



DETERMINATION OF MERGER NOTIFICATION M/19/010 – FORMPRESS PUBLISHING (ICONIC) / ASSETS OF MIDLAND TRIBUNE

Section 21 of the Competition Act 2002

Proposed acquisition by Mediaforce (Holdings) Limited through Formpress Publishing Limited of certain business assets of Midland Tribune Limited.

Dated 9 October 2019

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Formpress Publishing Limited and Mediaforce (Ireland) Limited, have submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Mediaforce (Holdings) Limited through Formpress Publishing Limited of certain business assets of Midland Tribune Limited, for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on both Mediaforce (Ireland) Limited and Formpress Publishing Limited.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Mediaforce (Holdings) Limited through Formpress Publishing Limited would acquire certain business assets of Midland Tribune Limited from Alpha Publications Limited 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)¹ of the Competition Act 2002, as amended.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission

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



PROPOSALS BY FORMPRESS PUBLISHING LIMITED T/A ICONIC AND MEDIAFORCE (IRELAND) LIMITED TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION BY FORMPRESS PUBLISHING LIMITED OF CERTAIN BUSINESS ASSETS OF MIDLAND TRIBUNE LIMITED (“Proposals”).

RECITALS

- A. On 9 May 2019, in accordance with section 18(1)(b) of the Competition Act 2002, as amended (the “**Act**”), the Competition and Consumer Protection Commission (the “**Commission**”) received a notification of a proposed acquisition whereby Mediaforce (Holdings) Limited through Formpress Publishing Limited (“**Formpress**”) would acquire certain business assets of Midland Tribune Limited (“**Midland**”) from Alpha Publications Limited (the “**Proposed Transaction**”).
- B. The Proposed Transaction is a media merger within the meaning of section 28A(1) of the Act.
- C. Prior to completion of the Proposed Transaction, Midland owns two regional newspapers, the Midland Tribune and the Tullamore Tribune (together the “**Titles**”).
- D. Pursuant to the Proposed Transaction, and subject to clearances from the Commission under section 21(2)(a) of the Act and the Minister for Communications, Climate Action and Environment under section 28G(1) of the Act, Formpress proposes to acquire the rights to the Titles.
- E. Prior to the Proposed Transaction, Formpress owns 21 local/regional newspaper titles and 19 regional digital newspaper titles. Formpress is part of a group of companies (the “**Mediaforce Group**”) to which Mediaforce Ireland Limited (“**Mediaforce**”) also belongs.
- F. Mediaforce acts primarily as a national advertising sales agency/conduit for local/regional newspapers and regional digital newspapers in the State.
- G. The Commission has concerns that the increase in local/regional newspaper and digital newspaper titles that Formpress will own as a result of the Proposed Transaction may impact on competition in markets for goods or services in the State due to Formpress and Mediaforce belonging to the same group of companies.
- H. Pursuant to section 20(3) of the Act, Formpress and Mediaforce have submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals being binding on Formpress and Mediaforce.
- I. The Proposals are submitted to: (i) ensure that, following completion of the Proposed Transaction, Mediaforce and Formpress are managed separately; (ii) prevent any direct or indirect exchange of competitively sensitive information between Mediaforce and Formpress concerning Non-Formpress Titles and advertising with local/regional newspapers; and (iii) ensure that Mediaforce acts in a non-discriminatory manner in the placing of advertising business with all local/regional newspapers and regional digital newspapers irrespective of whether they are Formpress Titles or Non-Formpress Titles.



- J. It is proposed that the Proposals shall become binding commitments by each of Mediaforce and Formpress to the Commission on the Commencement Date and shall remain in force until the Termination Date.

DEFINITIONS

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“Act”	means the Competition Act 2002, as amended;
“Commission”	means the Competition and Consumer Protection Commission and its successors;
“Commission’s Determination”	means a determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect subject to the provisions of section 28C(1) of the Act;
“Commencement Date”	means the date of the Commission’s Determination;
“Day to Day Running”	means: in relation to Formpress, the day to day management of the publication of local/regional newspapers and digital newspapers and the sale of advertising in the State; in relation to Mediaforce, the day to day management of national advertising sales agency/conduit for local/regional newspapers and digital newspapers in the State;
“Formpress Titles”	means any local/regional newspaper or digital newspaper titles in the State owned or controlled, directly or indirectly, by the Mediaforce Group at or after the Commencement Date;
“Formpress Personnel”	means any director, officer, manager, employee, representative or agent of Formpress;
“Mediaforce Competitively Sensitive Information”	means any specific disaggregated information concerning any of the Non-Formpress Titles and information concerning advertising with local/regional newspaper titles in the State in the possession or control of Mediaforce. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute “Mediaforce Competitively Sensitive Information”.
“Restricted Mediaforce Personnel”	means the restricted group of Mediaforce Personnel who administer that part of the Mediaforce business that requires access to the Mediaforce Competitively Sensitive



