁵ RBC and IMI's response to question 1 of s109 notice dated 12 February 2024.

[REDACTED]

(f) [REDACTED]

63. The Limited Partnership was registered at Companies House on 5 February 2024 and the entire share capital of RedBird IMI in RBI was transferred to the Limited Partnership.

RELEVANT MERGER SITUATION

64. In the context of an anticipated transaction, a relevant merger situation exists – and therefore the CMA would have jurisdiction to review an anticipated transaction – where the CMA believes that it is or may be the case that the following conditions are satisfied:¹⁶
- (a) there must be arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct; and
 - (b) either:
 - (i) the UK turnover associated with the enterprise which is being acquired exceeds £70 million (this is referred to as ‘the turnover test’); or
 - (ii) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition (this is referred to as ‘the share of supply test’);
 - (c) the merger must not yet have taken place.

Enterprises ceasing to be distinct

65. As a part of its assessment on jurisdiction, the CMA will assess whether the transaction involves ‘enterprises’ within the meaning of the Act and whether those

¹⁶ Section 23 of the Act.

enterprises will cease to be distinct as a result of the transaction. Enterprises will cease to be distinct under section 26(1) of the Act if they are brought under common ownership or control. 'Control' is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order):¹⁷

- (a) material influence,
- (b) de facto control, and
- (c) a controlling interest (also known as 'de jure', or 'legal' control).

66. More than one entity can have control over a target (eg an entity might have material influence over a target even though another entity has de facto control or a controlling interest over the same target). The Act also allows the CMA to consider whether a number of persons acquiring an enterprise are in fact acting together to secure or exercise control of that enterprise and should be viewed as 'associated persons' and treated as a single person for the purposes of the jurisdictional assessment.
67. These issues relating to 'enterprises ceasing to be distinct' are discussed below.

Enterprises

68. RBI is a vehicle established for the purposes of this Merger and has no other functions. As a result, the CMA must consider the ownership interests that sit behind RBI, namely the Limited Partnership and ultimately RBC and IMI. The CMA considers that RedBird IMI, RBC, and IMI are each an 'enterprise' within the meaning of section 129 of the Act as they each are engaged in making investments, which is a commercial activity. The CMA also considers that the Target Companies are each 'enterprises' within the meaning of section 129 of the Act as they are engaged in commercial activities relating to delivering news and entertainment content.

Ceasing to be distinct

RBC's control over the Target Companies

69. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

¹⁷ [Mergers - the CMA's Jurisdiction and Procedure \(CMA2 revised\)](#), January 2022, paragraph 4.16.

[REDACTED]
[REDACTED]
[REDACTED]

70. The CMA agrees that the enterprise RBC will cease to be distinct from the Target Companies as a result of the Merger. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 18 [REDACTED]

71. However, the CMA has also considered whether RBC has acted together with IMI to secure or exercise control over the Target Companies. The CMA has further considered whether IMI's interests in the Target Companies give it an ability to exercise material influence over the Target Companies.

Associated Persons

72. Under section 127(4)(d) of the Act, two or more persons acting together to secure or exercise control of a body of persons corporate or unincorporate or to secure control of any enterprise or assets shall be considered to be 'associated persons'. Associated persons shall be treated as one person for the purpose of deciding under section 26 of the Act whether any two enterprises have been brought under common ownership or control.¹⁹ This situation will most commonly arise where the acquiring persons are related or have a signed agreement to act jointly to make an acquisition.²⁰
73. The CMA has considered whether RBC and IMI are associated persons within the meaning of section 127 of the Act. The CMA's assessment of the evidence on 'associated persons' is segmented into two parts; first, whether RBC and IMI are acting together to secure control of the Target Companies; and second, whether RBC and IMI can be expected to act together to exercise control over the Target Companies.

CMA's assessment of RBC and IMI acting together to secure control

74. The CMA considers that RBC and IMI have taken a series of actions in concert to secure the control of the Target Companies.
- (a) RBC and IMI established RedBird IMI as a joint venture company to make media investments together. The business model of RedBird IMI is premised

¹⁸ [REDACTED]

¹⁹ Section 127(1) of the Act.

