

RESTRICTED - POLICY

KDJ10 3 1 0 0 0

PT 1

To: SECRETARY OF STATE  
 ci: see attached list

From:

CP1

Room 634

1 Victoria Street

4 February 2002

**REFORM OF THE NEWSPAPER MERGER REGIME**Issue

Advice on reform to the system of regulation of newspaper transfers in the Fair Trading Act 1973 following the joint DCMS/DTI Consultation on Media Ownership Rules. The reforms are to be included in the Communications Bill; it is not intended to amend the current newspaper regime through the general reform of merger control in the Enterprise Bill.

Timing

2 **Urgent.** Tessa Jowell is meeting officials tomorrow to discuss media ownership controls with a view to putting proposals on media ownership to the PM on Friday. Any views you have should therefore be fed in as soon as possible.

Recommendations

3 That you consider which of the two procedural models outlined in Annex A you would prefer:

- (i) Option One which provides a bespoke regime;
- (ii) Option Two which applies to newspaper ownership the procedures for "exceptional public interest" (EPI) merger cases to be introduced by the Enterprise Bill

Option One would maintain a newspaper regime that is separate from the general merger regime. Option Two would bring freedom of expression considerations in respect of newspapers within the general newspaper regime; this was one option floated in the consultation document. We do not advocate the other option floated there of separate consideration of the competition and plurality aspects of a newspaper merger, with the most negative solution prevailing.

4 Both options in Annex A could deliver the goals of a more streamlined and better targeted regulatory system which would still enable those cases which give rise to "plurality" concerns in the national or regional press to be tackled. Both provide for the Competition Commission (CC) when requested to carry out full investigations

## RESTRICTED - POLICY

of both the competition and plurality aspects of newspaper transfers, with the final decisions being for Ministers. The key differences are:

- (a) **the scope of the regime** Option One would create a new qualifying threshold, applying to transfers affecting newspapers commonly circulated in at least a substantial part of the UK. Option Two would apply the standard merger threshold of where the target business had a turnover of £45 million or created or increased a share of supply of 25% in the UK or a substantial part of it (we prefer these approaches to the criteria of circulation thresholds or day or days of publication suggested in the consultation document as ways to remove local newspapers from the regime).
- (b) **the role of OFCOM.** Option One would provide a formal role and status for OFCOM in referring cases on plurality grounds to the CC; and in commenting upon the CC's analysis and recommendations. OFCOM could advise the Secretary of State at both stages under Option Two, but only informally.
- (c) **the extent of Ministerial powers.** Option Two provides Ministerial discretion to determine whether any plurality detriments would arise from a transfer, what they are and how they are to be remedied. Such Ministerial discretion is of course appropriate for national security, which is the only EPI to be specified in the Enterprise Bill. Option One provides scope for limiting the discretion: for example, by providing that if the CC and OFCOM identify no detriments Ministers have no powers to intervene, or by more generally restricting their powers to remedying the specific detriments identified by the CC.

5 Under both options

- (a) there would be **no requirement for the prior approval** of the Secretary of State to newspaper transfers, nor as a corollary would there then be any criminal sanctions. Parties could complete transfers, but at the risk that Ministers might subsequently order divestment or other remedies;
- (b) the regime would **apply to all acquisitions of such newspapers**, irrespective of whether the acquirer is a current UK newspaper proprietor;
- (c) both a **specific competition test** (along Enterprise Bill lines) and a **plurality test** (perhaps involving consideration of the preservation or promotion of significant shades of opinions, freedom of expression and the accurate presentation of news) would be applied. However, in Option Two competition considerations could not be assessed by the CC if the DGFT had not raised such concerns (but the transfer had been referred on plurality grounds)-it could be argued this would avoid unnecessary assessment. In Option One the CC could look at competition even if OFCOM had made the reference (on the grounds

## RESTRICTED - POLICY

that concentration of the market is central to assessing certain plurality concerns).

