
Completed acquisition by Press Acquisitions Limited of Telegraph Group Limited

The OFT's decision on reference under section 33 given on 11 October 2004

PARTIES

1. **Press Acquisitions Limited (Press Acquisitions)** is a newly-incorporated company established for the purpose of acquiring The Telegraph Group Limited. Press Acquisitions is ultimately controlled by Sir David Barclay and Sir Frederick Barclay, who also ultimately control Scotsman Publications, which publishes *The Scotsman* and *Scotsman on Sunday* broadsheet newspapers (together, *The Scotsman*) and Business Publishing, which publishes *The Business*, a national Sunday title.
2. **The Telegraph Group Limited (Telegraph Group)** publishes two national broadsheets, *The Daily Telegraph* and *The Sunday Telegraph* (together, *The Telegraph*) as well as *The Weekly Telegraph* (primarily aimed at overseas readers) and magazine publications. The Telegraph Group is owned by **Hollinger UK Holdings Limited**, which is itself a wholly-owned subsidiary of **Hollinger International Inc (Hollinger International)**. In the year to 31 December 2002, the Telegraph Group generated turnover of £310m in the UK.

TRANSACTION

3. On 22 June 2004, Press Acquisitions entered into an agreement with Hollinger International to acquire the entire issued share capital of the Telegraph Group. The transaction was completed on 30 July 2004. The administrative deadline expires on 11 October 2004, and the statutory deadline expires on 29 November 2004.

JURISDICTION

4. As a result of this transaction Press Acquisitions and the Telegraph Group have ceased to be distinct. The UK turnover of the Telegraph Group exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created. As this transaction qualified under the

turnover test, it was not necessary to consider whether the share of supply test was met.

RELEVANT MARKET

5. The parties overlap in the sale of newspapers and of advertising space in those newspapers (see titles identified above).
6. While newspapers are one of a wide range of media available to both newspaper readers and advertisers – such as TV news, internet news sites, news-based magazines and radio news – previous Competition Commission (CC) and OFT investigations have concluded that it was appropriate to consider newspapers separately from other media.¹ In this investigation, third parties expressed mixed views on the extent to which other media act as a competitive constraint on the supply of newspapers and advertising space therein. Set against the findings of previous investigations, the available evidence from this inquiry consists only of mixed opinions. It is therefore appropriate to take a cautious approach and consider newspapers separately from other media.
7. Within the newspaper category, the parties submit that while there are several types of newspapers – ranging from so-called popular tabloids (e.g. *Daily Mirror*) to mid-market tabloids (e.g. *Daily Mail*) to the quality broadsheets (e.g. *Daily Telegraph*) – the historic difference between the segments may have become blurred since the arrival of tabloid formats of broadsheets.² Previous CC cases have concluded that the different segments are likely to form a chain of substitution.³
8. Newspapers may also be distinguished by scope of distribution, with UK-wide titles (referred to by the CC as ‘national’) differing from local newspapers by virtue of content, advertising and customers. The CC’s previous conclusion that Scotland should be considered separately from the rest of the UK is based, in summary, on the following considerations: (i) demand for newspapers in Scotland is higher than in the rest of the UK; (ii) Scotland offers several Scottish-only newspapers; and (iii) UK ‘national’ publishers are increasingly producing Scottish editions or adding Scottish editorial content to address demand. In relation to the

¹ See e.g. the CC’s findings in Gannett UK Ltd and SMG plc: A report on the proposed transfers (March 2003).

² ‘Broadsheet’ as used below is understood to include tabloid versions of broadsheet publications such as *The Independent* and *The Times*.

³ The supply of national newspapers: a report on the supply of national newspapers in England and Wales (December 1993); Trinity plc / Mirror Group plc and Regional Independent Media Holdings Ltd: a report on the proposed merger situations (July 1999).

latter, the CC concluded that Scottish editions of UK-wide national titles were substitutable – albeit to varying degrees – for some Scottish titles.⁴

9. On the supply side there are currently several newspaper suppliers publishing both broadsheets and tabloids (e.g. News International's *The Times* and *The Sun*), while others publish both UK-wide and Scottish titles (e.g. Trinity Mirror's *Daily Mirror* and *Daily Record*). The evidence available does not suggest major constraints that have hindered existing newspaper publishers in the UK from developing a Scottish edition of a UK-wide paper: certain existing UK-wide national publishers have been able to boost significantly their Scottish circulation by introducing Scottish editorial content or by producing Scottish editions.
10. On the basis of the above, the narrowest overlap appears to be the supply of broadsheets in Scotland and the sale of advertising space therein, although this might not reflect any competitive constraints arising on a wider basis such as the supply of national newspapers. It is not necessary to resolve this question, however, as the outcome of the competitive assessment does not materially differ whichever approach is taken.

