



Case M1523G

Proposed acquisition of TPA Guernsey Limited by Channel Islands Media Group Limited

Decision

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Guernsey Competition & Regulatory Authority
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Summary

1. Channel Islands Media Group Limited (**CIMG**) proposes to acquire all the issued shares in TPA Guernsey Limited (**TPA**) from Tony James Tostevin, Nigel James Stewart Mackenzie Kennedy, Ben Thomas Inder, Phillip Regan and Huntress (CI) Nominees Limited (together, the **Sellers**). CIMG is currently jointly owned by Bailiwick Investments Limited (**BIL**) and MXC Guernsey Limited (**MXC**).
2. The transaction has been notified to the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
3. The GCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

The Notified Transaction

4. On 1 July 2020, the GCRA received a joint application from CIMG, TPA, the Sellers, BIL and MXC (the **Notifying Parties**) for the proposed acquisition by CIMG of the entire issued share capital of TPA for the consideration of a mix of cash and shares in CIMG (the **Notified Transaction**). As a result of the proposed acquisition, the shareholdings in CIMG will be as follows:

Shareholder	Percentage (%)
BIL	[30-40]%
MXC	[30-40]%
Tony James Tostevin	[10-20]%
Nigel James Stewart Mackenzie Kennedy	[10-20]%
Ben Thomas Inder	[5-10%]
Phillip Regan	[0-5]%

5. The GCRA registered the application on its website with a deadline for comments of 14 July 2020. One submission was received after the deadline for comments had expired.

The Parties

6. CIMG is a special purpose vehicle that was initially created by BIL and MXC for the purpose of acquiring The Guernsey Press Company Limited (**GP**) from Guiton Media Group¹. CIMG is a company registered in Guernsey with company number 66665. GP is a wholly owned subsidiary of CIMG.

¹ That transaction was notified to, and approved by the GCRA (Case M1474G)

7. BIL is a company registered in Guernsey with company number 49479. It is an authorised closed-ended collective investment scheme, which, according to information provided by the Notifying Parties, invests in a diverse portfolio of investments, principally in businesses, property and assets situated in, registered, headquartered or managed from the Channel Islands. BIL is jointly owned by [X], a company registered in Guernsey with company number [X] ([90 -100]% shareholding), and a number of minority shareholders (each with a shareholding of less than [0-5]%). Investors in BIL, who hold their interest via [X], are minority investors each with less than a [0-5]% interest.
8. MXC is a company registered in Guernsey with company number 59361. It is a permanent capital vehicle, which, according to information provided by the Notifying Parties, has the objective of providing capital to companies with high growth potential. It is a wholly owned subsidiary of MXC Capital Limited, a company registered in Guernsey with company number 58895.
9. TPA is a company registered in Guernsey with company number 20144. It is active in the fields of digital marketing, digital advertising, design and development. TPA has three subsidiaries, TPA Jersey Limited, TPA Digital and Blix Limited. The TPA group operates in Guernsey, Jersey and the UK.

Requirement for GCRA Approval

Acquisition of control

10. Pursuant to s.61(1)(b)(i) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of that Ordinance when: *“an undertaking [...] directly or indirectly acquires or establishes control of another undertaking”*.
11. Control means the ability to exercise decisive influence over another undertaking, taking into account all relevant facts and circumstances of the case².
12. Joint control over an undertaking exists where:

*“two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. **Decisive influence in this sense normally means the power to block actions which determine the strategic commercial behaviour of an undertaking.** Unlike sole control, which confers upon a specific shareholder the power to determine the strategic decisions in an undertaking, **joint control is characterized by the possibility of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions.** It follows, therefore, that these shareholders must reach a common understanding in determining the commercial policy of the joint venture and that they are required to cooperate.”³*

² S.61(2), 2012 Ordinance.

³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95/01, 16.4.2008, paragraph 62.

13. The CIMG Shareholders' Agreement provides that:

“Each party shall procure that [CIMG] shall not, without the prior written approval each of Bailiwick, MXC and Management Shareholders holding not less than 50 per cent in nominal amount of the Management Shares, carry out any of the Reserved Matters.”

