

APPENDIX 1

(referred to in paragraphs 1.5, 3.35, 5.12 and 5.25)

**Undertakings given to the Director General of Fair Trading by
Sheffield Newspapers Ltd**

COMPETITION ACT 1980

NOTICE UNDER SECTION 4(3)

TO: Sheffield Newspapers Ltd.
23-27 Tudor Street
London EC4Y 0HR

Following an investigation under section 3 of the Competition Act 1980 the report of the Director General of Fair Trading published under section 3(10) on 27 October 1981 stated that courses of conduct which Sheffield Newspapers Limited had pursued, constituted anti-competitive practices and that it was appropriate for him to make a reference to the Monopolies and Mergers Commission under Section 5. Sheffield Newspapers Limited have made representations to the Director General which include an offer of an undertaking to be bound in accordance with section 4(2) of the Act. Now, therefore, the Director General gives notice that he accepts the offer of undertakings which are as follows:

Sheffield Newspapers Limited hereby undertakes to the Director General of Fair Trading:

- (i) not to refuse to supply advertising services in respect of the sale of any domestic real property on the ground that the property has been, or is to be, advertised in any free or paid-for publication not published by Sheffield Newspapers Limited
- (ii) not to carry on the course of conduct described in paragraph 8.40(a) of the report of the Director General of Fair Trading of 27 October 1981 or any other course of conduct similar in form and effect, provided that nothing in this undertaking shall prevent Sheffield Newspapers Limited from making qualification for the terms of the New Deal dependent upon the placing of a specified volume of business with Sheffield Newspapers Limited always provided that this qualification is applied without discrimination to all advertisers.

For the purposes of undertaking (i) above, Sheffield Newspapers Limited shall be treated as refusing to supply advertising services in respect of the sale of any domestic real property if it refuses to supply such services except at prices, or on terms, or conditions, less favourable than those which it applies generally for the supply of such services. However, nothing herein

contained shall prevent Sheffield Newspapers Limited from offering discounts to advertisers if such discounts are granted on objective criteria and without discrimination or breach of undertaking (ii) above.

This undertaking is given for a period of ten years from the date hereof.

(Signed) JOHN WARNE
Deputy Director General

18 December 1981

APPENDIX 2

(referred to in paragraphs 2.26, 3.9, 4.8, 5.18 and 5.25)

Sheffield Newspapers Limited's Conditions of Supply— September 1980

1. All Orders accepted by Sheffield Newspapers Limited ('Sheffield Newspapers') are accepted on the basis that these conditions shall form part of and govern the contractual relationship between Sheffield Newspapers and its customer to the exclusion of any conditions which the customer may seek or purport to impose.

2. In these conditions the following terms shall have the following respective meanings:

- (a) 'relevant publications' shall mean '*The Star*' the '*Green 'Un*', '*The Star Weekly*', and any special publications made available by Sheffield Newspapers for sale or distribution free of charge or any of such publications;
 - (b) 'publishing day' shall mean any day on which the relevant publications are published and made available by Sheffield Newspapers for sale or distribution;
 - (c) 'Category "A" customer' shall mean a customer who operates a delivery service of the relevant publications to his customers and who participates in such canvassing and promotional activities as Sheffield Newspapers shall from time to time nominate.
3. (a) The prices and/or allowances in respect of the relevant publications shall be fixed in accordance with the appropriate 'Recommended Retail Price List' issued periodically by Sheffield Newspapers.
- (b) Payment for products supplied for sale shall be made by the end of the month following the date of Sheffield Newspapers invoice relating thereto and shall be so made in full notwithstanding any errors in the number of relevant publications supplied or the relevant invoice. Any substantiated errors shall be rectified in the subsequent invoices issued by Sheffield Newspapers.
 - (c) Any payments to be made by Sheffield Newspapers in respect of relevant publications shall be by way of credit note unless otherwise agreed which credit note shall be issued as soon as reasonably practicable after the amount thereof has been calculated by Sheffield Newspapers.
 - (d) Sheffield Newspapers reserves the right to charge interest on overdue accounts at the rate of 1.5% per month. It also reserves the right where genuine doubts arise as to the customer's financial

position or in the case of failure to pay for products as and when payment falls due to suspend deliveries of the relevant publications without liability until payment or satisfactory security for payment has been provided.

