



# Decision

## Proposed acquisition of Bailiwick Broadcasting Limited by Tindle CI Broadcasting Limited (C-054)

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Jersey Competition Regulatory Authority  
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## 1. Summary

1.1 Tindle CI Broadcasting Limited (the **Purchaser**) proposes to acquire the business of Bailiwick Broadcasting Limited (the **Target Business**) by the acquisition of 100% of its share capital from Nation Broadcasting Limited (the **Seller**). The Target Business operates the local digital multiplex, which provides digital audio broadcasting (**DAB**) capacity, for Jersey and the wider Channel Islands. The proposed transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).

1.2 The Authority has determined the notified transaction will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

## 2. The notified transaction

2.1 On 24 January 2023, the Authority received an application from the Purchaser for the proposed acquisition of the Target Business.

2.2 The Authority registered the application on its website with a deadline for comments by 7 February 2023. No submissions were received.

## 3. The parties

### The Purchaser

3.1 The Purchaser, Tindle CI Broadcasting Limited is incorporated in England and Wales, with company number 07609224. The Purchaser is a wholly owned subsidiary of Tindle Press Holdings Limited (**Tindle Group**), a company incorporated in England and Wales, with company number 04958686.

3.2 The Tindle Group is a family-owned business and owner of local newspapers and websites in England, Wales and Isle of Man and commercial radio businesses in Jersey (Channel 103, Soleil Radio), Guernsey (Island FM, Soleil Radio) and the Republic of Ireland (Midlands 103). It publishes 30 newspapers mainly in the southeast of England, west of England, Wales and the Isle of Man.<sup>1</sup>

3.3 For the Purchaser the proposed transaction offers synergy with the existing radio businesses in the Channel Islands and offers the opportunity for brand extensions, greater listener choice and benefits for local advertisers. This will be complemented by an increased local focus, which could help attract new services to the DAB multiplex and offer the opportunity for third-party pop-up services for islanders e.g. [Redacted]

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<sup>1</sup> Further information on the Tindle Group can be found on their website: <https://tindlenews.co.uk/>

## The Seller

3.4 The Seller, Nation Broadcasting Limited, is incorporated in England and Wales with company number 03707801. It is owned by its founders who are natural persons. The Seller currently owns and operates twelve independent local radio stations across the United Kingdom alongside having interests in several digital multiplexes.

3.5 For the Seller, the rationale for the proposed transaction is that the Target Business is currently being operated as an offshore off-shoot and does not form part of their core business which consists mainly of wholly-owned radio stations in England, Scotland and Wales.

## The Target Business

3.6 The Target Business, Bailiwick Broadcasting Limited, is incorporated in England and Wales with company number 05388776. It is wholly owned by the Seller and was set up solely to operate the Channel Islands local DAB multiplex. The multiplex provides DAB capacity for radio broadcasters to transmit to the whole of the Channel Islands and it is the only one in operation in the Channel Islands. Service providers using the multiplex, alongside the Purchaser, include Global Radio, News UK, Nation Broadcasting, UCB and the BBC.<sup>2</sup>

3.7 Operating a DAB multiplex requires a licence that is advertised and awarded by Ofcom.<sup>3</sup> The local radio multiplex licence for the Channel Islands was awarded by Ofcom in October 2019 to the Target Business and services were launched in August 2021.

## 4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the 2005 Law, a merger or acquisition (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. The notified transaction will result in the Purchaser acquiring direct control of the Target Business and, therefore, constitutes a merger as defined by the 2005 Law. According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority.

4.2 Article 3 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the Order) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law if:

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<sup>2</sup> A list of radio stations carried can be found here: <http://www.muxco.com/multiplexes/channel-islands/>

<sup>3</sup> The Licence can be found at: <http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/digital/dl103059ba2channelislands.htm>

- (a) one or more of the undertakings in the proposed merger has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey; and,
- (b) another undertaking involved in the proposed merger is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held.

4.3 According to information provided by the parties, the Purchaser has a share of supply of more than 25% in commercial broadcasting in Jersey. The Target Business is active in the upstream broadcasting market and broadcasts content from the Purchaser. The notified transaction therefore requires the approval of the Authority prior to its execution.<sup>4</sup>

## 5. Market definition

### Approach

5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger will substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.

5.2 The boundaries of the market do not necessarily determine the competitive effect of the merger as there can be constraints on the merger from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The Authority will, where appropriate, take these factors into account in its assessment.