14. The Reserved Matters consist of a number of matters likely to constitute key aspects of CIMG's strategic decision making⁴. Both of BIL and MXC have the ability to block such decisions by withholding prior written approval. As such, (at least) BIL and MXC will, through the Notified Transaction, acquire joint control of CIMG and the Notified Transaction therefore constitutes a merger for the purposes of the 2012 Ordinance.

Undertakings involved

15. Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking.
16. On completion of the Notified Transaction, BIL (and its corporate group) and MXC (and its corporate group), through CIMG, will acquire control of TPA. Each of BIL, MXC and TPA are therefore involved in a merger for the purposes of the Regulations.
17. Under s.13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
- a. The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
 - b. Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
18. According to information provided by the notifying parties, the combined and individual applicable turnover of the Parties in the Channel Islands and Guernsey exceeds these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

Market Definition

19. Under s.13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services.

⁴ These include the ability to make any material variation, extension or limitation of the nature or scope of the Business (CIMG SHA, Schedule 1, paragraph 9) and the ability to make any acquisition or disposal by any Group Company of any material asset(s) otherwise than in the ordinary course of business (CIMG SHA, Schedule 1, paragraph 14)

20. As an initial step, the GCRA 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. When defining a market, the GCRA may take note of its own previous decision making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the GCRA. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts⁵.

Views of the Parties

21. According to the Notifying Parties, GP is active on the following markets, which are all Guernsey-wide:
- a. Production and sale of local daily news;
 - b. Sale of advertising space;
 - c. Distribution of free magazines;
 - d. Distribution of national (UK) newspapers and magazines.
22. The Notifying Parties consider that TPA is active on the following markets:
- a. Branding;
 - b. Graphic design;
 - c. Advertising planning and production;
 - d. Digital marketing, planning and execution;
 - e. Website and application development.
23. BIL is an investment fund managed by Ravenscroft Specialist Fund Management Limited, which is part of the Ravenscroft Group (**Ravenscroft**). Ravenscroft is an investment services group, providing investment services in Guernsey.
24. MXC's activities in Guernsey are limited to:
- a. The provision of certain consultancy services to Ravenscroft; and
 - b. Investment in Guernsey Investment Fund PCC Ltd's technology and innovation cell.

⁵ 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. .

GCRA Consideration

Media buying services (MBS) and marketing and communication services (MCS)

25. In previous cases, the European Commission has considered the markets for the sale and for the purchase of media buying services (**MBS**). It defines MBS as including:

“the purchasing of advertising time and/or space in various types of media, such as broadcast and cable TV, newspapers and magazines, radio billboards and the Internet, for clients running advertising campaigns [...] media buying agencies will also usually provide media planning and strategic advice, including research into target audiences, which media to use, and the monitoring/tracking of the success of a campaign.”⁶

26. It has also considered the market for the provision of marketing and communication services (**MCS**), which it defines as encompassing:

“an array of disciplines including advertising, insight and consultancy, public relations, consumer relationship management/direct marketing/event management, brand identity and design and other areas of specialist communications.”⁷

27. The activities of TPA as described by the Notifying Parties fall within these broad categories.
28. For the reasons set out below, the precise market definitions in respect of MBS and MCS in this case can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition on any reasonable basis in those sectors.

Supply of newspapers

29. In previous cases, the European Commission has considered the market for the supply of newspapers⁸. That market may encompass both print newspapers and online news services. It may also be segmented, for example, by type of newspaper (e.g. (1) tabloid; mid-market; quality title, (2) daily newspaper and non-daily, (3) national daily newspapers and regional/local newspapers)⁹.
30. For the reasons set out below, the precise market definitions in respect of the supply of newspapers in this case can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition on any reasonable basis in that sector.