The propositions at (a) and (b) would be very different from the current special newspaper regime; (c) would be formally so, but in practice the tests would be similar to those currently applied.

### Background

6 Attached at Annex B is an extract from the consultation document concerning the Press. It describes the present regime, against which you will wish to consider these recommendations, sets out the case for retaining special merger provisions for newspaper transfers whilst rationalising and targeting the regime, and identifies the areas in which we are considering reforms. Comments were particularly sought on

- the merits of taking local newspapers out of the regime, and if so how this should be done;
- whether the requirement for the Secretary of State's prior written consent for transfers to proceed on pain of nullity and criminal sanctions was still appropriate;
- whether the regime should apply to non-newspaper proprietors acquiring a title; and
- whether the restrictions on transfers of newspapers assets should be relaxed (the latter is a technical issue on which decisions do not need to be taken now: we will furnish advice on it at a later date).

As you will see, the consultation document also put forward two procedural models, one involving separate consideration of competition and freedom of expression issues with the most negative prevailing, the other modelled on the EPI gateway regime in the Enterprise Bill. Both contemplated a role for OFCOM in advising on freedom of expression issues.

7 A précis of the main comments on the newspaper regime is at Annex C. Although the Newspaper Society has yet to give a formal response to the consultation document – it is still consulting its members – a number of major newspaper businesses such as News International, Associated Newspapers and Trinity Mirror have done so. Their firm view, with the exception of the Guardian Media Group, is that special treatment of transfer of newspaper transfers is no longer justified, if it ever was, and that such arrangements should fall to be considered on competition grounds under the general merger regime. Most reluctantly recognise that the Government does intend to continue to treat newspaper transfers differently (a policy endorsed by the way by several non-newspaper consultees who gave a view on this issue). In commenting on the particular options they argue that

- there should be no requirement for prior approval;
- local titles should be taken out of any continuing special newspaper regime;

RESTRICTED - POLICY

- any such regime should apply equally to non-newspaper proprietors; generally the EPI/Enterprise Bill procedural model is favoured;
- the Competition Commission should continue to be the body responsible for advising on any freedom of expression issues arising from newspaper transfers; with the exception again of the Guardian, they are wary of giving a role to OFCOM, partly because of its lack of expertise in newspaper matters and partly because of one part of its heritage as a detailed regulator of media content, which they see as a potential threat to press freedom.

Argument

*Removing local titles*

8 Local titles constitute a high proportion of the many cases considered under the current regime. Few proposed newspaper transfers are found on investigation to be likely to operate against the public interest; of those few cases where Ministers have acted to address freedom of expression concerns arising out of proposed transfers, none has involved a local title. Removing local titles from the regime is therefore central to creating a more streamlined, better targeted and yet effective regime.

9 The difficulty has been defining the scope of regime so as only to catch national and regional titles.

10 The present regime operates on the basis of paid-for circulation thresholds and the most obvious way of differentiating national/regional titles from local ones would be to use such criteria; the newspaper consultees generally recommend the regime should only catch titles with a paid-for circulation of 100,000 copies. The difficulty here is that any threshold is arbitrary and is unlikely to be effective in catching all that we would wish to catch (for example *Metro* would not be caught by this test; free newspapers may well become increasingly significant). Other possibilities raised in the consultation document seem equally lacking in an intellectual basis (eg basing the regime on the day or days of publication) or be difficult to enforce.

11 However, the precision of the approach in the present regime is chiefly important because of the need to be absolutely sure at the outset whether a newspaper transfer is caught: the consequence of getting this wrong are invalidity of the contracts and criminal sanctions. If, as we recommend, these are removed, a change of approach becomes more credible. Moreover, the danger of precision is a lack of flexibility to deal with changing markets and technology.

12 In conceptual and drafting terms, it seems best to focus on what, as commonly understood, differentiates national/regional titles from local newspaper titles: that is, that they serve different kinds of geographical areas. A better approach therefore seems to be to provide that the titles we seek to catch are those which are commonly circulated in a geographically significant area, such as at least a substantial part of the United Kingdom.

