



DETERMINATION OF MERGER NOTIFICATION M/16/013 - INM / GREER

Section 21 of the Competition Act 2002

Proposed acquisition by Independent News & Media Limited of certain assets of Greer Publications

Dated 8 April 2016

Introduction

1. On 8 March 2016, in accordance with section 18(1)(b) and 18(5) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Independent News & Media plc (“INM plc”), through its wholly-owned subsidiary Independent News & Media Limited (“INM Limited”), would acquire certain assets from Greer Publications (“Greer”).
2. Given that INM plc carries on a “media business” within the State and Greer carries on a “media business” elsewhere, the proposed transaction constitutes a media merger (as defined in section 28A(1) of the Act) for the purposes of Part 3A of the Act.¹

Completion Prior to Commission Clearance

3. Prior to receiving the notification, the Commission was contacted by the parties to the transaction who stated that INM Limited and Greer completed a transaction whereby INM Limited had acquired certain assets from Greer, namely the assets described below in paragraph 7.²
4. Completing the transaction prior to notification to the Commission was in breach of Section 19(1) of the Act, which the parties acknowledged.³ Section 19(1) of the Act *inter alia* prohibits the putting into effect of a merger or acquisition until the Commission has made a determination that it may be put into effect (with or without conditions). Section 19(2) of the Act provides that any merger which purports to be put into effect in breach of section 19(1) is void.

¹ The definition of a media merger in section 28A(1) of the Act includes the situation where, as in this instance, one merging party carries on a media business in the State and another merging party carries on a media business outside of the State.

² Correspondence between the parties and the Commission dated 2 and 3 March 2016.

³ Correspondence between the parties and the Commission dated 2 and 3 March 2016.



5. The Commission accepts that (i) the completion of the transaction was the result of an oversight by the parties, and (ii) upon realising their obligation to notify the proposed transaction the parties contacted the Commission shortly thereafter.⁴
6. The Commission accepted the notification under section 18(12A)⁵ of the Act and proceeded to evaluate the acquisition as if it were a proposed transaction. The Commission did so on the basis that INM Limited would not, prior to receiving the Commission's determination in relation to the transaction, do any of the following:
 - (a) Combine or change the structure of any of "*Ulster Business*", "*Hospitality Review NI*", "*Ulster Grocer*" and "*Northern Woman*" (collectively, the "Target Titles") or related assets.
 - (b) Integrate into INM Limited any retailing or advertising functions relating to the Target Titles or related assets.
 - (c) Cross-sell advertising space between INM Limited and the Target Titles or in any other way use the INM Limited name to seek new advertising revenues for the Target Titles or related assets.
 - (d) Share commercially sensitive information between INM Limited and the Target Titles and related assets.⁶

The Proposed Transaction

7. The proposed transaction is to be implemented pursuant to an asset purchase agreement ("APA"), dated 24 February 2016, between INM Limited and Greer whereby INM Limited would acquire, from Greer, the Target Titles together with the goodwill, intellectual property and other intangible assets associated with those titles, from Greer.
8. As a result of the proposed transaction, the whole of the newspaper publishing business of the Target Titles would transfer to INM Limited.⁷

⁴ The parties, state in correspondence to the Commission dated 3 March 2016, that failure to notify prior to completion was "*a result of a genuine and honest oversight of the requirements of the Act. This oversight occurred due to the fact that the Target Titles are Northern Ireland publications with minimal circulation and advertising sales in the State.*"

⁵ Section 18(12A) of the Act, inserted by Section 55 of the Competition and Consumer Protection Act 2014, states that "*Notwithstanding section 19(2), the Commission may, for the purposes of this Part, request or accept notification of a merger or acquisition to which subsection (1) applies but which was purported to have been put into effect without having been notified in accordance with that subsection.*"

⁶ The Commission allowed [...].

⁷ Greer's remaining publications are not affected by the proposed transaction.