4. (a) Delivery of the relevant publications will be made by Sheffield Newspapers to the delivery address detailed in its records and the customer shall not sell or display or permit the sale or display of relevant publications at any other place.
 - (b) Sheffield Newspapers will not be bound to vary the amount of the relevant publications to be delivered on any publishing day unless the customer shall either inform Sheffield Newspapers of his requirements as to variation before noon on that day or (if applicable) comply with the provisions of Clause 7 hereof.
 - (c) Sheffield Newspapers will endeavour to comply with any delivery period quoted to the customer, but no such period shall be contractually binding on Sheffield Newspapers and the customer shall have no claim whatever against Sheffield Newspapers in the event of its failure or inability to comply with such period.
 - (d) Sheffield Newspapers shall be relieved of any liability to perform its obligations to the customer whenever and for so long as it is prevented from so doing by any cause beyond its control nor shall Sheffield Newspapers be liable for any direct, indirect or consequential loss whatsoever arising from any such cause.
 - (e) Both risk and property in products supplied shall pass to the customer on delivery to the delivery address.
5. (a) A category 'A' customer shall cause on all publishing days a delivery service of the relevant publications.
 - (b) A category 'A' customer shall fully participate in such canvassing and promotional activities (including reasonable display of publicity and merchandising material) in respect of the relevant publications as Sheffield Newspapers shall from time to time nominate.
 - (c) All customers shall cause the relevant publications to be made available for maximum sale and/or distribution on all publishing days.
 - (d) Customers shall not provide, distribute or deliver, or cause or permit to be provided, distributed or delivered to any person who purchases or receives or regularly purchases or receives *Morning Telegraph* and/or any of the relevant publications, any printed material which is either unsolicited or for which no charge is made to such person being material which Sheffield Newspapers has previously notified the customer as being material reasonably considered by it to be detrimental to its interests or business.

(e) Delivery by the customer of *The Star Weekly* shall be made on its publishing day to the addresses supplied by Sheffield Newspapers and on no other day or to any other addresses without the prior approval of Sheffield Newspapers.

(f) The records of the addresses referred to in condition 5(e) are and shall remain the property of Sheffield Newspapers. Additions or variations to or deletions from those records can only be effected by Sheffield Newspapers.

6. (a) The benefit of any contract between the customer and Sheffield Newspapers for the supply of relevant publications shall be personal to the customer and may not be assigned without the consent of Sheffield Newspapers (which consent shall not be unreasonably withheld or delayed subject to observance of the provision of condition 6(b) below).

(b) If a customer wishes to transfer the benefit of such a contract as is referred to in condition 6(a) above, he must first give 14 days' written notice to Sheffield Newspapers and prior to transfer discharge any invoices rendered prior to transfer in respect of products supplied by Sheffield Newspapers.

7. The customer shall give four weeks' written notice to Sheffield Newspapers of his intention either to discontinue his order for the supply of relevant publications or to reduce such order to a level which materially affects the availability of the relevant publications to the public.

8. Sheffield Newspapers reserves the right to determine forthwith by written notice or at any time thereafter any contract for the supply of relevant publications to the customer if he shall at any time:

(a) commit any breach of or shall fail to observe any of these conditions or

(b) become bankrupt or make any arrangements or composition with his creditors or (being a company) shall enter into liquidation whether compulsory or voluntary or shall have a receiver appointed or any of his assets or

(c) for any reason other than one which is beyond the reasonable control of the customer reduce his order for relevant publications to a level which materially affects the availability thereof to the public.

9. No apparent addition, variation or waiver of these conditions shall be binding on Sheffield Newspapers unless agreed in writing and signed by a director of Sheffield Newspapers.

10. Sheffield Newspapers reserves the right to amend, withdraw or replace any or all of the above conditions on giving not less than seven days' written notice thereof to the customer.