5.3 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition, and market definition will always depend on the prevailing facts.<sup>5</sup>

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<sup>4</sup> Article 4 of the Order (Conglomerate mergers and acquisitions) also applies as the Target Business is the only supplier of multiplex services so has an existing share of more than 40%.

<sup>5</sup> This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

## Views of the parties

5.4 The parties' view is the relevant product market is DAB digital radio transmission capacity for service providers (radio stations) consistent with the operations of the multiplex. The geographic market is seen as the Channel Islands, consistent with the transmission range of the multiplex.

## Authority consideration

5.5 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.<sup>6</sup> It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

5.6 The Authority notes the relevant framework is DAB digital radio distribution in the Channel Islands but considers the precise market definition can be left open on this occasion. This is because, as outlined below, the notified transaction will not result in a substantial lessening of competition in Jersey on any reasonable basis.

## 6. Effect on competition

### Approach

6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the notified transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.3 For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity will have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream. Another concern with conglomerate mergers is the

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<sup>6</sup> JCRA Guideline 7 – Market Definition.

ability to condition sales in a way that links products in separate markets together (through tying or bundling).

6.4 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

### View of the parties

6.5 The Target Business operates Jersey's sole DAB multiplex and has 100% market share. The parties note that the proposed transaction will result in the Purchaser wholly acquiring the Target Business, and therefore it will acquire 100% market share as the new operator of the multiplex.

6.6 The Target Business was given the exclusive right to run the service as a result of a tender process by Ofcom. The multiplex is run under Licence from Ofcom and the Licence includes a 'Fair and Effective Competition' condition.<sup>7</sup> Further, Ofcom has provided the parties 'comfort' that the Licence can be transferred once the proposed transaction is complete, this on the basis of the Purchaser being an existing Licensee and therefore a 'fit and proper person'.<sup>8</sup>

6.7 The parties also note it is possible that Ofcom may licence further multiplexes or existing UK-wide multiplexes may opt to expand to the Channel Islands (as they are permitted to do under the Broadcasting Act 1996). If this was to happen the Purchaser's market share would decrease accordingly.

6.8 The Purchaser has also confirmed that carriage fees and terms of carriage will be maintained for the duration of the contracts, the majority of which are long term and consistent with the duration of the multiplex licence. Where changes could be made, for example, if a service provider wishes to vary the nature of their services, in case of any dispute service providers would have recourse to Ofcom pre or post any change.

### Authority consideration

6.9 The multiplex is licenced by Ofcom and this and the wider framework provides a number of safeguards for competition, including:

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<sup>7</sup> For example, clause 1 of this condition holds that the Licensee shall:-

*"(a) not enter into or maintain any arrangements, or engage in any practice, which is prejudicial to fair and effective competition in the provision of licensed services or of connected services;*

*(b) comply with any code or guidance for the time being approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or of connected services; and*

*(c) comply with any direction given by Ofcom to the Licensee for that purpose."*

<sup>8</sup> At completion, the Purchaser will submit a the change of control form to Ofcom to complete the transfer.

- The ‘Fair and Effective Competition’ condition in the multiplex licence, which would be enforced by Ofcom and holds that, among other obligations, the Licensee shall not “*engage in any practice, which is prejudicial to fair and effective competition in the provision of licensed services or of connected services.*”;
- Ofcom’s prior consent being required for changes to the bouquet of programme services and technical characteristics of the multiplex. Ofcom also has a dispute resolution role in respect of a dispute between programme service providers and the multiplex operator; and
- The potential for future entry, either through the licencing of a new multiplex or the expansion of an existing UK-wide multiplex.

6.10 Within this context, there is no reason to consider that there would be an effect on competition in Jersey. The only change is in the acquisition of control of the Target Business by the Purchaser, with the various safeguards within the Licencing framework ensuring the operation of the multiplex and service provided to service providers, will not change. Therefore, there are no competition concerns arising from this Transaction.

6.11 The Authority also notes that Ofcom has already provided ‘comfort’ for the proposed transaction. Further, the transaction has been approved under the UK’s National Security and Investment Act 2021, this is required as the multiplex is deemed to be ‘critical national infrastructure’ as it transmits BBC services.

## 7. Decision

7.1 The Authority concludes that the proposed acquisition of the Target Business by the Purchaser will not substantially lessen competition in Jersey or any part of Jersey; and, therefore, the notified transaction is approved by the Authority under Article 22(1) of the 2005 Law.

**21 February 2023**

**By Order of the Jersey Competition Regulatory Authority**