

2023 No. 1300

COMPETITION

The Public Interest Merger Reference (Telegraph Media Group Ltd) (Pre-emptive Action) Order 2023

Made - - - - 7.17 a.m. on 1st December 2023

Coming into force - - 10.00 a.m. on 1st December 2023

Laid before Parliament 3.29 p.m. on 1st December 2023

The Secretary of State has reasonable grounds for suspecting that it is or may be the case that as a result of the proposed acquisition of Telegraph Media Group Ltd by RedBird IMI, arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.

An intervention notice in respect of the relevant merger situation concerned, given by the Secretary of State on 30th November 2023 under section 42 of the Enterprise Act 2002(a), is in force.

In the opinion of the Secretary of State, the exercise of the powers as set out in this Order is required for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002(b) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State's decisions on the reference.

The Secretary of State, for the purpose of preventing pre-emptive action(c), in exercise of the powers conferred by sections 86(1) and 124(2)(b) of, and paragraph 2(2) of Schedule 7 to, the Enterprise Act 2002(d), makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Interest Merger Reference (Telegraph Media Group Ltd) (Pre-emptive Action) Order 2023 and comes into force at 10.00 a.m. on 1st December 2023.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

(a) 2002 c.40; section 42 was amended by paragraphs 59 and 82 of Schedule 5, and paragraphs 15 and 21 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 (c.24) and S.I.2019/93; there are other amendments to section 42 which are not relevant to this Order.

(b) Section 45 was amended by paragraph 9 of Schedule 16 to the Communications Act 2003 (c.21) and paragraphs 59 and 86 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(c) "Pre-emptive action" is defined in paragraph 2(12) of Schedule 7 to the Enterprise Act 2002. Paragraph 2(12) was inserted into Schedule 7 by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013.

(d) Paragraph 2(2) of Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

Interpretation

2. In this Order—

“the Acquiring Entities” means—

- (a) RedBird IMI group;
- (b) RedBird Capital Partners Management LLC, a company incorporated in Delaware (file number 5372472);
- (c) IMI JV Holding Corp, which is an investor in RedBird IMI;
- (d) any other persons or bodies corporate which control RedBird IMI;
- (e) any bodies corporate which RedBird IMI controls,

and for these purposes a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate but without having a controlling interest in that body corporate, may be treated as having control of it;

“the Acquiring Entities’ business” means any enterprises carried on by any of the Acquiring Entities;

“the Act” means the Enterprise Act 2002;

“intervention notice” means the intervention notice issued on 30th November 2023 by the Secretary of State under section 42 of the Act in relation to the proposed acquisition of Telegraph Media Group by RedBird IMI;

“key editorial staff” means staff in a position of executive or managerial responsibility who exercise editorial control over “the Telegraph” or “the Sunday Telegraph” newspapers;

“the May Corporation” means the May Corporation Limited, a company incorporated in Jersey (registered number 87258);

“PAL” means Press Acquisitions Limited, a company incorporated in England and Wales (registered number 5098596);

“PIHL” means Penultimate Investment Holdings Limited, a company incorporated in the British Virgin Islands (registered number 1041811);

“the PIHL group” means PIHL and any other body corporate interconnected with PIHL and references to “members of the PIHL group” are to be construed accordingly;

“RedBird IMI” means RedBird IMI Media Joint Venture LLC, a company incorporated in Delaware (file number 7161567);

“the RedBird IMI group” means RedBird IMI and any body corporate interconnected with RedBird IMI and references to “members of the RedBird IMI group” are to be construed accordingly;

“Telegraph Media Group” means Telegraph Media Group Limited, a company incorporated in England and Wales (registered number 451593);

“Telegraph Media Group business” means the Telegraph Media Group, PAL and the May Corporation;

“specified period” means the period beginning with the date and time this Order comes into force and terminating when the intervention notice ceases to be in force.

3. Except with the prior written consent of the Secretary of State, the PIHL Group or the Acquiring Entities shall not take any action which transfers the ownership of Telegraph Media Group during the specified period.

4. The PIHL Group and the Acquiring Entities shall at all times during the specified period except with the prior written consent of the Secretary of State—

- (a) ensure that no step is taken to integrate the Telegraph Media Group business with any other enterprise;
- (b) take all necessary steps to ensure that no significant changes are made to—

- (i) the organisational structure of, or the management responsibilities within, the Telegraph Media Group business except in the ordinary course of business;
- (ii) the composition of the boards of the companies within the Telegraph Media Group business as they exist at the start of the specified period.

5. So far as it is within their respective powers to do so, the PIHL Group and the Acquiring Entities shall ensure that during the specified period—

- (a) no key editorial staff are removed from their positions within the Telegraph Media Group business except with the prior written consent of the Secretary of State;
- (b) no key editorial staff are transferred between the Telegraph Media Group business and the Acquiring Entities' business except with the prior written consent of the Secretary of State; and
- (c) all reasonable steps are taken to encourage all key editorial staff to remain with the Telegraph Media Group business.

Compliance

6. The PIHL Group and the Acquiring Entities shall provide to the Secretary of State such information or statement of compliance as she may from time to time require for the purposes of monitoring compliance with this Order.

7. A compliance statement must be signed by the chief executive officer or a director of the PIHL Group or the Acquiring Entities as the case may be.

8. At all times, the PIHL Group and the Acquiring Entities must keep the Secretary of State informed of any material developments relating to the Telegraph Media Group business, which includes but is not limited to details of key editorial staff who leave or join the Telegraph Media Group business.

9. If any member of the PIHL Group or any of the Acquiring Entities has any reason to suspect that this Order might have been contravened it must immediately notify the Secretary of State.

Derogations

10. For the purposes of paragraph 2(2C) of Schedule 7 to the Act(a), the Secretary of State is not to be treated as having consented to the taking of action or action of a particular description which would otherwise constitute a contravention of this Order unless the consent is in writing.

At 7.17 a.m. on 1st December 2023

Lucy Frazer
Secretary of State
Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Order)

The Secretary of State has given the Competition and Markets Authority an intervention notice on public interest grounds in respect of the anticipated acquisition of the Telegraph Media Group. This Order is made for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002 (c.

(a) Paragraph 2(2C) was inserted by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013 (c.24)

40) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State's decisions on the reference.

Article 3 of the Order prevents the PIHL Group, which owns the Telegraph Media Group, and the prospective acquiring entities of the business from transferring ownership of the business during the specified period except with the prior written consent of the Secretary of State. Article 4 requires the PIHL Group and the acquiring entities to refrain from integrating the business with any other enterprise and to take the necessary steps to ensure that board oversight of the Telegraph Media Group business is not changed during the specified period, except with the Secretary of State's prior written consent. Article 5 requires the PIHL Group and the acquiring entities to ensure, so far as it is within their powers to do, that during the specified period key editorial staff within Telegraph Media Group are not removed from their positions, or transferred between the business and the acquiring entities, except with the Secretary of State's prior written consent, and that reasonable steps are taken to encourage all key staff within the Telegraph Media Group to remain. Articles 6 to 9 impose reporting obligations and article 10 provides that the Secretary of State is not to be treated as having consented to any action in derogation of the provisions of this Order, unless she has consented in writing.

This Order, unless previously revoked, will cease to have effect if the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7 to the Enterprise Act 2002 instead of referring the merger to the Competition and Markets Authority under section 45 of that Act or when the intervention notice otherwise ceases to be in force in accordance with section 43 of that Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, <http://www.legislation.gov.uk>.

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