Information;

- “MediaForce Personnel”** means any director, officer, manager, employee, representative or agent of Mediaforce;
- “Non-Formpress Titles”** means any local/regional newspaper or digital newspaper titles in the State not owned or controlled, directly or indirectly, by the Mediaforce Group at or after the date of the Determination;
- “Termination Date”** means the date on which:
- a) Mediaforce Group: i) no longer operates local/regional newspapers and regional digital newspapers; or ii) accounts for the provision of less than 30% of national advertising agency/conduit services to local/regional newspapers and regional digital newspapers in the State; and satisfaction of these criteria have been confirmed in writing to the Undertakings by the Commission; or
 - b) the Commission considers that the Proposals are no longer required and confirms in writing to the Undertakings that the Proposals shall cease to apply.
- “Undertakings”** means Mediaforce and Formpress.
- “Working Day”** means a day (other than a Saturday or a Sunday or public holiday) on which banks are open for retail business in Dublin.

UNDERTAKINGS

2. Separation of Management and Non-Disclosure of Information Commitments:

2.1. From the Commencement Date, the Undertakings undertake that:

- 2.1.1. they each shall, within [...] Working Days of the date of the Commencement Date, provide to the Commission in writing the names and contact details of each member of the respective management teams of each of Formpress and Mediaforce;
- 2.1.2. they shall, within [...] Working Days of such change occurring, provide to the Commission in writing details of any changes to the management team of Formpress or Mediaforce (as the case may be), including any changes to the Restricted Mediaforce Personnel;
- 2.1.3. to ensure and maintain the separate Day to Day Running of each of the Undertakings from each other;
- 2.1.4. to ensure that no Mediaforce Personnel shall serve simultaneously as an officer, director, secretary, representative or agent holding any position in Formpress, save with the prior written consent of the Commission (such consent not to be unreasonably withheld or denied);



- 2.1.5. no person nominated or appointed to serve on the board of directors of Mediaforce (or any sub-committee thereof) shall have any responsibility for or involvement in the Day to Day Running of any Formpress Titles;
- 2.1.6. no Formpress Personnel involved in the Day to Day Running of any Formpress Titles shall have any access to any Mediaforce Competitively Sensitive Information; and
- 2.1.7. no Mediaforce Personnel shall discuss with or pass on or provide, directly or indirectly, to any Formpress Personnel, any Mediaforce Competitively Sensitive Information.

3. **Non-Discrimination Commitments:**

3.1. From the Commencement Date, Mediaforce undertakes:

- 3.1.1. to direct the advertising business received by it from advertisers and advertising agencies to local/regional newspapers and digital newspapers on a strictly fair, reasonable and non-discriminatory basis and to apply equivalent conditions in equivalent circumstances to all Formpress Titles and Non-Formpress Titles;
- 3.1.2. without prejudice to the generality of 3.1.1, in its activities as a national advertising sales agency/conduit for local/regional newspapers and regional digital newspapers in the State, to act in a non-discriminatory and transparent manner in all circumstances, including:
 - 3.1.2.1.1. the application of pricing and discounts to Formpress Titles and Non-Formpress Titles;
 - 3.1.2.1.2. in selecting the titles to be included in any of the packages of titles offered to advertisers and advertising agencies;
 - 3.1.2.1.3. in the use of newspaper circulation / readership figures and digital traffic figures in allocating advertising to Formpress Titles and Non-Formpress Titles.

COMPLIANCE AND REPORTING OBLIGATIONS

4. The Undertakings shall submit to the Commission within [...] months of the Commencement Date, and, at intervals on [...] thereafter, a written certificate in the form set out at Schedule 1 to these Proposals (a “**Compliance Certificate**”), signed by a director of each Undertaking confirming that they have jointly and severally complied with their obligations set out in these Proposals in the preceding period.
5. Mediaforce shall submit to the Monitoring Trustee within [...] months of the Commencement date, and at intervals of [...] thereafter, a fully documented and reasoned written report (the “Mediaforce Report”) on the compliance by Mediaforce with the obligations of Clause 3 of these Proposals, to include how any communication by third parties regarding the matters set out in Clause 3 have been dealt with.
6. Within [...] Working Days of receipt of the Mediaforce Report, the Monitoring Trustee will submit to the Commission a reasoned report on the compliance by Mediaforce with Clause



3 of the Proposals, to include how any communication by third parties regarding the matters set out in Clause 3 have been dealt with.

7. The Undertakings shall inform their respective management teams, as identified to the Commission pursuant to Clause 2.1.1 and 2.1.2 of these Proposals, of their respective obligations and responsibilities under these Proposals and shall provide training to them in that regard.
8. The Commission reserves the right to require the Undertakings to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires and which is necessary in order for the Commission to verify the Undertakings' compliance with their respective obligations and responsibilities set out in these Proposals. The Undertakings shall promptly provide to the Commission all such information in its possession.
9. These Proposals will come into effect on the Commencement Date and will remain in effect until the Termination Date.