The Undertakings Involved

INM plc and INM Limited

9. INM plc is a public limited company headquartered in Dublin and listed on the Irish and London stock exchanges. INM plc is involved in publishing, wholesaling and distributing newspapers and magazines in the State and in Northern Ireland. INM plc operates an on-line news service.⁸
10. INM Limited, a wholly-owned subsidiary of INM plc, is a private limited company headquartered in Belfast.
11. Within the State, INM plc publishes five national newspapers, namely: The Irish Independent, Sunday Independent, The Herald, Sunday World and The Star. It also publishes thirteen regional newspapers in counties Cork, Kerry, Dublin, Louth, Wexford, Wicklow, Carlow and Sligo.⁹
12. For the financial year ending 31 December 2014, INM plc's worldwide turnover was approximately €318.7 million, of which €[...] million was generated within the State.¹⁰

Target Titles

13. The Target Titles are magazines which are published monthly and circulated in Northern Ireland. The *Ulster Business*, *Hospitality Review NI* and *Ulster Grocer* are business publications which are distributed free of charge to businesses in Northern Ireland. *Northern Woman* is a monthly magazine sold in Northern Ireland.¹¹
14. The Target Titles generate turnover primarily from the sale of advertising space, including to advertisers in the State. Within the State all revenues generated by the Target Titles within the State are derived from advertising.¹²
15. For the financial year ending 28 February 2015, the Target Titles' worldwide turnover was approximately €[...], of which approximately €[...]¹³ was generated within the State.

The Vendor

16. Greer, headquartered in Belfast, is involved in the publication of business and consumer magazines in Northern Ireland, most of which are published on a monthly basis. Greer is partnership owned and operated by James Greer and Gladys Greer, trading as equal partners. Greer's remaining publications are not affected by the notified transaction.¹⁴

⁸ See <www.independent.ie>.

⁹ For more information on INM plc see <<http://www.inmplc.com>>.

¹⁰ For the same time period, INM Limited's worldwide turnover was €[...], of which approximately €[...] was generated within the State. (Calculated using an annual average ECB exchange rate of €1 = £0.7925).

¹¹ *Ulster Business*, *Hospitality Review NI* and *Ulster Grocer* all have a cover price but generate little or no circulation revenue as they are all distributed on a free distribution model. Notification page 2.

¹² Greer states, in correspondence with the Commission dated 23 March 2016, that the Target Titles only generate advertising revenues within the State.

¹³ Calculated using the annual ECB exchange rate for the period 1 March 2014 to 28 February 2015 of €1 = £0.7917.

¹⁴ For information on Greer see <<http://www.greerpublications.com/index.html>>.



Rationale for the Proposed Transaction

17. INM Limited states that the Target Titles will complement its existing portfolio of newspapers, establish a presence with the “*food & grocery, hospitality and female readerships in Northern Ireland*”¹⁵ and thereby allow it to increase its revenues in Northern Ireland.

Third Party Submissions

18. No submission was received.

Competitive Analysis

19. There is no horizontal overlap between the parties with respect to the sale or distribution of INM plc publications and Greer publications within the State given that the Target Titles are not sold within the State.¹⁶ Furthermore, the horizontal overlap in the supply of print advertising to customers in the State is minimal. Greer does not currently present a significant competitive constraint on suppliers of print advertising space to customers in the State. Its absence, as an independent entity, after the completion of the proposed transaction will not result in any significant competitive effect.
20. The proposed transaction does not give rise to vertical competition concerns within the State.
21. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

22. The APA between INM Limited and Greer contains a number of restrictive obligations on Greer. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁷ Given the particular nature of the proposed transaction, the Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

¹⁵ Notification pp. 5-6.

¹⁶ While it is possible that some copies of the Target Titles will be read within the State, this will not be the result of any active distribution by Greer, or agents acting on Greer’s behalf, into the State. As stated in paragraph 14, all revenue generated by Greer within the State derives from the sale of advertising space.

¹⁷ See <[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)>.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Independent News & Media plc, through its wholly-owned subsidiary Independent News & Media Limited, would acquire certain assets from Greer Publications, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect subject to the provisions of section 28C(1)¹⁸ of the Competition Act 2002.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission

¹⁸ Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.
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