²⁰ [CMA2revised](#), paragraphs 4.45 and 4.46. Lebedev Holdings Limited and Another v Secretary of State for Digital, Culture, Media and Sport [2019] CAT 21 at paragraphs 66-67.

on RBC and IMI acting together to identify and to make investments and the management of RedBird IMI is divided between RBC and IMI (paragraph 98). Since its establishment in 2022, it has made five investments (and another is expected to complete in 2024) as detailed at paragraph 40.

- (b) RBC (through RBI) and IMI ([REDACTED]) entered into the Implementation Deed with PIHL and the Bank of Scotland. The Implementation Deed provides for the Transaction Steps to occur, which includes the repayment of existing debts and ending of the receivership. These Transaction Steps (which involve both RBC and IMI) are now completed. The new lenders under the Implementation Deed are RedBird IMI and [REDACTED]
- (c) The two facility arrangements and the Option Agreement each cross-refer to the Transaction Steps. The Option Agreement provides that the Transaction Steps must be completed for the Call Option Notice and subsequent sale to be effective.²¹ These processes involving both RBC and IMI are interrelated and dependent on each other.
- (d) The timing of the entering into various transaction documents has been coordinated and could and would only happen if IMI and RBC/RedBird IMI were acting in concert.
- (e) RBC and IMI (through RedBird IMI) provided the New PIHL Facility and, additionally, IMI (through [REDACTED]) provided the [REDACTED] through which the repayment of the existing debts occurred.
- (f) Providing these loans allowed RBC and IMI to pre-empt the auction process and the evidence suggests that this was the reason why the loans were offered (and therefore differentiates RBC and IMI in this situation from institutional lenders like banks).²²
- (g) RBC (through RBI) and IMI entered into the Option Agreement.
- (h) RedBird IMI transferred all its shares in RBI to the Limited Partnership. This transfer could only occur with the consent of RBC and IMI given their governance roles within RedBird IMI. The partners within [REDACTED] are entities ultimately owned by RBC, IMI and both in the case of RedBird IMI.

75. In light of these factors, the CMA therefore considers that RBC and IMI are associated persons within the meaning of section 127(1)(a) of the Act acting

²¹ Paragraph 8.2.3 of the Option Agreement.

²² IMI Supplemental Response to Ofcom Issues Letter, 28 February 2024

together to secure control of the Target Companies for the purposes of section 26 of the Act.

CMA's assessment of RBC and IMI acting together to exercise control

76. CMA guidance notes that in respect of associated persons, the Act does not require that each of the acquiring parties should themselves individually have control over the acquired entity for them all to be regarded as being associated persons.²³
77. Therefore, in considering whether RBC and IMI are associated persons acting together to exercise control of the Target Companies, it would not be necessary to demonstrate that RBC and IMI will each have control over the Target Companies. It is only necessary to demonstrate that they are acting together in relation to matters that go to the ongoing exercise of control of the Target Companies (in this case via the Limited Partnership). The Limited Partnership has been formed by RBC and IMI to act as the future owner of the Target Companies. The CMA considers that this fact, combined with the transfer of shares in RBI and associated rights flowing from the Call Option and the related agreements that have been entered into relating to the investment in the Target Companies, demonstrates that RBC and IMI are acting together to exercise control of the Target Companies. The CMA notes that the contractual arrangements that were originally put in place to govern RBC and IMI's investment have been amended in the course of the CMA's investigation and that nothing prevents further changes being made in the future.
78. The CMA therefore considers that RBC and IMI are associated persons within the meaning of sections 127(1)(a) and (4)(d) of the Act as they are acting together to exercise control of the Target Companies for the purposes of section 26 of the Act. As a result, RBC and IMI are treated as a single person for the purposes of the CMA's jurisdiction assessment. Accordingly, the CMA's finding that RBC has at least material influence over, and may have de facto control of, the Target Companies applies to RBC and IMI acting together.