## RESTRICTED - POLICY

13 It would be possible to play with other, similar formulation ("a significant part"?). However, reference to a substantial part of the UK already constitutes the basic entry point to the UK general merger regime and has been helpfully interpreted by the courts. The jurisprudence is that while there can be no fixed definition, an area must be of such size, character and importance as to make it worth consideration for the purpose of the regulatory system. Factors which have been taken into account in the past have included its social, political, economic, financial and geographic significance, and whether it has any particular characteristics that might render it special or significant. Such factors would seem to be amenable to covering eg parts of Northern Ireland, Scotland and other areas where community voice issues would properly be a matter of concern. As it is, the competition authorities have been able to focus on quite small areas where appropriate – for example, in the case of radio broadcasting, they have defined Peterborough, Norwich and Cambridge each as being a substantial part of the UK.

14 Such factors could be left to the courts to adopt or alternatively be specified in the legislation. It would also be possible to provide for OFT or OFCOM to make a reference where they believed the circulation met the test. It could then be left for CC to investigate and rule definitively and as a matter of law whether the geographic test was met, thus settling whether the additional plurality test would apply to the transfer.

15 Alternatively, the EPI system would also enable newspaper transfers affecting a market within the UK to be looked at. It would provide jurisdictional tests which align the treatment of newspapers with other sectors of the economy and would do so by concentrating on key economic criteria. If the concern were more generally plurality and the more pure interests of regional voice, the Option One version might be better and would be more straightforward.

*Nullity of the transfer and criminal sanctions*

16 The provisions for prior approval and criminal sanctions were included when the newspaper regime was put in place in 1965 because of a fear that irreparable damage could be done to a newspaper by an inappropriate owner before action could be taken by Ministers to prevent the transfer. That now seems a little far-fetched and may also underestimate the financial self-interest of any purchaser. In any case, the general merger regime contains powers, which are occasionally exercised, enabling Ministers to prevent an acquiring company from exercising control over the one it has purchased, or integrating the companies: that seems to achieve all that needs to be done to meet any concern here.

17 This would make it easier for newspaper owners to act swiftly in reaching transfer deals, and would level the playing field compared to the present situation in which only current proprietors of UK newspapers are subject to the regime. An alternative way of doing this raised in the consultation would be to apply the regime to all transfers. We anyway recommend extending the regime to cover all acquisitions: it seem to us that, for example, a magazine proprietor or a foreign newspaper proprietor could have interfered on editorial grounds that might warrant investigation were he or she to acquire a UK newspaper. Moreover, this would be desirable for enforceability reasons. The lack of equivalent coverage for new acquisitions giving rise to an equivalent market share is likely to cause ECHR

## RESTRICTED - POLICY

difficulties. It is hard to argue that blocking a merger is the least intrusive way to protect the public interest if it is not considered necessary to block a person acquiring a similar interest *de novo*. And in terms of the overall balance of the package, this seems a reasonable *quid pro quo* for relaxing controls over local newspapers.

*Procedure*

18 The procedural option in the consultation document of separate consideration of plurality and competition was not supported by consultees, was not our own preference and we suggest it be discarded. Adopting the Enterprise Bill (EPI) model would flag up a shift from the current burdensome regime to one where intervention would be "exceptional". The ready made procedure could be presented as more streamlined than a proliferation of separate regimes. However, in the particular circumstances of the newspaper regime, we have provided a revised version for you to consider. This seeks to cover issues raised by the role of OFCOM and Ministerial powers.

