

5 The views of the principal parties and Lincolnshire Standard Group

Events leading up to EMAP's application for consent to the transfer

5.1. Courier told us that in November 1986 some shareholders in the company were sent a document outlining the terms of an intended offer to acquire Courier. The document had been prepared by Hill Samuel Group PLC on behalf of a company newly formed for the purpose of making the offer, Marshquest Ltd. Marshquest was seeking to acquire the whole of the issued share capital of Courier. The Board of Courier first learnt of the document from a shareholder and Courier told us that it had not yet received direct from Hill Samuel a copy of the document.

5.2. Courier understood that the bid had been made because of dissatisfaction on the part of a number of shareholders about the lack of marketability of their shares and the artificially low value placed on them because of the restrictions on their transfer contained in the company's Articles of Association. The shareholder leading the bid was Mr Robert Jarman, whose wife's family had held shares in Courier for many years.

5.3. The Board of Courier had two principal reservations about the intended offer. The first was that the Board of the company following the takeover by Marshquest was intended to have on it only one person with experience of the newspaper industry. The second was that the price likely to be offered was in the Courier Board's view very low given current profit levels and the value of Courier's holdings of cash and marketable securities.

5.4. Having learnt of the approach by Marshquest, the Board of Courier decided in mid-November 1986 that the interests of all shareholders would be best served by a sale of the company. It decided to seek through Kleinwort Benson Ltd alternative offers reflecting more what it saw as the true market value of the company. It therefore set out to obtain for shareholders the best possible offer consistent with the preservation of the editorial freedom and quality of its newspapers, the ability of the buyer to service Courier's customers, and the commitment of the buyer to maintain the continuity of both the business in its totality and the employment of its employees.

5.5. A short list of the three best offers meeting these criteria was drawn up. After examining each in detail the Board felt that the bid submitted by EMAP not only met the requirements but was also the most satisfactory in other aspects. EMAP's was a similar business to Courier's, with similar corporate and management philosophies, and EMAP had stated its intention to operate Courier as a continuing entity and as a separate unit under its present management structure. The Board of Courier therefore decided to accept EMAP's offer themselves and to recommend it to other shareholders.

5.6. EMAP told us that it had long considered Courier to be one of the best regional newspaper companies. In addition, the circulation areas of the two groups were contiguous: combining them would confer a number of advantages, particularly in their ability to attract national advertising. For these reasons when the Board of Courier decided to seek bids for the group, EMAP made an offer.

Accurate presentation of the news and free expression of opinion

5.7. EMAP told us that it believed its purchase of Courier would not affect the accurate presentation of news or free expression of opinion of either EMAP or Courier newspapers. It highlighted a number of factors on which it based that belief:

- (a) As a regional publisher it did not express extensive opinions on matters such as national political issues. There would be expression of opinion on local issues but EMAP had maintained a long tradition of giving freedom in editorial matters to its editors. Any change in this would be likely to lead to a decline of the motivation and performance of its editors and journalists.
- (b) EMAP believed that local newspapers which did not give balanced views soon came to alienate substantial portions of their potential readerships, with consequent loss of circulation and, in turn, advertising revenue.
- (c) EMAP said that it did not in any case think it would be possible for a large regional newspaper group successfully to impose a particular editorial view on a large number of newspapers. EMAP felt that the checks and balances provided by journalists, the Press Council, and the readership would make such an objective difficult for all but a determined and wealthy proprietor. As a public company with broadly based shareholders EMAP had to maintain profitability and could not risk the well-being of its newspapers through a single-minded crusade.
- (d) No single shareholder in EMAP controlled more than 5 per cent of equity voting rights: the company was therefore free of undue influence by any individual.

5.8. Courier told us that its policy had always been one of allowing editorial freedom. As noted in paragraph 5.4, the maintenance of this freedom was one of the criteria Courier had applied when assessing the bids. EMAP's policy was similar in this respect to Courier's, not only for its established newspapers but also for those it acquired. In addition EMAP had assured Courier that this policy would be applied should its bid succeed. Courier told us that it therefore did not think the proposed acquisition would adversely affect either the accurate presentation of news or the free expression of opinion.

Concentration of ownership of newspapers

5.9. EMAP told us that on a national basis in terms of turnover or circulation neither EMAP nor Courier was currently one of the largest owners of local newspapers. EMAP said that on a national basis the proposed acquisition would result in no increase in concentration for morning newspapers; in an increase in concentration of 0.3 percentage points (from 1.8 per cent to 2.1 per cent) in daily evening newspapers; in an increase of 1.6 percentage points (from 3.4 per cent to 5.0 per cent) in paid-for weeklies; and in an increase of 0.8 percentage points (from 1.9 per cent to 2.7 per cent) in free newspapers.

5.10. EMAP said that the effect of the purchase would be to reduce the number of independent newspaper companies by one. It thought that even if its bid were to fail, any likely alternative would have the same effect. EMAP contended that some concentration of ownership in regional newspapers was not by definition against the public interest. It noted that six or more regional newspaper companies were larger in revenue terms than EMAP and Courier combined. It also said that the regional newspaper industry was more dynamic with more titles and more individual publishers than ten years previously.