Whether IMI would have material influence over the Target Companies

79. Although the CMA has found that RBC and IMI can be treated as a single person for the purposes of the CMA's jurisdiction assessment under section 26 of the Act, the CMA has also assessed whether the reality of IMI's involvement in the Merger

²³ Paragraph 4.46.

is that IMI on its own could exercise control over the policy of the Target Companies for the purposes of section 26 of the Act.²⁴

80. In assessing whether one entity will have material influence over another, the CMA focuses on the acquirer's ability materially to influence policy relevant to the target's commercial behaviour. The assessment of material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target. In making its assessment, the CMA will have regard to all the circumstances of the case.
81. While a finding of material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholders meetings, or as a result of the ability to influence the board of target, it may also arise through other arrangements, that is without the acquirer necessarily being able to block votes at shareholders' meetings (or equivalent).²⁵
82. The CMA notes in its guidance that financial arrangements may, in certain circumstances, confer material influence where the conditions are such that one party becomes so dependent on the other that the latter gains material influence over the company's commercial policy.²⁶

RBC and IMI's views on IMI's ability to exert material influence over the Target Companies

83. [REDACTED]
[REDACTED]
[REDACTED]
- (a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁷
- (b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁸

²⁴ Section 127(2) of the Act specifies that a finding that persons are associated persons for the purposes of assessing jurisdiction, shall not exclude from section 26 any case which would otherwise fall under that section. Accordingly, the CMA is able to find both that IMI is an associated person with RBC and also that it has the ability to exercise material influence over the Target Companies.

²⁵ [CMA2revised](#), paragraph 4.19

²⁶ [CMA2revised](#), paragraph 4.32

²⁷ [REDACTED]

²⁸ [REDACTED]

- (c) [REDACTED]
[REDACTED]
[REDACTED]²⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁰
- (d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³¹ [REDACTED]
[REDACTED]

CMA's assessment

84. Having considered the arrangements between RBC and IMI and how they interact under those arrangements, the CMA has considered whether IMI will have the ability to exercise material influence over the Limited Partnership and therefore will have material influence over the Target Companies post-Merger for the purposes of section 26 of the Act. It is well-established that in carrying out its merger review functions the CMA is necessarily concerned with the substance of the relevant transactions and not just the legal form.³² In assessing the level of control that IMI would be able to exercise over the Target Companies, the CMA has considered the range of arrangements RBC and IMI entered into with the Sellers, the funding arrangements presented by RBC and IMI for the Limited Partnership, funding for RBC's and IMI's broader media investment activities together, the expertise that IMI has and the overall relationship between RBC and IMI. In doing so, the CMA has assessed the reality of these arrangements and how they will impact the relationship between RBC and IMI vis-a-vis the Target Companies and not simply the contractual position presented by RBC and IMI.
85. In carrying out its assessment the CMA has considered the arguments presented by RBC and IMI.

²⁹ [REDACTED]
³⁰ [REDACTED]
³¹ [REDACTED]
³² *Société Cooperative de Production SeaFrance v CMA* [2015] UK SC 75, at 38

Material influence is not confined to the legal form of the Limited Partnership

86. RBC and IMI have stated that IMI, as a limited partner, is not legally entitled to manage the business. However, the CMA's assessment is not limited to considering IMI's legal rights under the Limited Partnership Agreement, but rather whether IMI has the ability to materially influence the policy of the Limited Partnership and in turn the Target Companies. The simple creation of the Limited Partnership, in and of itself, is not enough to prevent IMI from influencing the strategic direction of the Limited Partnership.³³

87. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁴ [REDACTED]
[REDACTED]
[REDACTED]

88. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

89. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IMI's financial importance to the strategic objectives of RedBird IMI and the Limited Partnership

90. IMI has contributed a significant amount of money to the Merger and to other investments it has made with RBC.

91. [REDACTED]
[REDACTED]
[REDACTED]

³³ By way of analogy, an acquirer may be able to exercise material influence over a company without having Board representation or being a part of the company's management team.

³⁴ [REDACTED]

³⁵ [REDACTED]

[REDACTED]

92.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁶ [REDACTED]

[REDACTED]³⁷ [REDACTED]

[REDACTED]

93. IMI has provided [REDACTED] of the funding for both RedBird IMI and the Limited Partnership. It also holds the equivalent level of equity in both RedBird IMI and the Limited Partnership.

IMI's importance to RBC and its access and influence on senior managers

94. In presenting the structural changes, RBC and IMI stated they resulted in a 'standard private equity structure'.³⁸ The CMA understands by this that RBC and IMI are suggesting the structure itself makes clear that IMI would have no control over the Target Companies. As above, the question the CMA is assessing is how the arrangements may work in practice.