*OFCOM*

19 The industry is wary of OFCOM. Notwithstanding that, OFCOM needs to build up its expertise in newspapers because of its involvement in cross-media regulation; giving it a role in the newspaper regime can only help achieve that task. Furthermore, we have heard criticisms that the Competition Commission has been too relaxed and malleable in its role in assessing newspaper mergers under the current regime; this has not exactly been rebutted by the industry's own preference for the Competition Commission over OFCOM. Whilst we would not accept those criticisms, a role for OFCOM would be a useful counter-balance. Again, in terms of the overall package, it does balance some significant gains for the industry. How formal the role should be is a nice judgement.

*Ministerial powers*

20 The consultation document said, at paragraph 6.4.15, '.....a crucial question is the extent to which Ministers should have a role in the process. There is a case for removing from party politicians powers designed to regulate freedom of expression and pluralism within a medium so central to political discourse. On the other hand, there is a view that, precisely because these powers are so politically sensitive, they should be exercised not by unelected officials but by Ministers answerable to Parliament. We suggest that Ministers could take the final decisions, acting on the advice of the regulators, but we would be grateful if comments on our proposals could address this question'.

20 Consultees (with the notable exception of Associated Newspapers) did generally support Ministers exercising the powers and we have so provided in both procedural options. In the light of the considerations raised in the consultation paper, you may wish to consider whether there is a case for fettering Ministerial powers in the ways suggested under Option One.

*The Plurality Test*

## RESTRICTED - POLICY

21 There are a number of philosophical questions revolving around the precise nature of the plurality test for newspapers to be applied, in addition to a competition test, under the new regime, and the suggestion we have put to you in paragraph 5 (c) above does not resolve them. Each of the objectives there is open to doubt – for example, freedom of expression is only putting one person's freedom (presumably the editor's) above another's (the owner's); views on what is the truth in the news will vary; freedom of expression and a requirement for so-called accurate presentation of news are inherently at odds; all of these points have greater force given that we have a polemical press; indeed, arguably current owners would not be able to meet these tests, but a variety of views are nevertheless able to find expression. However, looking at it pragmatically, the CC has been able to come to some sensible and useful judgements on the basis of the current public interest test which highlights the accuracy of presentation of news and freedom of expression and we suggest that these remain at the core of the test. The other useful element seems to be the preservation or promotion of certain particular shades of opinion as evidenced by the decisions on the Belfast Telegraph in the light of the nationalist/unionist divide. But doubtless thinking on this will have to be further refined as we move to detailed drafting.



RESTRICTED - POLICY

ANNEX A

OPTION ONE

1 The DGFT would be able to refer a transfer over which he had competition concerns to the Competition Commission, within a set period from the later of the completion of the transfer or its publication, OFCOM would be able to refer any remaining cases over which it had "plurality" concerns by a slightly later timescale.

2 The Competition Commission would assess the transfer(s) on competition and plurality grounds. If they found no detriments to the transfer on both grounds, and OFCOM consented, the transfers would be cleared. If they found detriments on either or both grounds, they would so advise the Secretary of State and recommend remedies which would cure the problem.

3 The DGFT would be required to advise on the competition aspects of the CC's case, and OFCOM on the plurality aspects. Decisions would be for the Secretary of State, but would be restricted to remedying the identified detriments.

OPTION TWO

1 The SoS would be able to intervene in any case that raised issues concerning the plurality of newspapers. The DGFT would advise the SoS on the competition aspects of the case, and the SoS could seek OFCOM's advice on the plurality issues. The reference decision would rest with the SoS.

2 The CC would assess the transfer(s) on competition and plurality grounds (if the DGFT had raised competition concerns) or on plurality grounds alone (if the DGFT had concluded that the transfer would not result in a substantial lessening of competition). On receipt of the CC's report, the ultimate decisions (on whether the merger was in the public interest and, if not, what remedies should be imposed) would be for the SoS.