5.11. We asked EMAP to examine its circulation in the South Midlands area in which most of the publications of the two groups concentrated. EMAP told us it was currently the largest producer of weekly paid-for newspapers in the 'central area' as shown on the map at Appendix 2 with 24.5 per cent of circulation. It was the second largest producer of free newspapers with 10.4 per cent of circulation and the fifth largest producer of evening daily newspapers with no more than 10 per cent of circulation. After the proposed merger its share of the weekly paid-for newspapers would be increased to 31 per cent. It would be the largest publisher of free newspapers with 13 per cent and would have acquired an 11 per cent share of morning daily newspapers (see Chapter 2 for more detailed information on

circulation). EMAP told us that in the central area as EMAP defined it, after the acquisition, EMAP would be publishing (in terms of circulation) 13.2 per cent of free newspapers and 22.3 per cent of paid-for newspapers. EMAP currently produced 10.4 per cent of free newspapers and 18.8 per cent of paid-for newspapers in the area. EMAP told us it was not aware that its present market share had been held to represent an unreasonable dominance of the local market. It did not believe that the proposed merger materially altered the scale of its share of the market.

5.12. Courier, too, argued that concentration of local newspaper ownership should not be regarded automatically as being against the public interest but should be judged on a case by case basis. In Courier's view, although the proposed merger would reduce the number of local newspaper owners by one and the new group would be significantly larger than EMAP at present, it would still be small in relation to many other owners of local newspapers. EMAP's share of weekly paid-for newspapers at 5 per cent would be no more than 450,000 out of nine million. The group would be the seventh largest owner of weekly paid-for newspapers by number of titles and the second largest by circulation (though it would only have 60 per cent of the circulation of the largest owner). The group's 21 titles and 801,000 circulation of free sheets would make it only the tenth largest owner of free sheets by number of titles (excluding companies that published free sheets only) and 14th largest by circulation.

5.13. Courier said that the circulation areas of itself and EMAP were complementary with only a very limited overlap in Lutterworth. It felt that not only was the overlap minimal but that there was little likelihood of any adverse consequences resulting from it as it occurred in an area in which Associated Newspapers had two titles. Courier took the view that, save in Lutterworth, the proposed acquisition would not result in any reduction in the number of separate owners or titles in the areas involved.

5.14. Courier did not believe that it was relevant to the inquiry to examine concentration in the central area as defined by EMAP. The only direct overlap between the two groups was in Lutterworth. EMAP and Courier were to retain their separate managements and their existing market penetrations and circulation areas. Therefore, Courier suggested, issues of concentration did not arise.

Competition

5.15. EMAP said that as the circulation areas of the two companies did not overlap, except in Lutterworth, the question of a reduction in competition did not arise except in that town. EMAP suggested that even in Lutterworth there would be no decrease in competition for three reasons:

- (a) the combined group would be a minority publisher in Lutterworth in competition with the strong presence of Associated Newspapers;
- (b) it was EMAP's firm intention to continue separately to operate the two newspapers whose circulation areas overlapped in Lutterworth: a degree of competition between newspapers within the group was seen to be healthy; and
- (c) the degree of overlap was small: advertisers in one of the newspapers involved would be unlikely to consider advertising instead in the other as the bulk of their circulation did not overlap.

5.16. Courier said that there was no reason why the proposed acquisition should have any effect on competition between the companies' respective newspapers. It said that the larger area covered by the combined group might make it more attractive to potential advertisers: Courier did not, however, think that this would increase significantly the competitive pressures to which local competitors were already exposed. Courier also drew attention to the intense competition in Warwickshire, its principal circulation area. More generally, weekly paid-for newspapers were also in competition with daily newspapers particularly from Coventry but also from Oxford and Birmingham. Finally it noted that the competition facing local newspapers included television, radio and free sheets; both for the attention of local people and for advertising revenue.

Future prospects of the newspapers involved in the proposed merger

5.17. EMAP said that the merger would have no effect on its present titles, with the possible exception of the Scarborough Evening News which it hoped would benefit from Courier's skills. EMAP thought that operating within a combined group would be beneficial to the prospects of Courier's titles in the contiguous area of operation in the Midlands. EMAP had given Courier an undertaking to continue with the operation in South Wales.

5.18. Courier expected that its titles would maintain and in some cases improve their circulation in the future. It saw no reason why the proposed acquisition should in any way harm the existing prospects of the group.

Efficiency

5.19. EMAP told us it believed that Courier was already an efficiently run company. It was confident the merger would not disrupt this and felt that it could in fact lead to some improvements for the group as a whole. In particular more efficient production scheduling might be possible together with economies of scale on items such as newsprint, lithoplates and ink.

5.20. Courier also drew attention to production scheduling and economies of scale and suggested that the combined group might be able to increase the efficiency of its marketing.