95. The CMA has considered the wider context in which RBC and IMI take investment decisions in particular with regard to media investments. Given that Redbird IMI is the main vehicle for making such investments the JV meetings and frameworks give IMI the opportunity to make its views known on the commercial strategy for such investments to be made and, given that under the JV agreement IMI acts as the principal source of funding, IMI's views are likely to be taken into account by RBC.

96. As noted in paragraph 40, RedBird IMI has five other investments and a sixth is proposed.³⁹ RBC and IMI have stated that they meet bi-weekly to discuss their investment pipeline. [REDACTED]

[REDACTED]⁴⁰

³⁶ [REDACTED]

³⁷ [REDACTED]

³⁸ RBC and IMI's response to the Ofcom Issues Letter, 16 January 2024,

³⁹ [REDACTED]

[REDACTED]

⁴⁰ [REDACTED]

97. In respect of the Redbird IMI Board of Managers, [REDACTED]
[REDACTED]⁴¹
98. RedBird IMI is governed by the JV Agreement. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴² [REDACTED]
[REDACTED]
[REDACTED]⁴³
99. In addition to the Board of Managers of Redbird IMI are the positions of Chairman (currently this position is held by Dr Sultan Al Jaber)⁴⁴ and the RedBird Principal (currently this position is held by Gerry Cardinale, founder and Managing Partner of RBC).⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁶
100. The Services Agreement provides that RBC, as the Manager of RedBird IMI, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁷
101. The CMA notes that the governance arrangements relating to RedBird IMI are such that, if it had been required to do so for the purposes of this assessment, the CMA would have found that each of RBC and IMI have at least the ability to exercise material influence over the commercial policy of RedBird IMI.
102. The CMA considers that the evidence suggests that RBC and IMI meet regularly and currently there is no structural mechanism in place which would prevent IMI from seeking to use the investment discussions as a means to influence decisions relating to the Target Companies. IMI's ability to exercise influence over commercial strategy does not just arise from the regular senior level meetings it has with RBC [REDACTED]
[REDACTED]

41 [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED]
45 [REDACTED]
46 [REDACTED]
47 [REDACTED]

103. In some previous cases in which the CMA assessed whether a party had material influence over a target company, the CMA has assessed whether the party's status in the industry would be a factor in the overall assessment of material influence.⁴⁸ In this case the CMA notes that:

- (a) IMI is an extremely significant strategic investor in RedBird IMI and that RedBird IMI is a very important part of the broader RBC business. [REDACTED]

[REDACTED]
[REDACTED]⁴⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (b) Mr Rani Raad, as CEO of IMI and Operating Partner of RedBird IMI, can be expected to play an important role in not only managing investments made by RedBird IMI but also in safeguarding IMI's interests in those investments;

- (c) [REDACTED]
[REDACTED]
[REDACTED]⁵⁰

- (d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵¹

- (e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴⁸ For example, [Amazon/Deliveroo](#) and [RWE/E.ON](#)

⁴⁹ [REDACTED]

[REDACTED]
[REDACTED]

⁵⁰ [REDACTED]

⁵¹ [REDACTED]

[REDACTED]

104. The CMA considers that this evidence indicates that IMI's status in managing media companies is likely to influence the management of the Target Companies, particularly in light of IMI's overall strategic importance to investments made by RedBird IMI and RBC more generally, and in light of the regular meetings that take place between RBC and IMI.

IMI's strategic importance for further media investments

105. Under the JV Agreement, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵² [REDACTED]
[REDACTED]⁵³
106. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusion on whether IMI has material influence over the Target Companies

107. In considering whether IMI has the ability to exercise material influence over the Target Companies, the CMA has had regard to all the circumstances of the case.⁵⁴ In other words, it has examined the evidence in the round in its assessment of whether a number of factors in combination would lead to IMI gaining material influence over the Target Companies.
108. In their submissions, RBC and IMI have drawn the CMA's attention to various contractual arrangements, particularly in regard to how the Limited Partnership (and therefore the Target Companies) will be managed. However, the question for the CMA is whether IMI would have the ability to exercise material influence over the commercial strategy of the Target Companies. The CMA considers that contractual rights are not necessarily the sole factor determining whether one entity may be able to influence the commercial strategy of another and that it is necessary to have regard to the commercial reality and not just legal form.
109. The CMA considers that the evidence relevant to the assessment of whether RBC and IMI are associated persons is also relevant to the assessment of whether IMI may have the ability to exercise material influence over the Target Companies. IMI