## RESTRICTED - POLICY

## ANNEX B – Extract from Media Ownership Consultation Document

## The Press

6.4.1 We promised in the White Paper to consider a lighter touch approach to newspaper mergers.

6.4.2 Ownership of the Press has long been treated as a special case. Under the Fair Trading Act 1973, most newspaper mergers are subject to a stricter regime than general mergers. In all cases, a newspaper transfer which meets the circulation thresholds for the special regime will be null and void if it proceeds before the Secretary of State's written consent has been obtained. Qualifying newspaper transfers are also subject to a mandatory reference to the Competition Commission (which will provide the Secretary of State with advice following a thorough investigation) except in limited and specified circumstances involving cases where a title is not economic as a going concern or has a daily, paid-for circulation of not more than 50,000.

6.4.3 The rationale for the introduction of the special regime in 1965, following a Royal Commission on the Press, was that control of the Press was a matter of particular public sensitivity, and that the increasing concentration of newspaper ownership in too few hands could stifle the expression of opinion and argument, and distort the presentation of news. In the light of these concerns, newspaper transfers are judged against a public interest test which specifically requires the competition authorities to take into account the need for accurate presentation of news and free expression of opinion. The statutory provisions do not seek to prescribe any particular limit on concentration, or impose any requirement for impartiality.

6.4.4 This regime has imposed significant costs on the industry and yet, out of 172 cases considered by the Secretary of State since 1980, only three have been refused and five given approval subject to conditions. It is not clear how significant a role the regime has played in preserving day-to-day freedom of expression by, for instance, preventing the tabling of contentious merger bids. Nevertheless, there have been a small number of significant cases, all concerning national or regional titles, where the Government has acted to address freedom of expression concerns, such as editorial independence and community voice. This suggests that there continues to be a role for the regime, but that it could be rationalised and better targeted.

6.4.5 We therefore reject the view of those who suggest that the regime should be completely abandoned and newspaper ownership left to be regulated by normal competition law. It is possible that competition concerns over further concentration in the national press could lead to decisions by the competition authorities which ensured a minimum number of players in the national market. However, we cannot forecast the degree of plurality which would be delivered by pure competition analysis. In addition, as demonstrated by cases the Competition Commission has addressed, acquisitions of key regional titles may raise concerns over local or regional community voice which might not be addressed by ensuring a minimum number of owners at national level.

6.4.6 As outlined earlier in this document, the case for media-specific regulation remains strong on democratic grounds – if anything, particularly so for the Press, who often consider themselves to be opinion-formers as much as conveyors of news. Some light touch regulation of newspaper ownership will therefore be required. We put forward below our own suggestions on how the current regime might be reformed, and invite views. We raise several issues concerning the scope of the regime which

## RESTRICTED - POLICY

might be addressed by any reform, and we put forward two options as to the procedures which might be followed.

6.4.7 One possibility to lighten the burden of the regime would be to remove regime local newspapers from its remit entirely. Local issues can be matters of considerable interest and controversy, and we recognise the genuine public interest in their accurate presentation. On the other hand, the burden of complying with the regime seems particularly disproportionate in relation to the acquisition of local newspapers. Furthermore, in no case has the Competition Commission found that the acquisition of purely local newspaper titles would be against the public interest on freedom of expression grounds. In recent years the Commission has taken the view that to maintain or increase circulation, local (and regional) newspapers must reflect the views and concerns of readers in their area, and local editors are best placed to judge the interests of those readers. (It is also the case that some local free and some paid-for papers lack significant editorial content.) On this basis, and taking into account competition for advertising and the potential for new entry, Ministers have been prepared to accept very high concentrations of local newspaper titles under the current newspaper regime.

6.4.8 A key consideration is whether a satisfactory definition of local newspapers could be found. Many local newspapers, being free, do not have paid-for circulation figures which are the basis of the current thresholds. It might be possible simply to exclude all titles with limited circulation or production. Share of supply or gross assets thresholds might be adopted, as in the general merger regime, or a new turnover threshold might be introduced. Our proposals for reforming the general merger regime involve retaining the 25% share of supply test but replacing the assets test with a turnover threshold of £45 million. One possibility might be to retain the existing qualifying thresholds but exclude from the regime titles that are only published weekly, or less frequently than weekly, unless they are published on a Sunday.

