

# 6 Conclusions

6.1. We are required by our terms of reference and section 59(3) of the Fair Trading Act 1973 (the Act) to report on whether the acquisition by Mr David Sullivan of a controlling interest, as defined in section 57(4) of the Act, in The Bristol Evening Post PLC (BEP) may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

## **Circumstances of the application**

6.2. The circumstances of Mr Sullivan's application for consent to the acquisition of a controlling interest are unusual, and are set out in paragraphs 2.2 to 2.5. At the time of the application Mr Sullivan held approximately 7.5 per cent of the shares in BEP. He indicated in his application that he intended to increase his stake as the opportunity arose and that a situation might arise where this became a controlling interest under section 57(4) of the Act and the relevant acquisition required the approval of the Secretary of State for Trade and Industry. He considered it was in no one's interest for him to spend considerable sums acquiring a stake without knowing whether consent would be forthcoming. He has, therefore, applied for consent before proceeding further. The application thus rests on intention. There is no firm commitment by Mr Sullivan to proceed further nor any certainty that he will be successful in acquiring a 25 per cent interest if consent is given, although he has indicated that it is his present intention to proceed to a possible bid situation.

## **The scope of our inquiry**

6.3. Against this background we have considered carefully the proper scope of our inquiry. Mr Sullivan quoted to us a letter from the Department of Trade and Industry when the reference was made in which it was pointed out that if following the Commission's report the Secretary of State were to give his consent to Mr Sullivan's proposed acquisition, no consent would be required under the newspaper merger provisions of the Act to any further acquisition of shares. This was, however, without prejudice to whether the ordinary merger provisions in sections 63 to 77 of the Act would be applicable to such an acquisition. Mr Sullivan argued that he had applied for consent only to acquire in excess of 25 per cent of the shares but not for consent to move to a full bid situation by acquiring a shareholding of more than 29.9 per cent and that a 25 per cent shareholding would not give him control. Any move to acquire more than 29.9 per cent of the shares would be notified to the Secretary of State who would make his decision at that time on referral under the general merger provisions of the Act. It would therefore, in Mr Sullivan's view, be totally invalid for the Commission to apply any arguments about the merits of his seeking full control in the current reference.

6.4. We believe that for the purpose of section 59(3) of the Act the transfer in question which we have to consider is the proposed acquisition of a 'controlling interest' as defined in section 57(4) of the Act, ie of 25 per cent of the shares, by Mr Sullivan but that, as indeed the MMC have been previously advised, the relevant matters we may take into account in considering the public interest consequences of the proposed transfer include not only the extent of the influence or control that such a shareholding may confer on Mr Sullivan but also the likelihood that such a shareholding may

lead to Mr Sullivan acquiring effective management control of the company. The possibility that a further reference might be made at some later stage and there could be no certainty that such a reference would be either possible or considered appropriate by the Secretary of State does not in our view affect the proper scope of our present inquiry.

6.5. In considering whether the acquisition of a 'controlling interest' of 25 per cent of BEP shares would in itself confer significant influence on Mr Sullivan or would provide a basis for moving to effective management control, the present ownership of the shares and likely response of shareholders is important. There is one major shareholder, Associated Newspapers Holdings Ltd (AN), which holds 23.8 per cent of the shares while the associated Harmsworth & Mail pension funds hold a further 6.1 per cent of the shares. AN's long-standing involvement with BEP is described in paragraphs 3.2 and 3.4. The company has indicated that it has no present plans to dispose of any of its holding, to Mr Sullivan or anyone else. There are several other institutional shareholdings of more than 3 per cent. Just over half the shares are held in smaller parcels by institutions, individuals and employees. Almost half the shareholders, holding about one-quarter of the total shares, appear to be individuals or institutions with Bristol connections. We have received some letters of concern about Mr Sullivan's plans from small shareholders, particularly employees, and it may be that a proportion would refuse to sell to Mr Sullivan. However, other shareholders, including institutional shareholders, would be bound to consider opportunities to dispose of their shares. We note that the shares can change hands rapidly. For example, in 1986 a single shareholding of 25.4 per cent was built up rapidly and subsequently disposed of on the market. Against this background, we think it likely that Mr Sullivan could over time acquire a 25 per cent share in BEP. What influence this gave him would depend to a large extent on the attitude of other shareholders and in particular of AN.