APPENDIX 3

(referred to in paragraph 3.10)

Extracts from a synopsis of the presentation given to estate agents by Sheffield Chronicle Ltd at the meeting on 21 August 1980

Introduction

The intention is to launch an alternative medium, to the *Morning Telegraph*, for estate agent's advertising, entitled the *Sheffield and District Property Guide*.

Although the day-to-day running of this new venture will be carried out by the management of the *Sheffield Chronicle*, the publication will be entirely separate and estate agents will have a say, through a committee, on its format and policy.

Any profit made on 32 pages and above (and a publication of less than 32 pages is not envisaged) will be shared between the publishers and the participating estate agents. Payments of profits will be made by the publishers three monthly in arrears together with profit and loss accounts.

Rate structure

The basic rate will be £1.45 per single column centimetre. 25 per cent discount will be given to all estate agents who pay their accounts within 10 days of receiving a monthly statement, ie statements will be sent out on the 3rd of each month clearly stating the amount outstanding without discount, and the amount outstanding with 25 per cent discount providing payment is made by the 14th of the month.

Providing this discount offer is taken the rate of advertising becomes £1.09p per single column centimetre and, together with profit sharing, costs will be two-thirds cheaper than at present.

Distribution

It is realised by the publishers that this is the area which will cause estate agents the most concern, so every effort has been made to alleviate this worry in the following ways.

- (1) 61,000 copies will be distributed free to the following areas of prime private housing: Dore, Totley, Bradway, Ecclesall, Millhouses, Hunters Bar, Netheredge, Hallam, Fullwood, Marmoor, Stannington, Crookes, Woodseats, Norton Lees, Gleacless Valley, Dronfield and Coal Aston.

Experience gained in distribution has brought to light two areas of faults. First large houses with long drives are not delivered to effectively—a survey will be carried out and the houses will be put on a mailing list. Secondly no deliverer will be allowed to distribute more than 500 copies and each deliverer will be paid well above the norm to ensure his job is worth keeping and doing 100 per cent effectively. Constant checks will be carried out.

- (2) The *Sheffield Property Guide* will be put on sale in newsagents throughout Sheffield at 8p per copy. (For obvious reasons this will not include Star Newsshops.) The newsagent will keep all monies, no charge will be made by the publishers. The publication will also be made available to newsagents in Barnsley, Rotherham, Worksop and the Derbyshire Villages.
- (3) Estate agents can, if they so wish, provide the publishers with a list of enquirers, each week, and they will be mailed a copy.
- (4) Although corporation houses probably do not provide a great number of home buyers it is felt that in the initial six months from launch they should all be delivered to at least twice. This is to show that the publication exists, where it is obtainable etc. The guide will always carry this information.
- (5) It is also felt that for the first six months City Centre shops and major companies should be delivered a supply each week for employees.

APPENDIX 4

(referred to in paragraphs 3.20 and 4.15)

Text of SNL's letter to Newsagents, dated 24 October 1980

'Approaches from the Federation have led us to believe that some newsagents may be upset about the issue of Conditions of Supply effective from 1st September, 1980.

Written conditions were introduced in 1976 and it is true that we gave an assurance that at that time they would only be issued to multiples, new owners and new businesses. In fact, half of our newsagents were already subject to written Conditions of Supply prior to 1st September 1980. But changes have taken place, circumstances have altered and, not least, the law too has moved on.

Conditions of Supply, laid out formally in writing can appear frightening and severe and yet, in simple terms, they exist only to cover the extremes of any situation. Our policy has always been to act as reasonably as possible and to try to accommodate our newsagents in all relevant matters. The issue of these Conditions to all our customers from 1st September, 1980 does not, in any way, change this policy.

For example, some newsagents do close on bank holidays (even some delivery agents, although they first ensure their deliveries will be made) with our prior agreement; some newsagents do not pay their accounts on time due to exceptional circumstances and are not surcharged or their supplies stopped; again special circumstances can mean that we are not given fourteen days notice of a change in ownership and yet the new owners are supplied in the usual way; most newsagents genuinely attempt to distribute *The Star Weekly* properly, and although a few are let down from time to time by their delivery boys they usually suffer no penalty whatsoever. In other words, whilst reserving legal rights, we endeavour to see the practicalities of any situation and consider our legal rights only as a last resort. Thus we have not had formally to enforce any of the terms contained in the previous written conditions.