6.4.9 One feature of the newspaper regime which we might reconsider in any reform is that it applies not only to newspapers but also to newspaper assets i.e. those necessary to the continuation of a newspaper as a separate newspaper. With changes in technology, business organisation and advertising techniques, it may be that some revision to the scope of the controls in relation to assets would be sensible.

6.4.10 Another difference between the general merger regime and the newspaper regime is that only the latter is underpinned by criminal sanctions. These have never been used. This may suggest that they are effective in operation. However, it may well be that insofar as additional sanctions are appropriate for newspaper acquisitions (and we raise below the issue of whether the two regimes might be brought closer together on level playing field grounds) the sanction that the transfer is null and void is sufficient and there has been no need for a criminal regime.

6.4.11 We also need to consider to whom the regime should apply. At present parties who are not already UK newspaper proprietors are not caught by the special newspaper provisions but are considered under the general merger regime. They may complete a transaction before regulatory clearance is obtained, putting them at a clear commercial advantage. The more de-regulatory approach might be to align the regime with the general merger regime to allow parties to proceed with a merger but at the risk that the authorities will require them to divest the acquisition or impose conditions. An alternative approach which would level the playing field would be to include in the regime all qualifying acquisitions regardless of whether they were by an existing newspaper proprietor. This would help meet concerns that issues of editorial content and freedom of expression are a public policy matter whoever is the acquirer.

## RESTRICTED - POLICY

6.4.12 Turning to the question of how a reformed newspaper regime might operate, the Government is considering two alternative options.

6.4.13 Under the first, the regime might be reformed to give OFCOM the duty of assessing whether a particular newspaper transfer would compromise the accurate presentation of news and free expression of opinion. OFCOM could advise the Secretary of State on whether to prohibit the merger or subject it to conditions on "freedom of expression" grounds. The independent competition authorities (the Director General of Fair Trading and the Competition Commission under the proposed merger reforms in the forthcoming Enterprise Bill) would separately assess the merger on competition grounds. Proposed mergers would have to clear both hurdles.

6.4.14 An alternative process could be based on the creation of an exceptional public interest gateway under the reformed general merger regime, so that the Secretary of State could call in any qualifying newspaper merger case which gave rise to freedom of expression concerns. OFCOM might have the role of advising the Secretary of State on freedom of expression issues in such cases. The Director General of Fair Trading would advise the Secretary of State on the competition issues. The Secretary of State would be the ultimate decision maker.

6.4.15 In considering these alternatives, a crucial question is the extent to which Ministers should have a role in the process. There is a case for removing from party politicians powers designed to regulate freedom of expression and pluralism within a medium so central to political discourse. On the other hand, there is a view that, precisely because these powers are so politically sensitive, they should be exercised not by unelected officials but by Ministers answerable to Parliament. We suggest that Ministers could take the final decisions, acting on the advice of the regulators, but we would be grateful if comments on our proposals could address this question.

**XIII Options:**

- *The special newspaper regime could be reformed to give OFCOM the duty of assessing whether a particular newspaper transfer would compromise the accurate presentation of news and free expression of opinion. OFCOM would advise the Secretary of State on whether to prohibit the merger or subject it to conditions on "freedom of expression" grounds. The independent competition authorities (the Director General of Fair Trading and the Competition Commission under the proposed merger reforms in the forthcoming Enterprise Bill) would separately assess the merger on competition grounds.*
- *An alternative process could involve the repeal of the special newspaper provisions. An exceptional public interest gateway under the reformed general merger regime would be created, so that the Secretary of State could call in any newspaper merger case which gave rise to freedom of expression concerns. OFCOM could have the role of advising the Secretary of State on freedom of expression issues in such cases. The Director General of Fair Trading would advise the Secretary of State on the competition issues. The Secretary of State would be the ultimate decision maker. If either option were to be adopted, we invite views on:*
  - *the merits of taking local titles out of the newspaper regime. In particular, we would welcome suggestions as to how "local" should be defined for this purpose;*
  - *the merits of extending the newspaper regime to all qualifying acquisitions, regardless of whether the potential owner is an existing newspaper proprietor or not;*
  - *whether the scope of controls should be revised in relation to newspaper assets;*
  - *whether it is appropriate to retain the criminal sanctions that underpin the regime.*