⁵² [REDACTED]

⁵³ [REDACTED]

⁵⁴ [CMA2revised](#), paragraph 4.18

[REDACTED]

115. Although no single factor leads the CMA to conclude that IMI would exercise material influence over the Target Companies, the CMA believes that the evidence outlined above, taken in the round, indicates that a number of factors in combination may give IMI the ability to influence the management and strategic direction of the Target Companies.
116. Consequently, the CMA believes that it may be the case that IMI can exercise material influence over the policy of the Limited Partnership, and in turn the Target Companies on completion of the exercise of the Option, for the purposes of section 26 of the Act.

Conclusion on enterprises ceasing to be distinct

117. For the reasons set out above, the CMA believes that it is or may be the case that, as a result of the Merger, arrangements are in progress or in 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.

The turnover test

118. The combined UK turnover of the Target Companies exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

Conclusion

119. Accordingly, the CMA believes that it is or may be that 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 section 44(4)(a) of the Act.

COUNTERFACTUAL

120. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).⁵⁵
121. In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the prevailing conditions of competition.⁵⁶ In determining the appropriate counterfactual, the CMA will generally focus on potential changes to the prevailing conditions of competition only where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁵⁷
122. In this case, the CMA has not received submissions (or other evidence) suggesting that the Merger should be assessed against an alternative counterfactual.⁵⁸ Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

COMPETITIVE ASSESSMENT

Market definition

123. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.⁵⁹
124. Market definition involves identifying the most significant competitive alternatives available to customers of the merger parties and includes the sources of competition to the merger parties that are the immediate determinants of the effects of the merger.

Product market

125. The merging parties overlap in the supply of online news content and digital advertising in the UK. The Target Companies earn revenues from two groups of customers; readers and advertisers. The range of substitutes may differ between

⁵⁵ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

⁵⁶ [CMA129](#), paragraph 3.2.

⁵⁷ [CMA129](#), paragraph 3.9.

⁵⁸ [REDACTED]

⁵⁹ [CMA129](#), paragraph 9.1.

each customer group, so the CMA has given separate consideration to each in considering the product frame of reference.

126. Neither RBC and IMI nor the Target Companies made any submissions on the most appropriate product market. RBC and IMI told the CMA that there is a de minimis overlap between the Parties in the online publishing of newspapers and the supply of digital advertising in the UK.⁶⁰

Supply of online news

127. In previous CMA decisions, the CMA has considered it appropriate to segment the product frame of reference between print and online news.⁶¹ This is because there is a limited diversion between print newspapers and online news.⁶²
128. The CMA did not receive any third-party evidence to suggest that different product markets would be appropriate. Consequently, the CMA considered that the appropriate product frame of reference is the supply of online news.

Supply of digital advertising

129. In previous CMA decisions, the CMA considered that print and digital advertising form separate product markets.⁶³ The CMA has previously found that advertisers use different forms of advertising for different purposes, noting with regard to digital advertising in particular that the ability for advertisers to use data to target specific audiences online distinguishes it substantially from traditional advertising media.⁶⁴
130. The CMA therefore believes that the narrowest plausible candidate product market is the supply of digital advertising. The CMA did not receive any third-party evidence to suggest that different product markets would be appropriate.

Geographic market

131. RBC and IMI did not make any submissions on the most appropriate geographical market.⁶⁵
132. In line with precedents regarding publication of and advertising in print newspapers, the CMA have previously considered the geographic market of

⁶⁰ RBC and IMI's response to question 11 of s109 Notice dated 1 December 2023.

⁶¹ [Completed acquisition by DMG Media Limited of JPIMedia Publications Limited \(DMGH/JPI\)](#), paragraph 44 and [Completed acquisition by Reach Plc of certain assets of Northern & Shell Media Group Limited \(Reach/Northern Shell\)](#), paragraph 44.

⁶² [DMGH/JPI](#), paragraph 48.

⁶³ [Completed acquisition by Mr. Sultan Muhammad Abduljadayel and Wondrous Investment Holdings L.P. of Independent Digital News and Media Limited and Lebedev Holdings Limited \(Lebedev\)](#), paragraphs 48-50 and 54.

