

# DETERMINATION OF MERGER NOTIFICATION M/21/025 NEWS CORP UK – SMURFIT KAPPA NEWS PRESS

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## Section 21 of the Competition Act 2002

### Proposed acquisition of sole control of Smurfit Kappa News Press Limited by News Corp UK & Ireland Limited

Dated 22 June 2021

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#### Introduction

1. On 12 May 2021, in accordance with section 18(1)(a) 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 News Corp UK & Ireland Limited (“News Corp UK”), through its wholly-owned indirect subsidiary KIP Limited (“KIP”), would acquire sole control of Smurfit Kappa News Press Limited (“News Press”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. News Press is currently owned and controlled by Damous Limited (“Damous”), which holds the entire issued share capital of News Press.
3. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 12 May 2021, between Damous, Smurfit Kappa Packing Limited, KIP and News Corp UK (the “SPA”). Pursuant to the SPA, KIP will acquire the entire issued share capital and, therefore, sole control of News Press.

#### The Undertakings Involved

##### *The Acquirer – KIP and News Corp UK*

4. KIP’s principal activity is to procure and conclude newspaper printing contracts with third-party suppliers of printing services in the State on behalf of News Corp UK.<sup>1</sup>
5. News Corp UK is a subsidiary of News Corporation, a public company incorporated in the United States and listed on the NASDAQ Stock Market. News Corporation and its subsidiaries are active in newspaper publishing, information services, book publishing, digital real estate and

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<sup>1</sup> Information furnished to the Commission by email correspondence with the legal representative for News Corp UK on 14 May 2021.

broadcasting. News Corporation's news and information services division includes Dow Jones & Company Inc. (a global provider of news and business information), News Corporation Australia, and Storyful Limited (a social media news agency). News Corporation also owns HarperCollins Publishers L.L.C. (a book publisher), Wireless Group (radio stations and digital services) and FOX Sports StreamCo Pty Limited/Australian News Channel Pty Limited (TV channels in Australia).

6. In the State, News Corp UK publishes local editions of The Sun, The Sun on Sunday and The Sunday Times newspaper titles. News Corp UK also sells the hardcopy of the United Kingdom's edition of The Times newspaper and publishes a digital-only Irish edition of The Times which is available to subscribers. News Corp UK also operates websites and applications for its various newspaper titles. News Corp UK sells advertising space in the Irish editions of its newspapers.
7. In the financial year ending 30 June 2020, the worldwide turnover for News Corporation was [...], of which [...] was generated in the State.

#### *The Target – News Press*

8. News Press is a contract printer active in the provision of printing services to national and regional newspaper publishers, specialising in broadsheet and tabloid printed products. News Press's facility is located in Kells Business Park, Kells, County Meath.
9. News Press's activities are limited to the State. News Press's turnover in the year ending 31 December 2020 was €[...].

#### **Rationale for the Proposed Transaction**

10. The notifying parties state the following in the notification:

*“Following a review by the Purchaser [News Corp UK] of its print and distribution operations in the UK and Ireland, [...] [News Corp UK] is acquiring full ownership of the business as part of its strategy to sustain print publishing in Ireland by ensuring the most cost efficient route to market.  
[...].”*

#### **Third Party Submissions**

11. Third party submissions, from four parties, were received by the Commission. These submissions concerned employment-related issues in News Press. The Commission considers that these submissions do not raise any competition issues in respect of the Proposed Transaction. Assessing concerns regarding employment-related issues is not within the Commission's remit and therefore such concerns have not been taken into account as part of the Commission's assessment of the competitive effects of the Proposed Transaction.
12. One of these third party submissions, in addition to employment concerns, expressed general concerns regarding the competitive impact of the Proposed Transaction. The Commission has

had due regard to these concerns when conducting its competitive assessment of the Proposed Transaction.

### **Competitive Analysis**

#### ***Horizontal Overlap***

13. There is no horizontal overlap between the parties' activities in the State.

#### ***Vertical Relationship***

14. The notifying parties state in the notification that there is a vertical relationship between their activities in the State in: (a) the supply of newspaper printing services to publishers (the potential upstream market); (b) newspaper publishing (supply of newspapers/supply of advertising space) of national newspaper titles (the potential downstream market).