## RESTRICTED - POLICY

## ANNEX C

**Trinity Mirror**

Believes the special provisions should be repealed and newspapers subject to general merger control. If this is not accepted, argue strongly against a role for OFCOM, which is not well-placed to decide over freedom of expression and editorial independence. Put forward 2 procedural options

**First option** should be left to the CC and a panel of civil servants. Should be no prior consent for newspaper transfers but a discretionary involvement by the Secretary of State. The threshold for falling within the discretionary regime should be a paid for circulation of 100,000 and should only apply, as now, to transfers to a current newspaper proprietor whose combined circulation is at least 500,000. Criminal sanctions should be repealed. **Second option.** Prior consent is required but regime then applies to all purchasers where paid-for circulation is 100,000. Alternatively, Secretary of State could publish list, amendable by statutory instrument, of the newspapers to which the regime would apply.

**Guardian Media Group**

Supports a special newspaper merger regime. Supports the model of an exceptional public interest gateway with a role for OFCOM. Believes the regime should only apply to national titles, since local titles are not subject to political pressure and must concentrate on local issues, but local titles should be caught only if one of following criteria fulfilled:

- (i) paid for circulation is below 1000,000 copies;
- (ii) the newspaper is a weekly; and
- (iii) there is no newspaper group with a hub within 1½ hours driving distance of that market's heartland. The regime should apply to all acquisitions.

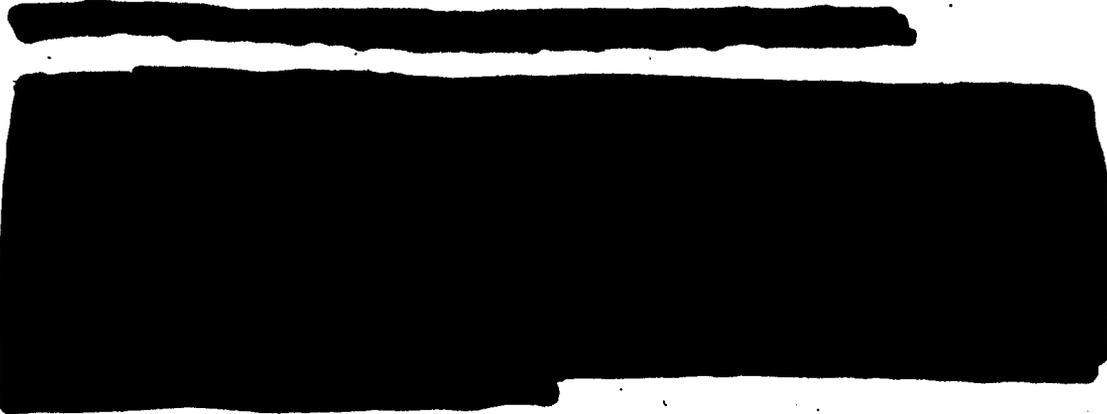
**News International**

Newspaper transfers should be subject to general merger law. There is no meaningful difference between an effectively competitive market place and an effectively pluralistic one. Supports neither procedural option. A role for OFCOM is wrong: it would be a further regulatory hurdle and by putting a regulation in the business of deciding the accuracy of newspaper reporting would threaten press freedom. It also has no relevant experience. On specific questions, there is no need to control newspaper assets; criminal sanctions should be abolished; foreign or UK non-newspaper purchases should not be exempt; and on local newspapers, the considerations relevant to a policy for a local market are the same as those relevant at a national or regional level.