⁶ Case No COMP/M.7023 – PUBLICIS / OMNICOM, paragraph 12

⁷ Case No COMP/M.7023 – PUBLICIS / OMNICOM, paragraph 60

⁸ For example, in case Case No COMP/M.5932 – NEWS CORP/ BSKYB

⁹ Case No COMP/M.5932 – NEWS CORP/ BSKYB, paragraph 207 – 218

Investment services

31. In previous cases, the European Commission has considered the provision of asset management services, which it defines as *“the provision of investment advice and often also the implementation of this advice”*¹⁰.
32. The activities of Ravenscroft as described by the Notifying Parties fall within this broad category.
33. For the reasons set out below, the precise market definition in respect of the provision of asset management services in this case can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition on any reasonable basis in that sector.

Effect on Competition

Horizontal effects

34. There is no overlap between the activities of the Notifying Parties in any sector in Guernsey. The Notified Transaction will not lead to a substantial lessening of competition on the basis of market concentration.

Vertical effects

35. Vertical mergers are mergers where one party has a ‘vertical’ relationship with the other (for example, as a supplier to or customer of that party). The focus of control of these types of merger focuses on the ability and incentive to foreclose an actual or potential rival’s access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.
36. A third party expressed concern to the GCRA that, post-merger, the merged entity might have the ability and incentive to channel customer advertising through GP, rather than through channels that compete with GP, such as radio advertising. In the view of that third party, this could restrict the ability of those competing channels to offer advertising space.
37. Information gathered by the GCRA¹¹ suggests that anti-competitive vertical foreclosure is unlikely to occur in the way suggested. This is because:
 - a. Customers who purchaser MBS/MCS services will typically want to advertise through multiple platforms in order to reach their target audience and/or as wide a range of customers as possible. As such, a customer would be very unlikely to accept a marketing agency channelling all advertising through one particular platform as doing so would be unlikely to be effective in achieving either objective. This conclusion is supported by the fact that MBS/MCS suppliers are generally able to offer their services across a range of media;

¹⁰ *Case M.8257 - NN GROUP / DELTA LLOYD*

¹¹ Submissions of the Notifying Parties and interview with third party purchaser of MBS/MCS services.

- b. Customers are highly price and quality sensitive¹² and are easily able to switch provider if the advertising strategy pursued by an MBS/MCS provider is not effective. The following factors are relevant in that regard:
- i. Contracts for the purchase of MBS/MCS services are typically not long term (12 months); and
 - ii. There are multiple alternative providers of MBS/MCS services in Guernsey and customers also have the ability to source these services from outside of Guernsey (e.g. Jersey).
- c. Customers also have the option of carrying out MBS/MCS services in-house.
38. These conclusions are consistent with the decision making practice of the European Commission. So, for example, in its *Publicis/Omnicom* decision, when considering the sale and purchase of MBS, the Commission noted that:
- “A majority of customers also suggested that they usually purchase a range of MBS covering more than one media channel, which allow them to reach their final consumer target, and that they usually look for MBS suppliers that are able to provide services with respect to all types of media.”*¹³
39. In the same case, in assessing customer considerations when purchasing MBS services, the Commission stated:
- “On the other hand, a majority of customers indicated that the different media segments are in general not substitutable with respect to the type of advertising they offer. The degree of flexibility across media channels depends to a large extent on the individual advertiser and the specific target groups to be reached. All types of media have specific characteristics in relation to the effects of advertisement. In that regard, a majority of customers and competitors that responded to the market investigation indicated that depending on the needs and media strategy of advertisers, there may be one or several “must-have” media channels to promote advertisers’ products or services, which are not substitutable with other media channels.”*¹⁴
40. For those reasons, the GCRA concludes that the Notified Transaction is unlikely to give rise to anti-competitive vertical foreclosure on any reasonable basis.

Decision

41. Based on the preceding analysis the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.
42. The GCRA is also satisfied that the merger would not be to the prejudice of:
- a. consumers or any class or description thereof;

¹² I.e. Looking to demonstrate a quantifiable return on advertising budget

¹³ Paragraph 22

¹⁴ Paragraph 40

- b. the economic development and well-being of the Bailiwick; or
- c. the public interest.

43. The merger is therefore approved under s.13 of the 2012 Ordinance.

31 July 2020

By Order of the Board of the GCRA