### **Relevant Product and Geographic Markets**

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, however, the Commission does not need to come to a definitive view on the precise relevant product and geographic markets as its views on the likely competitive impact of the Proposed Transaction are unaffected regardless of the precise relevant markets adopted. For purposes of its assessment of the likely competitive impact of the Proposed Transaction, the Commission has considered the potential product and geographic markets described below.

### **Upstream Newspaper Printing**

16. The Commission's predecessor, the Competition Authority (the "Authority"), in *M/05/065 – Johnston Press/Leinster Leader*, assessed the provision of newspaper printing services as separate from the provision of commercial printing (i.e. printing of books, reports, advertising material brochures and race cards).<sup>2</sup> The Authority did not conclude on the precise relevant product market but assessed that transaction by reference to the market for the provision of newspaper printing services. In subsequent transactions<sup>3</sup> the Commission distinguished between the provision of printing for national newspapers and the provision of printing for regional/local newspapers, however, the Commission left the precise product market open. In the current assessment the Commission has not found sufficient reason to depart from the approach previously adopted. Given that News Corp UK is involved in the publication and sale

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<sup>2</sup> *M/05/065 – Johnston Press/Leinster Leader*, which is available at: [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/m\\_05\\_065\\_p1d\\_0.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/m_05_065_p1d_0.pdf)

<sup>3</sup> *M/20/021 – Reach/ISL* para 21, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/07/M-20-021-Reach-ISL-Determination-PUBLIC.pdf>; *M/17/068 - Irish Times/Sappho (the Examiner)*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-068-Irish-Times-Sappho-Phase-2-DET-Public-Version-1.pdf>

of national newspapers only, the Commission assessed the impact on competition by reference to the potential product market for the supply of printing services to publishers of national newspapers.

17. The Commission, in *M/16/044 – INM/CMNL*,<sup>4</sup> left the precise geographic market definition for the supply of printing services to national newspaper titles open but nonetheless analysed the competitive impact of that transaction by reference to the narrowest potential geographic market, i.e., the State. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has not found sufficient reason to depart from the approach previously taken in *M/16/044 – INM/CMNL* and has assessed the likely competitive impact of the Proposed Transaction in the State.

### **Downstream Newspaper Publishing**

18. The Commission in *M/16/044 – INM/CMNL* stated the following regarding newspaper publishing:<sup>5</sup>
  - *“The content of newspapers (eg ‘tabloid’; ‘quality’ newspapers) does not serve as a basis on which to distinguish them for the purposes of defining the relevant product market.”*<sup>6</sup>
  - *Local/regional newspapers do not compete in the same advertising market as national newspapers.*<sup>7</sup>
  - *Daily (Monday to Saturday) newspapers do not compete in the same advertising market as Sunday newspapers.”*
19. In the current case, the Commission does not see reason to divert from its previous decision in *M/16/044 - INM/CMNL*. In light of the fact that News Corp UK is involved in the publication and sale of daily as well as the Sunday national newspapers and to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed the impact of the Proposed Transaction on competition by reference to the: (a) potential market

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<sup>4</sup> *M/16/044 – INM CMNL*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-044-INM-CMNL-Public.pdf>

<sup>5</sup> *M/16/044 – INM CMNL*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-044-INM-CMNL-Public.pdf>

<sup>6</sup> *M/20/021 – Reach/ISL*, para 20, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/07/M-20-021-Reach-ISL-Determination-PUBLIC.pdf>; *M/18/067 – Trinity Mirror/Northern & Shell*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/07/M-20-021-Reach-ISL-Determination-PUBLIC.pdf>; *M/09/013 – Metro/Herald AM*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M09013-Phase-1-Determination.public.pdf>

<sup>7</sup> *M/09/013 – Metro/Herald AM* para 3.29-3.33, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M09013-Phase-1-Determination.public.pdf>

for the publishing of daily national newspapers; and (b) potential market for the publishing of Sunday national newspapers.

20. With regard to the geographic market the Commission, in *M/17/068 - Irish Times/Sappho (the Examiner)*, considered the relevant geographic market for the publication of national newspapers as the State.<sup>8</sup> In light of the fact that News Corp UK is active in the publication of national newspapers only, for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has not found sufficient reasons to depart from the approach previously taken in *M/17/068 - Irish Times/Sappho (the Examiner)* and has assessed the likely competitive impact of the Proposed Transaction in the State.<sup>9</sup>

### **Conclusion on Relevant Product Market**

21. For the purposes of conducting its competitive analysis of the vertical relationship between the notifying parties, the Commission has assessed the competitive impact of the Proposed Transaction in: (1) the potential upstream market for the supply of printing services to publishers of national newspapers in the State; (2) the potential downstream market for the provision of publishing of daily national newspapers; and (3) the potential downstream market for the provision of publishing of Sunday national newspapers.

