Decision

Proposed acquisition of KP Services (Jersey) Limited by All Island Media Limited (C-059)

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Jersey Competition Regulatory Authority
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1. Summary

1.1 All Island Media Limited[1] (**AIM** or the **Purchaser**) is proposing to acquire 84% of the issued share capital of KP Services (Jersey) Limited (**KPS** or the **Target Business**) from Kodak Limited (**Kodak** or the **Seller**), giving AIM 100% control of KPS (the **Proposed Transaction**).[2] AIM will pay a consideration of £2 for 100% control of KPS.

1.2 The Proposed Transaction was notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **Law**). The Authority has determined the Proposed Transaction will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

2. The Application

2.1 On 8 August 2023, the Authority received a joint application from the parties for AIM to acquire 84% of the issued share capital of KPS. The Authority registered the application on its website with a deadline for comments of 22 August 2023. The application was also notified on the Jersey Gazette. No submissions were received.

3. The Parties

The Purchaser

3.1 The Purchaser, AIM, is an existing company, incorporated in Jersey with registration number 144825. AIM is legally and beneficially legally owned by a Jersey resident individual, Mr John Davey (**JD**). The Purchaser is an investment holding company for the Jersey Evening Post and Bailiwick Express and distributes national newspapers and magazines in Jersey. The Purchaser group has budgeted turnover for 2023 [redacted]. The Purchaser and JD have no other business interests in printing in Jersey.

The Seller

3.2 The Seller, Kodak, a company incorporated in England and Wales with registration number 59535, which is part of the Eastman Kodak Company group.[3] The Seller is a global technology company providing products and services for commercial print, packaging, publishing, manufacturing, and entertainment.

[1] Formerly MH Limited.

[2] For completeness, the Authority was also notified of the Purchasers intention to exercise its right to acquire 16% of KPS, which was previously acquired from The Guiton Group Limited at the time it acquired the Jersey Evening Post Limited in September 2022 C-048 - MH Limited Jersey Evening Post Lighthouse Media Decision

[3] Please see Eastman Kodak Company | Kodak

The Target Businesses

3.3 KPS is a Jersey registered company (number 117801) which is currently jointly owned by The Guiton Group and Kodak. The Guiton Group Limited currently owns 886 shares, being approximately 14% of the issued shares in KPS ("Shares"), and Kodak currently owns 5,435 Shares, being approximately 86% of the Shares. The turnover of KPS in 2023 is estimated to [redacted].

3.4 KPS currently has 100% of the newspaper printing business on Jersey. KPS currently operates two printing lines (i) the printing of the Jersey Evening Post and (ii) the printing of all the daily national newspapers in Jersey.

Reasons for the Proposed Transaction

3.5 Kodak, the current majority owner of KPS, provides financial support to KPS [redacted]. However, the parties expressed the view that this is unlikely to continue beyond its current commitment, which ends in May 2024, as Kodak no longer wishes to operate a loss-making activity in Jersey. Without Kodak's financial support, KPS would have to close leaving Jersey with no capability to print the Jersey Evening Post or national newspapers on Island. Future distribution of newspapers would require printing off Island and shipping facilities. This would make it uneconomic to continue to provide hard copies of the Jersey Evening Post and national newspapers to local consumers. The parties claim that the Proposed Transaction is designed to maintain the printing capacity on Jersey and extend the life of the physical newspapers.

4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the Law, a merger or acquisition (referred to in this paper as a 'merger') occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the Proposed Transaction, the Target Businesses will be owned and controlled by the Purchaser. The Proposed Transaction, therefore, constitute a merger as defined by the Law.

4.2 According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to these transactions, Article 4 of the Competition (Merger and Acquisitions) (Jersey) Order 2010 provides that the merger must be notified to the Authority for approval under Article 20(1) of the Law if one or more of the parties to the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey. According to information supplied by the parties, KPS has 100% of the newspaper printing business on Island and therefore the merger requires the approval of the Authority prior to its execution.

5. Market definition

Approach

5.1 Under Article 22(4) of the Law, the Authority must determine if the merger would 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 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.[4]

Views of the Parties

5.3 KPS prints the Jersey Evening Post, and also prints other printed media that are distributed by the Jersey Evening Post within the printed media wholesale market. With this in mind, the notifying parties are of the view that the appropriate economic markets for the purpose of assessing the competition effects of the Proposed Transaction is specialist newspaper printing on the basis of a Jersey wide geographic market.

5.4 The size of the newspaper printing market, which is in structural decline as many people shift to on-line news rather than physical newspapers, means that there is no viable economic alternative to having one printer of physical newspapers in Jersey due to the very substantial cost of machinery. Hence, KPS has 100% market share, and no other provider has tried to enter the market since KPS was formed eight years ago. The alternative to printing newspapers on Island is to ship or fly them in from the UK, neither of which would be economically viable.

Authority consideration

5.5 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.[5] It will comprise products and/or services which are regarded as

[4] 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 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.

[5] JCRA Guideline 7 – Market Definition.

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 considers the precise market definition can be left open. This is because, as outlined below, the Proposed Transaction would 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 proposed 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 coordinated effects (i.e. the ability of the merged entity to raise prices with 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 would 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 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.

Views of the Parties

6.5 The parties submitted that, since KPS was formed eight years ago, no other provider has tried to enter the newspaper printing market in Jersey, leaving KPS with 100% of the market share. The parties explained that the alternative to printing national newspapers on Jersey is to ship them in from the UK which would not be economically viable whilst the local newspaper would only be available online, thus reducing consumer choice.

6.6 The parties submitted that KPS has always been in a weak commercial position because the price of printing each page is set by the national newspaper publishers which means KPS has been a loss-making business with no pricing power. Whilst the parties consider it unlikely to happen, KPS would welcome the printing of other physical newspapers as it would spread KPS' high fixed costs of machinery.

Authority consideration

6.7 KPS prints the Jersey Evening Post and all other printed media that are distributed by the Jersey Evening Post in Jersey. As stated above, the Jersey Evening Post is owned and controlled by AIM, the Purchaser, meaning the Proposed Transaction is a vertical merger. However, due to the decline in the physical newspaper market which has resulted in KPS being loss-making [redacted] and the high fixed cost of printing machinery, the Authority considers it unlikely that there will be future entrants to the newspaper printing market and so considers there are no competition concerns in this regard.

6.8 The Authority notes that there has been a shift towards online media. Ofcom has reported that, in 2022, only 38% of people use print newspapers and their online offering which demonstrates the reduced the demand for printed newspapers. Therefore, with regard to any potential vertical or conglomerate effects, the Authority does not believe the merged entity would have the incentive to foreclose the market to competitors given the declining market in printed media.

6.9 The Authority notes that the Proposed Transaction would result in a change of control of the Target Business but would not change the structure of the newspaper printing market. The Jersey Evening Post focuses on local Jersey news, whereas the national newspapers focus on UK news. The Authority considers the types of printed newspapers each serve a different purpose and so there would be no incentive for the merged entity to reduce the printing of national news with a view to increasing the sales of printed local news. Furthermore, the Proposed Transaction will maintain the printing capacity of physical newspapers in Jersey and consumer choice. Therefore, the Proposed Transaction will not give rise to a substantial lessening of competition on any reasonable basis.

7. Decision

7.1 On this basis, the Authority concludes that the Proposed Transaction will not substantially lessen competition in Jersey or any part of Jersey; and are therefore approved under Article 22(1) of the Law.

04 September 2023 **By Order of the Jersey Competition Regulatory Authority**