However, there may be occasions when we would have to look to the Conditions; the newsagent who decides to close on a publishing day AND ignore his deliveries; the newsagent who continually does not pay on time for his supplies; the newsagent who arranges to sell his business and who has no intention of clearing his final Sheffield Newspapers Ltd account; the newsagent who dumps his copies of *The Star Weekly* over the nearest high wall. These instances are not unreal and each has happened more than once. These are examples of the extremes of situations and mean that not only the written Conditions of Supply are being broken, but also our practical working relationship.

Each party to an order and supply situation has rights. It is in our mutual interests to protect each other's and to make a real effort to avoid the extremes.

It has already been agreed, between our solicitors and those acting for the Federation, that without prejudice to the provisions of Clause 5(d) newsagents can handle and distribute free newspapers and similar unsolicited material, generally, (ie any distribution cannot be limited to the regular recipients of *Morning Telegraph*, *The Star* or *The Star Weekly*) provided that the home delivery of such things is not made at the same time as the delivery of *Morning Telegraph*, *The Star* or *The Star Weekly*.

Dealing with you as we do, almost every day of the year, we feel it important to send this letter to you in an attempt to indicate the actual application of Conditions of Supply as opposed to the somewhat odd interpretations being placed on them.

We would deeply regret losing any newsagent, who felt he now had to rescind the new Conditions of Supply, because simply there is no intention on our part to use them in any way which would reasonably justify his decision.

We trust this letter clarifies the introduction of Conditions of Supply from 1st September, 1980, but if you would like a chat about anything please let us know.

Yours sincerely,

Circulation Manager.'

APPENDIX 5

(referred to in paragraphs 3.28 and 4.15)

SNL's Important Notice sent to newsagents on 10 February 1981

IMPORTANT NOTICE

CONDITIONS OF SUPPLY (1.9.80) CLAUSE 5(d)

Customers are advised that Sheffield Newspapers reserves the right not to supply their publications to customers who

- (a) distribute free publications at the same time as they distribute any of Sheffield Newspapers publications.
- (b) distribute free publications substantially only to regular recipients of Sheffield Newspapers publications.

For these purposes free publications are those which are unsolicited or not paid for by the reader and those which have a cover charge, the whole or a substantial part of which is retained by our customer.

.....

Should you have any queries regarding this matter, the Company would be pleased to provide clarification.

APPENDIX 6

(referred to in paragraphs 4.29 and 7.51)

SNL's contributions to the development of the readership and of the distribution and delivery system

1. Production of a paper which will so appeal to the public as to attract home delivery.
2. Promotional and publicity expenditure over £250,000 pa to promote *The Star* and *Morning Telegraph* and especially home delivery.
3. A wide variety of promotional activities including press, radio and poster advertising, the distribution of leaflets, bingo, coupon redemption schemes, Christmas shopping prizes and other prize or gift schemes, and advertising material for newsagents.
4. Permanent staff and teams of canvassers (for 10 months per annum)
 - £100,000 (1981)
 - £69,000 (1982 budget)
5. Direct incentives to newsagents (eg prize draws) and newsboys (eg rewards for new customers).
6. Safety aids for newsboys supplied by SNL at cost.
7. Better terms (28.125 per cent) for delivery of *The Star* and acceptance of canvassed orders.
8. Display signs etc at newsagents' shops
 - over £10,000 in 1981.
9. Regular research into readers' habits, preferences etc
 - £28,825 (1981)
 - £39,750 (1982 budget)
10. Payment for delivery service through the rate offered to newsagents.

APPENDIX 7

(referred to in paragraphs 4.40, 5.35 and 7.51)

SNL's first proposed revision of clause 5(d)

A customer shall not distribute or deliver a free publication substantially only to regular readers of any editions of *The Star* or the *Morning Telegraph*.