⁶⁴ [Online platforms and digital advertising: Market study final report, 1 July 2020](#)

⁶⁵ RBC and IMI's response to question 16 of s109 Notice dated 1 December 2023.

reference for the supply of online news and the supply of digital advertising to be UK wide.⁶⁶

133. The CMA has therefore assessed the impact of this Merger on the supply of online news in the UK and the supply of digital advertising in the UK.

Theories of harm

134. The CMA assesses the potential competitive effects of mergers by reference to theories of harm. Theories of harm provide a framework for assessing the effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.⁶⁷
135. In its investigation of this Merger, the CMA has considered the following theories of harm:
- (a) horizontal unilateral effects in the supply of online news in the UK; and
 - (b) horizontal unilateral effects in the supply of digital advertising in the UK.
136. Each of these theories of harm is considered below.⁶⁸

Horizontal unilateral effects in the supply of online news in the UK

137. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁶⁹ Horizontal unilateral effects are more likely when the parties to a merger are close competitors.⁷⁰
138. 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 as a result of horizontal unilateral effects in the supply of online news in the UK. The CMA has considered:
- (a) RBC, IMI and the Target Companies' submissions;
 - (b) shares of supply; and
 - (c) third-party evidence.

⁶⁶ [DMGH/JPI](#), paragraph 98.

⁶⁷ [CMA129](#), paragraph 2.11.

⁶⁸ On the basis of the evidence gathered by the CMA, the CMA considered at an early stage in its investigation that there are no plausible competition concerns in respect of the supply of online news as a result of the Merger and this is therefore not discussed further in this Decision.

⁶⁹ [CMA129](#), paragraph 4.1.

⁷⁰ [CMA129](#), paragraph 4.8.

Merging parties' submissions

139. RBC and IMI and the Target Companies submitted Redbird IMI has a *de minimis* presence in the supply of online news content in the UK and does not overlap with TMG (or any other business acquired as part of the transaction).⁷¹ The Acquirers also submitted that IMI owns The National.⁷² The National is an online news provider active in the UK.
140. On this basis, the CMA considers that the Merger gives rise to an overlap between The National and TMG in the supply of online news in the UK.

Shares of supply

141. RBC and IMI submitted share of supply estimates based on data from Ipsos iris on the total number of page views over one month and the monthly average number of page views (for the time period between January 2022 to November 2023).⁷³ The Target Companies submitted that Ipsos iris is the industry standard measure for the number of page views.⁷⁴ The CMA has relied on Ipsos iris data in a previous decision to assess the relative market size and shares of supply in online news.⁷⁵
142. According to the Ipsos iris data for October 2023, the Parties have a combined share of less than [0-5]% and the share of supply of The National is very small ([REDACTED]).⁷⁶ By contrast, BBC News is the largest supplier of online news and have a significant proportion of the market share ([50-60]%) according to this data.⁷⁷
143. The CMA sent questionnaires to a number of the largest online news websites requesting their average monthly page views by UK consumers. The CMA received several responses. While the data received differed from the Ipsos iris data due to differences in methodology, the data confirmed that The National is significantly smaller than the largest providers of online news in the UK.⁷⁸ On this basis, regardless of the methodology used, the increment brought about by the Merger in the supply of online news in the UK is very small.

⁷¹ RBC and IMI's response to question 11 of s109 Notice dated 1 December 2023. The Target Companies' response to question 2 of s109 notice dated 12 February 2024.

⁷² RBC and IMI's response to question 11 of s109 Notice dated 1 December 2023.

⁷³ RBC and IMI's response to question 2 of s109 Notice dated 13 December 2023 and Target Companies' response to question 1 of information request dated 21 December 2023.

⁷⁴ [Ipsos iris | Total understanding of UK online audiences](#)

⁷⁵ See [DMGH/JPI](#).

⁷⁶ Ipsos iris is the UK online measurement and industry standard measure of audiences for online content and ad campaign verification. The Ipsos iris data is collected from a panel of 10,000 respondents across the England, Scotland, Wales and Northern Ireland. The figures therefore represent views from UK households only. [Ipsos iris | Total understanding of UK online audiences](#)

⁷⁷ These figures are based on using the total market size of the largest 50 news providers in the UK as calculated by RedBird IMI from the Ipsos iris data. Therefore, the shares of supply presented in the Ipsos iris data are an overestimation of the actual shares of supply.