6.6. Mr Sullivan has indicated to us (see paragraphs 4.14 to 4.16) that, given the pattern of shareholdings, he does not consider that a 25 per cent holding would give him management control. He would be happy to hold 25 per cent as a business investment to try to influence policy by securing support from other shareholders for proposals they recognised as commercially sound. Mr Sullivan has also told us, however, that he has the newspaper 'bug'. His involvement with both the Sport newspapers and the Daily Star shows that he takes an active role in newspapers in which he has an interest. We think it unlikely that Mr Sullivan would be prepared to invest £12 million (the approximate cost of a 25 per cent holding at present quoted prices of BEP shares) without the intention of securing effective management control over the company's affairs, either by securing the support of other shareholders or, if this failed, by moving to increase his shareholding to the extent necessary. He has indicated his present intention of moving to a possible bid situation and with a 25 per cent holding he would be strongly placed to make a bid which might well be successful. We have therefore considered the public interest issues that would arise if Mr Sullivan were to secure effective management control of BEP as well as those arising from his holding 25 per cent or more of the shares.

## **The issues**

6.7. It appears to us that the main public interest issue for consideration is the effect of significant influence or management control by Mr Sullivan on the content and character of the BEP newspapers, bearing in mind in particular the need for accurate presentation of news and free expression of opinion. Other issues which arise relate to the effects of such control on:

- (a) circulation, advertising and advertising policy;
- (b) competition both between BEP newspapers and other newspapers in the areas, and between BEP newspapers and the Sport newspapers;

- (c) employment; and
- (d) the efficiency and profitability of BEP.

## **The character and content of BEP newspapers**

6.8. The possible effect of Mr Sullivan acquiring influence or control over the character and content of the BEP newspapers, particularly of the Evening Post and the Western Daily Press (WDP), has been the main concern of the large number of individuals and organisations who have written to us (see paragraph 5.2) about Mr Sullivan's proposed acquisition, in the light of the character and content of his existing newspapers and of his other business interests. We have been impressed in particular by the strength of opinion in the Bristol area, expressed in letters or petitions to us from the Bishop of Bristol and a number of other clergymen, from MPs, the present and a former Lord Mayor, local organisations and ordinary citizens. Mr Sullivan has assured us that he has no intention of changing the character and content of BEP newspapers. He saw no parallel with the Sport newspapers where, in establishing a new newspaper at limited expense, he had needed to identify an unfilled niche at the edge of the market. As the only local publication in their area BEP's titles occupied the middle ground and he suggested that it would not be in his commercial interest to alter their character. His present ideas for change in the newspapers were limited to suggestions on such matters as distribution and promotional activities of different kinds and he would make no attempt to infringe editorial freedom (paragraph 4.62).

6.9. We accept that these are Mr Sullivan's present intentions. However, it is clear that he is an active proprietor of Sport Newspapers Ltd with clear views on the content and promotion of his own publications. These views are communicated to his editors regularly, usually several times a week. A weekly article appears under his name in the Sunday Sport. During his involvement with the Daily Star he was, we were told, in daily communication with the editor. Mr Sullivan himself has indicated to us that, with a 25 per cent holding, he would not envisage any contact with editors of BEP papers but that if he secured management control of BEP, he would expect to have influence and to send suggestions to the editors, perhaps on a daily basis, which the editors would be free to accept or reject as they saw fit. It seems to us that the editors would be bound to give considerable weight to such suggestions from such a shareholder. Moreover, although it may not be Mr Sullivan's present expectation that a 25 per cent holding would put him in a position to influence editorial policy, it seems likely that his ideas for change would over time include ones bearing on the content of the papers. Such suggestions, made by such a substantial shareholder, who might well have acquired a seat on the Board, would also carry weight with editors, particularly if they thought him likely ultimately to achieve effective management control.

6.10. In considering how his influence might be used we are bound to consider carefully the evidence from the period when Mr Sullivan was newspaper promotion consultant to the Daily Star. We have received conflicting evidence from Mr Sullivan and from representatives of United Newspapers on his role during that period, on his relationship with the late Mr Michael Gabbert, who had transferred from the Sunday Sport to become editor of the Daily Star and continued to receive a salary from Mr Sullivan, and on the extent to which Mr Sullivan was the instigator of changes in editorial policy at the Daily Star during that period. Mr Sullivan told us that he was unable to exercise any influence over Mr Gabbert and was in no way responsible for the change in editorial policy at the Daily Star during that period. The representatives of the Daily Star believed that Mr Sullivan exercised considerable influence over Mr Gabbert. In any event, while the extent to which Mr Sullivan was responsible for the changes in policy at the Daily Star during that period may be a matter of dispute, it is clear to us that he attempted to play an actively interventionist role in relation to both content and promotion of the newspaper and we find it difficult to believe that he was unable to exercise any influence.

