

BIS | Department for Business
Innovation & Skills

NOTTINGHAM EVENING POST

DECISION ON REQUEST TO
RELEASE CONDITIONS
IMPOSED ON OWNER,
NORTHCLIFFE

JANUARY 2010

DECISION ON REQUEST TO RELEASE CONDITIONS RELATING TO THE NOTTINGHAM EVENING POST

Introduction

1. In April 2009, the Daily Mail and General Trust (DMGT) submitted a formal request to be released from certain conditions that were imposed in relation to their 1994 acquisition of the newspapers and assets of T. Bailey Forman Ltd based in the East Midlands area, including the Nottingham Evening Post (NEP). The conditions require that DMGT and its regional newspapers subsidiary, Northcliffe, must have in place an independent Editorial Board for the NEP. This requirement was one of those imposed at the time of approving the transaction in order to address certain concerns which arose from the acquisition relating to a possible detrimental impact on the range of views and opinions on local matters being expressed. Most of the other conditions originally imposed in relation to the acquisition were revoked in 2002.
2. In August 2009, the Department published a consultation document inviting interested parties to submit comments in writing on whether the Editorial Board remained necessary to ensure the NEP editor's independence, and whether the requirement to maintain the Board could be released. The Department received five responses to the consultation. All expressed the view that the independent editorial board should be retained.

Background

3. Prior to introduction of the Enterprise Act 2002, the transfer of a newspaper to a new proprietor was governed by Sections 57-62 of the Fair Trading Act 1973 (FTA). This provided that such transfers were subject to a mandatory investigation by the then Monopolies and Mergers Commission (MMC) and required the written consent of the Secretary of State for Trade and Industry who, taking account of the MMC's report, had to decide whether the merger operated against the public interest and whether or not it should be cleared.
4. In June 1993, DMGT applied to the Secretary of State for consent for its local and regional newspapers arm, Northcliffe Newspapers Group Ltd, to acquire the newspapers and assets of T. Bailey Forman Ltd based in the East Midlands area, including the Nottingham Evening Post. The MMC's report on the proposed acquisition was published on 31 October 1994 (CM 2693). This can be viewed at the following link:
http://www.competition-commission.org.uk/rep_pub/reports/1994/358dailymail.htm#full.
5. The MMC was required to consider whether or not the transaction may be expected to operate against the public interest. They assessed this matter under four headings: (i) effect on choice of newspaper; (ii)

concentration of ownership; (iii) accurate presentation of news and free expression of opinion; and (iv) employment issues. The MMC noted that Northcliffe already had a strong presence in the East Midlands region and highlighted the risk of increased concentration of ownership of local newspapers having a detrimental impact on the range of views and opinions on local matters being expressed. They concluded that the acquisition might be expected to operate against the public interest and recommended that consent should be refused.

6. The then Industry Minister announced on 5 December 1994 that he was clearing the acquisition, subject to agreeing statutory undertakings that imposed conditions on DMGT that he was satisfied addressed the concerns that had been identified by the MMC, (DTI Press Notice 94/730).
7. In March 2002, following a review, most of the conditions imposed in relation to the acquisition were released (DTI Press Notice P/2002/203). The two conditions that now apply to Northcliffe's ownership of the NEP are: first, the need for an editorial board to oversee decisions relating to editorial policy at the NEP and ultimately for deciding on the appointment or dismissal of the newspaper's editor; and second, the need for the Articles of the Association of the company which owns the NEP to include specific provisions guaranteeing that the editor of the NEP has complete freedom and control over editorial matters without interference from the newspaper's owners.
8. No request has been made to release the conditions relating to the Articles of Association.
9. The rationale for an independent editorial board for the NEP with powers to authorise appointments and dismissals and arbitrate disputes, is to ensure that the owner, Northcliffe, is not able to exert undue pressure on the NEP's editor over editorial decisions at the newspaper. The desire to protect the NEP editor's independence reflected a concern that, with Northcliffe already owning a number of other local titles in the East Midlands area, there was a risk that the range of views expressed on local matters might be reduced were those titles to adopt similar editorial positions.