Monitoring Trustee

10. Within [...] Working Days of the date of the Determination, the Undertakings will propose to the Commission a trustee, who is independent of the Undertakings (the "**Proposed Monitoring Trustee**"). The appointment of the Proposed Monitoring Trustee is subject to the approval of the Commission (such approval not to be unreasonably withheld or delayed). If the Commission does not reject the Proposed Monitoring Trustee by notice in writing within [...] Working Days of the date of the proposal by the Undertakings the Proposed Monitoring Trustee shall be deemed to have been approved.
11. If the Proposed Monitoring Trustee is rejected by the Commission, the Undertakings will propose the name of a new trustee (the "**New Monitoring Trustee**") within [...] Working Days of being informed by the Commission of the rejection. If the Commission does not reject the New Monitoring Trustee by notice in writing to the Undertakings within [...] Working Days of the new proposal, the New Monitoring Trustee shall be deemed to have been approved.
12. If the New Monitoring Trustee is rejected by the Commission, the Commission shall nominate a suitable trustee (the "**Commission Monitoring Trustee**") within [...] Working Days, whom the Undertakings will appoint or cause to be appointed.
13. Within [...] Working Days of the date on which the Commission has approved or is deemed to have approved either the Proposed Monitoring Trustee, the New Monitoring Trustee or the Commission Monitoring Trustee, the Undertakings shall enter into a mandate agreement (the "**Monitoring Mandate**") with the approved trustee (the "**Monitoring Trustee**"), the terms of which shall have previously been agreed with the Commission, which confers on the Monitoring Trustee all the rights and powers necessary to permit the Monitoring Trustee to monitor compliance with the Proposals.
14. The Monitoring Trustee shall be independent of the Undertakings, possess the necessary qualifications and experience to carry out its mandate and shall neither have nor become exposed to a conflict of interest.



Miscellaneous

15. The Monitoring Trustee's duties and functions as set out in these Proposals shall not be extended or varied in any way by the Undertakings save with the express written approval of the Commission (whose approval shall not be unreasonably withheld or delayed). Any instruction or request to the Monitoring Trustee from the Undertakings which conflicts with the terms of the Monitoring Mandate and the duties and functions as set out above, will be considered null and void.
16. The Commission may, on its own initiative or at the request of the Monitoring Trustee, give any orders or instructions to the Monitoring Trustee that are required in order to ensure compliance with the Proposals so long as the Undertakings are first given a reasonable opportunity to comment on any such orders or instructions in advance.
17. The Undertakings will provide the Monitoring Trustee with all reasonable assistance and will procure that all relevant third parties provide such assistance required to ensure compliance with the Proposals. The Undertakings will provide or cause to be provided to the Monitoring Trustee all such assistance and information, including copies of all relevant documents accessible by the Undertakings as the Monitoring Trustee may require in carrying out its Monitoring Mandate and will pay reasonable remuneration for the Monitoring Trustee's services. For the avoidance of doubt, the reasonable remuneration of the Monitoring Trustee, of itself, will not be deemed to affect the Monitoring Trustee's independence, nor of itself to result in a conflict of interest.
18. The Commission may, at its sole discretion, either in response to a reasoned request from the Undertakings or the Monitoring Trustee showing good cause or, in appropriate cases on its own initiative waive, modify or substitute any provision in these Proposals.



SCHEDULE 1

[Headed Paper of each of the Undertakings]

[Date]

Mr Ibrahim Bah
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/19/010 – Formpress Publishing Limited (Iconic)/Assets of Midland Tribune Limited

Dear Mr. Bah

I refer to Merger Notification M/19/010 – Formpress Publishing Limited (Iconic)/Assets of Midland Tribune Limited in relation to the proposed acquisition by Formpress Publishing Limited t/a Iconic (“**Formpress**”) of two regional newspapers namely the Midland Tribune and the Tullamore Tribune from Midland Tribune Limited which was notified to the Competition and Consumer Protection Commission (“**Commission**”) on 9 May 2019 (the “**Proposed Transaction**”).

The Commission issued a determination approving the Proposed Transaction under section 21(2)(a) of the Competition Act 2002 (as amended) (the “**Act**”) on [] [September] 2019.

In accordance with the terms of the proposals given by Formpress and Mediaforce Ireland Limited (“**Mediaforce**”) to the Commission on [] [September] 2019 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Act, have become commitments binding upon Formpress and Mediaforce (the “**Commitments**”), I hereby confirm [Formpress/Mediaforce]’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination/date of the previous certificate issued by [Formpress/Mediaforce]] (the “**Relevant Date**”) and ending on the date hereof.

Yours faithfully,

[Name]
Director
[Formpress/ Mediaforce]