6.11. Taking these matters into account we consider that Mr Sullivan could be expected to try to influence editorial policy of the BEP titles and would succeed in so doing. We considered how such influence might be used.

6.12. Mr Sullivan's expertise has all been in national newspapers at the lower end of the market. The news content of his present newspapers is limited and heavily sex-oriented and the Sunday Sport carries little news in the accepted sense. Mr Sullivan himself has told us that he used the word 'newspaper' in relation to the Sunday Sport 'extremely lightly'. Not only are many of the stories in the Sunday Sport 'fantasy', making no attempt at accurate presentation of news, but we also noted that Mr Sullivan's own signed column is frequently written and published without him being consulted on content or presentation. There is little scope for the expression of a range of opinion on any issues. Mr Sullivan has no experience in the responsibilities of organising a news service for a regional newspaper, the development and maintenance of channels for the free expression of opinion or of working with editors and staff of this kind of newspaper. Mr Sullivan stressed to us several times that he was a businessman who saw everything from a commercial perspective and therefore would do nothing to harm BEP newspapers. However, his approach has not prevented him being directly associated in the past with changes to one newspaper, the Daily Star, which led to accelerated decline in readership and a withdrawal of advertisers. Taking into account both the present high standards of the BEP newspapers and the nature of Mr Sullivan's past involvement with newspapers, we consider that Mr Sullivan's influence, either in the shorter or longer term, could be expected to harm both the accurate presentation of news and the free expression of opinion. Any adverse effects would be particularly serious for local readers given the absence of other local or regional newspapers over the greater part of the circulation area of BEP's newspapers, where they are thus the only printed source of local news. Some 56 per cent of WDP readers, we are told, take no other newspapers at all.

6.13. Moreover the standing of the BEP newspapers would be affected by Mr Sullivan's acquisition of a 25 per cent interest even if there were no major immediate changes in content. The volume and nature of the protest we have received during the inquiry suggests considerable local hostility to Mr Sullivan's interest in BEP newspapers. Mr Sullivan considers that this hostility has been stirred up as a result of a campaign by BEP and will quickly disappear if he is given consent. We do not agree. We consider that Mr Sullivan's business activities have created a strong public perception of him which, whether justified or not, is a reality which we must recognise. We believe that he will find it difficult to secure acceptance by the Bristol community and that if he is perceived to have influence on the papers it is bound to affect their standing, particularly if, as has been suggested to us by the National Union of Journalists and by the representatives of BEP, Mr Sullivan's direct involvement with BEP titles led to immediate staff resignations. (They also pointed to the experience on the Daily Star where senior journalists had resigned during the period of Mr Sullivan's association with the newspaper.) Moreover both the Evening Post and WDP have the reputation as independent investigators and reporters of local news and issues. Were someone of Mr Sullivan's business background and interests seen to have a significant influence in their affairs their reputation could well be seen as compromised, particularly where the reporting of events with sexual aspects was involved. Were he to have acquired effective management control these effects could be expected to be more pronounced.

### **Circulation and advertising of BEP newspapers**

6.14. Mr Sullivan has indicated (see paragraphs 4.49 to 4.54) that he has some ideas for increasing the sales of BEP newspapers, for example through cross-marketing within the BEP Group and better promotional competitions, but would do nothing to take them down market which he said would harm their circulation. On the other hand some of the individuals writing to us and to BEP have indicated that they would cease to take the BEP major titles if Mr Sullivan were connected with them. We have indicated above that we consider the character and content of BEP newspapers would be adversely affected by Mr Sullivan's acquisition of a 25 per cent interest or of effective management control. The changes could be expected to lead to a loss of readership. More generally, it was put to us by BEP that Mr Sullivan's association would in itself damage the newspapers' credibility sufficiently to lose readers, and that it might lead certain groups who object to his present titles, particularly their treatment of women and sex, to boycott the newspapers, as a way of making their objective felt. The WDP is perhaps particularly vulnerable to loss of sales, to the national newspapers with which it is in competition. We concluded that acquisition of a 25 per cent interest

would by itself have some damaging effect on circulation, that the effects if Mr Sullivan were seen to have effective management control could be even more serious and that such lost circulation would be hard to regain.