### **Competitive assessment**

22. There is an existing vertical relationship between the notifying parties in the State as News Corp UK currently outsources its newspaper printing operations to News Press. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction is unlikely to lead to input and/or customer foreclosure concerns for the reasons discussed below.
23. With regards to input foreclosure, the notifying parties state in the notification that News Press's estimated<sup>10</sup> market share in the potential upstream market for the supply of printing services to national newspaper publishers in the State is approximately [...] <sup>11</sup> or [...]. <sup>12</sup> There are a number of other providers of printing services active in the State, such as Adenium Limited trading as Webprint ("Webprint"), The Irish Times DAC, International News & Media Group Limited ("INM"), Reach Publishing (Ireland) Limited and Associated Newspapers (Ireland) Limited ( trading as Daily Mail) and General Trust Plc. Further, the notifying parties state in the

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<sup>8</sup> *M/16/044 – INM CMNL* para 21, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-044-INM-CMNL-Public.pdf>

<sup>9</sup> See also: *M/20/021 – Reach/ISL* para 21, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/07/M-20-021-Reach-ISL-Determination-PUBLIC.pdf>; *M/17/068 - Irish Times/Sappho (the Examiner)* para 3.6, which is available at: ; *M/17/068 - Irish Times/Sappho (the Examiner)*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-068-Irish-Times-Sappho-Phase-2-DET-Public-Version-1.pdf>

<sup>10</sup> [...]

<sup>11</sup> The notifying parties estimate that [...]

<sup>12</sup> The notifying parties estimate that [...]

notification that there is excess production capacity (approximately [...]%) at each of the five printing presses in the State at any given time. For these reasons, the Commission considers that the Proposed Transaction is unlikely to raise input foreclosure concerns in the State.

24. With regards to customer foreclosure, the notifying parties submit in the notification that News Corp UK has an estimated market share of [...]% and [...]% in the potential downstream markets for the provision of publishing of (i) daily national newspapers and (ii) Sunday newspapers in the State, respectively. Other publishers of daily and Sunday newspapers in the State include the companies listed above in paragraph 23, who, according to the notifying parties, outsource some of their printing requirements. Competitors of News Press in the State can continue to provide printing services to these customers. The notifying parties submit that [...] is the other supplier of printing services to News Corp UK in the State. [...].<sup>13</sup> Finally, News Corp UK has indicated that it intends to continue to utilise third-party printing services following the completion of the Proposed Transaction. For these reasons, the Commission considers that the Proposed Transaction is unlikely to raise customer foreclosure concerns in the State.

### Conclusion

25. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

26. The parties state in the notification that Clause 9.1 of the SPA contains non-compete and non-solicitation obligations on Damous. The parties state in the notification that these restrictions are directly related and necessary to the Proposed Transaction in order to achieve the transfer of goodwill and knowhow in the form of customer loyalty.
27. The scope and duration of the restrictive covenants in clauses 9.1.1, 9.1.2, 9.1.3, 9.1.4 and 9.1.5 of the SPA does not exceed the maximum scope and duration acceptable to the Commission.<sup>14</sup> The Commission considers these restrictions to be directly related and necessary to the implementation of the Proposed Transaction.
28. The Commission notes that clause 9.1.6 of the SPA [...]. The Commission notes that, unlike the restrictions in Clauses 9.1.1, 9.1.2, 9.1.3 and 9.1.5 of the SPA, the restriction contained in Clause 9.1.6 of the SPA is not limited in time and applies at any time after completion of the Proposed Transaction until such information falls into the public domain. For this reason, the Commission has not reached a view as to whether or not Clause 9.1.6 of the SPA is directly related and

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<sup>13</sup> Notes of discussion with [...]

<sup>14</sup> In this respect the CCPC follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).

necessary to the implementation of the Proposed Transaction. Clause 9.1.6 of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby News Corp UK & Ireland Limited, through its wholly-owned indirect subsidiary KIP Limited, would acquire sole control of Smurfit Kappa News Press 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.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**