Request to be released from conditions

10. Sections 57-62 of the FTA make provision for the Secretary of State to give his consent to the transfer of ownership of a newspaper. This includes provision to make the grant of such consent subject to conditions. The Act does not go on to specify a process for assessing whether such conditions may subsequently be released though it has previously been concluded that such conditions are capable of being released. As mentioned in paragraph 7 above, most of the conditions imposed in respect of the transaction involving the NEP have already been

released. In assessing whether or not to agree to the current request, the key question to address appears to be whether or not, in practice, the relevant conditions continue to achieve a substantive purpose that is relevant and necessary in current circumstances.

11. In its request to BIS, DMGT identifies four points it believes amount to a change in circumstances that demonstrate why the relevant conditions are no longer necessary. DMGT also refers to a letter from the Chairman of the Editorial Board which confirms that the Board itself believes it serves little practical purpose and that the editorial independence at the NEP is not likely to be damaged should the Board be disbanded. The full substantive text of DMGT's letter of request was included in the consultation document. The main points DMGT made may be summarised as follows:

- (i) The editorial staff of the NEP operate independently without input from the Board and the Board itself believes this would continue to be the case should the Board be disbanded.
- (ii) There have been significant changes in the regional newspaper industry leading to greater diversification and competitive pressures.
- (iii) Editorial independence is crucial for the success of a regional newspaper from a commercial perspective – a point they say is acknowledged by the Competition Commission¹.
- (iv) It is Northcliffe's policy and practice to respect the editorial freedom of its editors.

Responses to the consultation

12. Five parties responded to the Department's call for views on DMGT's request. All of them expressed the view that the request should be refused. The primary concerns identified in the responses may be categorised as:

- Concerns about restructuring and consolidation, with editing functions at the NEP being combined with those for other Northcliffe titles in the East Midlands region;
- Concerns about job losses and the way redundancies are handled;

¹ The Competition Commission's April 2000 report on the proposed merger between News Communications & Media plc and Newsquest (Investments) Ltd, Johnston Press plc/Trinity Mirror plc includes the statement: "to attract and retain readers, editors must be free to make decisions on the content of their newspapers and the line they take on local issues. So, if a publisher were to dictate or standardise the editorial content of its titles, or to impose a uniform style or approach it would risk losing readers, and thus, return from advertising and, for paid-for titles, circulation".

- Concerns about the loss of an individual identity for the NEP and other Northcliffe owned local titles in favour of Northcliffe corporate branding;
- Concerns about the ultimate closure of the NEP and other Northcliffe owned local titles in the East Midlands to be replaced with a single regional newspaper covering a wider geographical area;
- Concerns about continued political neutrality and the loss of a perceived current scope to raise complaints with the Editorial Board about incidences of inappropriate reporting by the NEP.

Dispute Settlement Function of the Editorial Board

13. DMGT did not make any formal application in respect of the condition provided at 2(vii) of the 1994 letter of consent. This condition provides that the Editorial Board has the power to take final decisions in settling any disputes that may arise between the editor and its owners. However, it may be noted that were conditions 2(i) and 2(ii) of the consent letter to be revoked, this would clearly have a subsequent impact on condition 2(vii) since there might no longer be an Editorial Board that could perform such a dispute settlement role. None of the respondents to the consultation expressed views on this matter.

Conclusions

14. On balance, and taking account of the responses to the consultation, the Secretary of State has concluded there presently remains a valid reason to retain the commitment requiring Northcliffe to maintain an independent Editorial Board for the NEP. The interest of ensuring people have access to a sufficiently wide range of views and opinions on both local and national matters and preventing too much influence becoming concentrated in too few hands remain legitimate concerns for the Government. The original purpose behind requiring an independent Editorial Board for the NEP related to the desirability of ensuring the editor of that title remained free to take editorial decisions independent of the title's new owner, Northcliffe. Those concerns remain relevant. While there is no evidence to suggest that the NEP editor's editorial independence is currently constrained, the Secretary of State considers that scope remains for the Editorial Board to serve a practical purpose as originally intended.

Decision

15. The Secretary of State has decided to decline the request set out in DMGT's letter of 8 April 2009. Accordingly, the conditions contained in paragraphs 2(i), 2(ii), 2(iii) and 2(iv) of the 5 December 1994 consent letter from the then Industry Minister remain effective.

Ends