**Associated Newspapers**

## RESTRICTED - POLICY

A special regime is not required. However, AN Accepts the Government's reluctance to remove the special regime entirely. Ex post facto control is now the appropriate way to govern newspaper acquisitions. Any regime should apply whoever the acquirer. Review should be by the CC: it's difficult to see what skills OFCOM would have. The political element should be reviewed: there should be no role for the Secretary of State. Supports a combination of the procedural models: an exceptional public interest gateway with the decision being by the CC (given its newspaper expertise). If the Secretary of State is to have a role, she should be required to put her concerns publicly to the CC, so it can assess and comment upon them. Local newspapers (those with limited circulation) should be removed from the regime as should newspaper assets; criminal sanctions should be removed.



### **Campaign for Press & Broadcasting Freedom (CPBF)**

#### National:

No national press mergers have been disallowed. Puzzled therefore as to what a lighter touch approach to newspaper mergers might involve. Agree that special newspaper regime should not be abandoned in favour of regulation by normal competition law.

#### Local & Regional:

Huge publishing groups with regional monopolies mean many newspapers are 'local in name only'. Consolidation was allowed to proceed largely without consideration under newspaper regime. Note costs and delays of present regime, and note anomaly whereby larger owners are able to acquire titles without consideration by CC. Nevertheless CPBF strongly against any changes in current regime of reference to CC for local/regional transfers. Supports process outlined in 6.4.14 and its application to national, regional and local titles. Extend regime to all acquisitions, regardless of whether they're by existing proprietors.

#### **Stirling Media Research Institute**

Increasing newspaper concentration a matter of course, given role as source of news and setting public debate agenda. Regulatory regime should be more effective curbing concentrations. Upper restrictions on newspaper ownership should be

RESTRICTED - POLICY

introduced as per TV, e.g. 20% share of total UK national daily market. Agree that it should be OFCOM to assess transfer, not politicians. OFCOM should look at accurate presentation, free expression etc, while competition authorities look at competition.

**ITC**

Favours reformed version of special regime process rather than special 'call in power' – want more transparency, predictability than this would give. SoS should retain final say on 'freedom of expression' grounds – democratically accountable. Welcomes proposed role for OFCOM on advising on this.

**Mediawatch**

Agree with 6.4.13 on role of OFCOM in assessing accurate presentation etc. Agree with 6.4.15 that answerable Ministers should exercise moderating influence, on advise of regulators, to safeguard public interest.

**Scottish Advisory Committee on Telecommunications**

Agree that provisions are needed above competition law. Want ultimate decision to rest with SoS, but don't want process 'politicised' too early. Therefore favour first option, with OFCOM assessing and making recommendations. SoS must be transparent as to reasoning. Local newspapers should be excluded (if satisfactorily defined). Regime should be applied to newspaper assets. Regime should apply to those who aren't already proprietors. Strong case for dropping criminal sanctions.

**ISBA (British Advertisers)**

All newspapers should be regulated by similar rules to TV and radio, not a specific regime. Current controls disproportionate. Challenge the assumption of the particular influence of newspapers.

**National Council of Women of Great Britain**

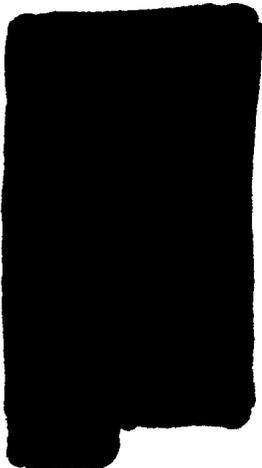
Concern at limitation of accurate presentation and free expression - Murdoch's influence especially small local newspapers should be protected from being swamped by very large papers.

RESTRICTED - POLICY

ci

---

DTI



Outside DTI

SoS Culture, Media and Sport



Andrew Ramsey DCMS

Diana Kahn DCMS



Ruth Mackenzie DCMS

Bill Bush DCMS