HORIZONTAL ISSUES

11. Although *The Telegraph* and *The Business* are both national publications, and *The Scotsman* is also sold in England and Wales, the transaction adds only around 1 per cent to the Telegraph Group's 5 per cent share of total circulation of UK national newspapers.⁵ No evidence suggested that any title of the one party is a particularly close competitor to a title of the other. In terms of content, *The Business* focuses on business news, *The Scotsman* on Scottish and wider issues, while *The Telegraph* is a broader, general interest newspaper.
12. In relation to Scotland, both the Telegraph Group and Scotsman Publications have a relatively small presence compared to several other large media groups whose newspapers have significantly higher Scottish circulation figures.⁶ Post-transaction, the parties would have a combined share of 6.7 per cent (increment 1.2 per cent) of all daily and Sunday newspaper sales in Scotland. Even by focusing more narrowly on broadsheet circulation in Scotland, the parties' data suggest a combined share of supply below 30 per cent (29.2 per cent, increment 6.7 per cent).

⁴ Gannett UK Ltd and SMG plc: A report on the proposed transfers (March 2003).

⁵ Advertising revenue figures were not available. Circulation figures have been taken to measure sales as the best available proxy for the parties' position in advertising.

⁶ Source: ABC.

13. Third parties did not consider *The Telegraph* and *The Scotsman* to be particularly close competitors. The parties provided evidence supporting this view in the form of the proportion of advertising in each title derived from Scottish and national advertisers/agencies. This evidence indicates that *The Scotsman* and *The Telegraph* attract different advertisers, principally due to the relatively limited Scottish focus of the latter: of the Scottish editions of UK-wide nationals, *The Telegraph's* edition is one of the least differentiated relative to its UK-wide title. Third parties considered *The Telegraph* to compete more closely with other UK-wide nationals sold in Scotland such as the *Times*, *Independent* and *Guardian* titles, while viewing *The Scotsman* as competing more closely with other Scottish titles such as *The Herald*. The differentiation between the parties' titles is reinforced to some degree by the difference in cover prices.⁷
14. The various items of evidence canvassed above, notably (i) the share of supply data; (ii) the presence of large rival publishers at both the UK-wide and Scottish level and (iii) the absence of evidence that the parties' titles are close substitutes, all point to the conclusion that the transaction raises no substantive competitive concerns in relation to broadsheets in Scotland or on any other basis. The lack of third party concern also supports this conclusion.

Barriers to entry and expansion

15. As discussed above (at paragraphs 8-9), the CC has previously defined Scotland as a separate geographic region in respect of the supply of newspapers; certain existing national publishers have, however, been able to boost significantly their Scottish circulation by introducing Scottish editorial content or by producing Scottish editions of UK-wide titles.
16. Third parties regarded the competitive nature of the Scottish newspaper market itself as a major obstacle for new entrants, as only new entrants with differentiated content could find a niche in the market and succeed. (However, the strength of existing competition cannot in itself be considered a barrier in competition terms, since it simply may make entry unattractive given current terms of trade, and therefore unlikely, rather than presenting a specific barrier.)

⁷ *The Scotsman* retails at 45p, while *The Telegraph* retails at 60p (weekdays, at time of notification). For completeness: *The Telegraph* retails at £1 on Saturday and £1.20 on Sundays; *The Scotsman* retails at 55p on Saturday and £1 on Sunday; while *The Herald* retails at 55p on weekdays, 70p on Saturday and £1 on Sunday.

17. In light of the conclusions reached above (at paragraph 14), the issue of barriers to entry is not material to the outcome of the competitive assessment and no determinative view is therefore necessary.

Buyer Power

18. Readers of newspapers are individuals and are therefore unlikely to possess any buyer power. Although there are a number of relatively large advertising agencies who may exercise some buyer power, the parties did not seek to rely on this argument, and the OFT received no other evidence on the strength of buyer power.

VERTICAL ISSUES

19. No vertical issues were raised by this transaction.

THIRD PARTY VIEWS

20. No third party raised any concerns about this transaction.

ASSESSMENT

21. The parties overlap in the sale of newspapers and advertising space at the UK-wide and Scottish levels. On a UK-wide basis, the combined share of supply is small and no evidence suggested that any title of the one party was a particularly close constraint on a title of the other.
22. The combined entity represent less than 10 per cent (increment of around 1 per cent) of the supply of newspapers in Scotland, and would still account for less than 30 per cent of supply (increment of less than 10 per cent) if only Scottish broadsheet circulation were considered. The parties will also continue to face competition from large publishers at both a UK-wide and Scottish level. In addition, third party views, the different advertiser profiles of *The Telegraph* and *The Scotsman*, as well as disparities in cover price, all point to the conclusion that these titles cannot reasonably be described as particularly close competitors (largely due, it seems, to the relatively low level of Scottish editorial content in *The Telegraph*). Finally, as noted, no third party raised any concerns.
23. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

24. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.