⁷⁸ Response to the CMA questionnaire from a number of third parties, January 2024, question 1.

Third-party evidence

144. The CMA contacted the largest providers of online news in the UK. None of the competitors who responded to the CMA's merger investigation consider neither (i) The National and The Telegraph; nor (ii) The National and The Spectator to be close competitors to each other in the supply of online news.⁷⁹ Competitors noted that The National is focused on news in the UAE, whereas The Telegraph and The Spectator are focused on UK news and UK politics respectively.
145. Furthermore, the competitors that responded did not identify The National as one of their top five competitors in supplying online news.⁸⁰ Competitors identified BBC News, Mail Online, The Telegraph, and The Mirror most frequently.
146. Two competitors raised concerns that the Merged Entity could shift away from their current part paywall-funded business model following the Merger, which could result in the Merged Entity becoming a stronger competitor in the current online news market and creating distortions that could diminish its rivals' ability to compete.
147. The CMA has considered these submissions and has assessed that attempts by the Parties to compete more strongly against other news websites are unlikely to give rise to a negative impact on competition, in particular given the Parties' current levels of market power as indicated by shares of supply and third-party evidence.

Conclusion

148. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to online news in the UK.

Horizontal unilateral effects in the supply of digital advertising

Parties' submissions

149. As discussed previously, RBC and IMI told the CMA that it has a de minimis presence in the supply of online news content in the UK.⁸¹

⁷⁹ Response to the CMA questionnaire from third parties, January 2024, question 5 and 6.

⁸⁰ Response to the CMA questionnaire from third parties, January 2024, question 2.

⁸¹ RBC and IMI's response to question 2 of information request dated 21 December 2023.

Shares of supply

150. RBC and IMI estimated that online news brands and magazine brands accounted for c. [0-5]% of the total UK digital advertising spend in 2022.⁸² Redbird IMI submitted that it is likely that the proportion has declined in 2023 due to news and magazines underperforming relative to online advertising as a whole.⁸³ The Target Companies also submitted that digital advertising expenditure for national newspapers, regional newspapers and magazines was in slow decline during 2022-2024. However, they also submitted that revenue is predicted to grow in 2024.⁸⁴
151. On this basis, the CMA considers that the Parties' combined share post-Merger is likely to remain small with respect to all forms of digital advertising.

Third-party evidence

152. Third parties that responded to the CMA submitted that there is a range of competitors in digital advertising.⁸⁵ This includes other online news providers and online media platforms, such as Meta and Google.

Conclusion

153. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to digital advertising in the UK.

PUBLIC INTEREST CONSIDERATIONS

154. A few third parties raised concerns on public interest aspects of the Merger to the CMA. The third parties informed the CMA that these submissions were also sent to Ofcom for its consideration.
155. In summary, third-party concerns focused on proposed acquisition of two important and influential titles, The Telegraph and The Spectator, by parties closely linked to a foreign government. The third parties raised concerns regarding the impact the Merger might have on the accurate representation of the news and freedom of expression in those publications.

⁸² RBC and IMI's response (question 2) and Target Companies' response (Appendix 2) to information requests dated 21 December 2023.

⁸³ RBC and IMI's response to question 2 of information request dated 21 December 2023.

⁸⁴ Target Companies' response to information request dated 21 December 2023, Appendix 2.

⁸⁵ Response to the CMA questionnaire from third parties, January 2024, question 3.

ADVICE TO SECRETARY OF STATE

156. As regards each of the decisions that the CMA is required to include in its report, pursuant to sections 44(4) of the Act, for the reasons set out above, the CMA:
- (a) believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation as of the date of the January PIIN (ie 26 January 2024) and as of the date of this report (ie 11 March 2024); and
 - (b) does not believe that it is or may be the case that the relevant merger situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom for goods or services.
157. In view of these conclusions, it has not been necessary to assess whether any of the exceptions to the duty to refer apply, or whether it would be appropriate to deal with competition concerns by way of undertakings in lieu of a reference.



Tim Geer
Director, Mergers
Competition and Markets Authority
11 March 2024