Provided that:

- (1) For the purposes of this condition a free publication shall mean a publication which is unsolicited and either which is free or for which no charge is made to the person to whom it is delivered or distributed.
- (2) If a customer should request Sheffield Newspapers for permission to make such deliveries or distribution as aforesaid Sheffield Newspapers will grant such permission if such deliveries or distribution does not materially affect the commercial interests of Sheffield Newspapers.

APPENDIX 8

(referred to in paragraphs 4.40 and 7.51)

SNL's second proposed revision of clause 5(d)

A customer shall not without the previous written consent of Sheffield Newspapers distribute or deliver or permit the distribution or delivery of a free publication intentionally and substantially only to those persons who regularly order for either delivery or collection any edition of *The Star* and/or *Morning Telegraph* from the customer and who are selected as such.

Provided that:

- (1) For the purposes of this condition a free publication shall mean any material whatsoever which is unsolicited and either which is free or for which no charge is made to the person to whom it is delivered or distributed.
- (2) If a customer should request Sheffield Newspapers for permission to make such deliveries or distribution as aforesaid Sheffield Newspapers will grant such permission if such deliveries or distribution do not materially affect the commercial interests of Sheffield Newspapers.
- (3) Sheffield Newspapers will not take any action under Condition 8(a) hereof for any breach of Condition 5(d) without first consulting the customer.

APPENDIX 9

(referred to in paragraph 5.26)

Text of SNL's letter to NFRN dated 10 September 1980

Further to our meeting of yesterday, I detail below the agreed outcome.

1. Our respective lawyers will be asked to try to agree an explanatory addendum to be attached to the Conditions of Supply relating to Clause 5(d). Hopefully they could report by September 30th, 1980.
2. However, 1. is first subject to the receipt by this Company of a satisfactory letter from the National Federation of Retail Newsagents stating that such a variation would not be detrimental to the interests of Sheffield Newspapers Ltd now, or in the foreseeable future.
3. Subject to legal advice, the Company would consider amending the new Conditions of Supply for those members who had not received written conditions prior to September 1st 1980. Such possible amendment would be based on Clause 5(d) plus any agreed addendum plus other essential clauses from the new Conditions of Supply.
4. The Company will not send the proposed letter to all newsagents, nor proceed further with the Press Release subject to a satisfactory conclusion to the matter.
5. In the interim, the Federation will inform any enquiring member that the Conditions of Supply are legally binding and, in turn, the Company will not act on the Conditions of Supply, other than in exceptional circumstances.

It is further understood that we will meet again as soon as possible after the lawyers report on item 1.

APPENDIX 10

(referred to in paragraph 5.26)

Text of NFRN's letter to SNL dated 17 September 1980

Conditions of Supply: Sheffield Newspapers Ltd

I have been kept acquainted of the circumstances which have arisen as a result of Sheffield Newspapers Ltd, introducing Conditions of Supply effective from September 1st 1980, and have before me, as I write a copy of your letter dated September 10th 1980 addressed to our Yorkshire District Secretary, Mr J Milburn, which summarises the meeting which took place on September 9th 1980 between our representatives and yourself.

In respect of Item 2 therein I am writing to you, the Commercial Director of Sheffield Newspapers Ltd, to state that in no way is it the intention of our Officials engaged in the discussions relating to the Conditions of Supply nor any other official representative of this Federation, to be party to formulating an explanatory addendum to Clause 5(d) which will be detrimental to the interests of Sheffield Newspapers Ltd, now or in the foreseeable future.

Our concern is solely to protect the interests and livelihood of our members anywhere in the Country. When occasions arise which may diminish their freedom to conduct their individual businesses in a manner which they see fit for their maximum advantage or they are subject to restriction or any act which is detrimental to their interests then we always hold to the belief that such problems are best resolved by discussion.

As to the wording of the addendum to Clause 5(d) in the Conditions of Supply of Sheffield Newspapers Ltd, whilst our respective lawyers will be asked to agree a form of words, clearly these will have to be acceptable both to the Federation and Sheffield Newspapers Ltd, so that it should be possible to dispense any fear on your part that the addendum may be detrimental to the interests of your newspapers at the next meeting of the two sides.