Employment and prospects for employment

5.21. EMAP told us that it had given an undertaking that there would be no redundancies arising purely as a result of the merger. It felt that the main effect of the merger would be to widen the breadth of opportunities available to staff. EMAP's newspaper subsidiary companies recognised and negotiated with the printing and journalists' unions and would continue to do so in the future.

5.22. Courier said it had no reason to believe that the proposed acquisition would adversely affect its employees. It thought that the merger would offer staff greater variety and opportunity for advancement, and training facilities would be better than Courier could currently offer. The company also noted that its top management was close to retiring age, which should provide an incentive to middle management right across the merged group.

Other matters

5.23. EMAP drew attention to two trends which increased competitive pressure on the regional newspaper publisher:

- (a) The first was the impact of free newspapers on publishers of traditional paid-for newspapers. These were becoming increasingly important and provided publishers such as EMAP or Courier with a spur to provide their readers and advertisers with greater quality, flexibility and value.
- (b) The second was the steady increase of television's advertising revenue market share at the same time as new technology allowed regional editions of national newspapers and a partially deregulated commercial radio industry was in prospect. EMAP believed that the acquisition of Courier would help it compete more effectively in this changing environment.

Shareholding in Lincolnshire Standard Group (LSG)

5.24. LSG is a company publishing ten paid-for and three free newspapers, and two free monthly magazines. It operates in Lincolnshire, South Humberside and, to a limited extent, East Nottinghamshire.

5.25. LSG told us that in 1984 EMAP had launched a hostile bid for 29.99 per cent of the shareholding in LSG. EMAP was not successful, ending up with 0.83 per cent of the shares. One of LSG's defensive tactics had been, together with its stockbroker and merchant bank, to seek out other companies prepared to buy up any LSG shares which came on to the market at a price higher than that being offered by EMAP. Two of these companies were Scarborough and District Newspapers Ltd and Courier. Since the defeat of the hostile bid, LSG's Board had pursued a policy of encouraging shares in the company to be spread among shareholders who had the independence of LSG at heart.

5.26. Since that bid, LSG said, EMAP had acquired Scarborough and District Newspapers Ltd, which took its holding in LSG to 2.66 per cent, and was now proposing to acquire Courier. This would give EMAP control of about 12.28 per cent of LSG equity, all except 0.83 per cent of which would have been acquired indirectly through acquisitions of other companies.

5.27. LSG told us that it thought this holding by EMAP could at least indirectly threaten the long-term independence of LSG. LSG said that, given EMAP's existing newspaper interests in Lincolnshire, should EMAP be permitted to gain this degree of control it would be conducive to further concentration of the provincial press in the East of England, and Lincolnshire in particular. LSG told us that in the long term this would be inimical to the diversity of published news and opinion in the area, and consequently to its accuracy and freedom of expression.

5.28. LSG told us that a shareholding by EMAP of 12.28 per cent gave rise to a number of specific concerns:

- (a) the holding could deter any third party who might wish to invest in LSG with a view to ultimately gaining control of the company (a holding of 10 per cent or more could not compulsorily be purchased);
- (b) EMAP might use the shareholding as a basis on which to launch a further hostile bid;
- (c) by virtue of the size of its shareholding, EMAP would be able to convene extraordinary general meetings and might seek a seat on LSG's Board; this would give EMAP considerable insights into management of LSG on the basis of which a further hostile bid might at some point be launched; and
- (d) because EMAP's shareholding and influence might discourage other potential investors in LSG, LSG's ability to raise capital by issuing shares might be circumscribed.

5.29. A submission of law was made on LSG's behalf as to the propriety of the Commission considering the question of the shareholding. LSG suggested that the Commission might as a condition of approval of the proposed transfer require that EMAP reduce its shareholding to no more than 4.9 per cent. LSG felt this to be an appropriate figure as above this level any subsequent acquisitions by EMAP would need to be disclosed.

5.30. Courier told us that as it understood that the directors of LSG directly or indirectly controlled more than 50 per cent of the equity in the company it did not think a holding of the size EMAP would control could have any material influence on LSG. In addition it questioned whether the size of the EMAP holding was relevant to the present inquiry and pointed out that under the newspaper merger provisions of the Fair Trading Act 1973 the acquisition of less than 25 per cent of the equity of a newspaper company does not require the consent of the Secretary of State. Courier told us that it could see no reason why EMAP should be required to divest itself of any LSG shares.

5.31. EMAP said that it would not seek to use the combined EMAP/Courier holding to gain any influence over LSG and that in any case it believed that more than 50 per cent of LSG shares were controlled by LSG directors. It told us that, while LSG had featured in its expansion plans in 1984, it now had no intention of making a further contested bid for LSG: it had tried to do so in 1984 and ended up with only 0.83 per cent of the equity.

5.32. EMAP told us that if at any point it became clear that its shareholding was blocking efforts by any third party to take LSG over then it would not stand in the way of those efforts. In these circumstances it would not remain as an unwanted shareholder of LSG. EMAP told us that it considered its holding in LSG could not in any way be considered to operate against the public interest.