6.15. BEP suggested that there was no scope for advertising of the kind carried in Sport newspapers in their family newspapers and that association with Mr Sullivan would have the same adverse effects on advertising as they foresaw on circulation. Mr Sullivan stated that he had no intention of changing significantly the advertising policy of BEP newspapers. He too saw no scope for advertising sexually-oriented goods or services in BEP newspapers because the loss in circulation would be far greater than any short-term gain in revenue. He thought, however, that there was more scope for carrying generally acceptable 0898 telephone lines, for example horoscopes, city lines, racing lines. We think it unlikely that there would be major changes in advertising policy if Mr Sullivan gained control. Some advertisers might be deterred by his association with the newspaper but the majority of small local advertisers would have no suitable alternative outlets and other non-local advertisers would be likely to wait and see what changes occurred in the character and content of the newspapers.

## **Competition**

6.16. Readership patterns shown in paragraphs 2.26 and 3.19 suggest little overlap between the readership of BEP newspapers and Sport newspapers and the acquisition of a controlling interest in the former by Mr Sullivan is likely to have little effect on the marginal competition between them. Although BEP newspapers tend to be the only local newspapers within most of the area they serve, there is competition at the margin. Were acquisition of a 25 per cent interest in itself, or of full management control by Mr Sullivan, to lead to a decline in the standing and readership of the BEP titles, that decline would have to be substantial before any local or regional daily newspaper contemplated direct competition with either the Evening Post or the WDP in their main areas of circulation given Mr Sullivan's substantial resources. The most likely development would be encroachment by local free newspapers. The main immediate beneficiaries of any weakening of the two main newspapers would probably be national titles with which they are already in competition.

## **Employment**

6.17. Mr Sullivan has told us that he would hope to provide significant new employment in BEP by boosting circulation of the existing newspapers, through better presentation and publicity, and by publishing a new Bristol Sunday newspaper, if that proved feasible. However, these plans have not been developed sufficiently for us to reach any view on their feasibility; some of them carry risks. On the other hand the potential impact on the circulation and hence the advertising revenue of the BEP titles of Mr Sullivan's association with the company could have adverse employment consequences, as could his suggestion that BEP's non-newspaper activities be reappraised. He might also suggest accelerating the rundown of production staff on the newspapers. We are not able to identify clear effects on employment in either direction.

## **Efficiency and profitability**

6.18. Mr Sullivan has indicated that as a businessman with a successful track record he would expect to be able to put forward a number of suggestions for improving BEP's performance and efficiency when he had more detailed information on their activities. On the basis of his present information he suggested (see paragraph 4.49) that the non-newspaper activities of the Group, particularly in property and the Kiosk chain, should be reviewed and possibly disposed of, freeing assets to develop the newspaper business, that there might be scope for starting a regional Sunday newspaper, for undertaking contract printing, for performance incentives for staff and for generally

improved marketing and presentation of the newspapers. Most of these suggestions are ideas that have previously been considered by BEP and are kept under review by the Board, and indeed a performance bonus scheme is already in operation. Some, for example the idea of starting a regional Sunday newspaper, require detailed appraisal in the light of the resources and risks involved. Mr Sullivan made clear in discussion that his suggestions were no more than ideas that had occurred to him as a businessman and that might or might not prove viable in the light of more detailed examination of BEP's operations. Given his professed intention of becoming a substantial shareholder in BEP and possibly moving to a bid situation, we were surprised that his proposals were no further developed. We noted also that he has no experience in the regional newspaper field and would bring no special expertise in the task of increasing their circulation. From the evidence put to us therefore we are not able to conclude that the acquisition of a 25 per cent interest in BEP by Mr Sullivan would enhance its efficiency or profitability and thus offset the adverse effects we have identified.

## **Conclusion**

6.19. We have indicated in paragraph 6.6 that we consider that the acquisition of a 25 per cent shareholding in BEP by Mr Sullivan is likely either to lead to significant influence over BEP or to provide a basis for the acquisition of a larger holding, and hence to effective management control by him. In the subsequent paragraphs we have identified the various adverse effects on the public interest which we think would be likely to arise, and in particular the effects on the standing, character and content of the BEP newspapers. We find therefore that the acquisition by Mr Sullivan of a controlling interest in BEP may be expected to operate against the public interest.

6.20. We note that Mr Sullivan stated in evidence to us that he would be happy, if allowed to make an investment of 25 per cent in BEP, to use the holding, as could any other significant shareholder, to influence policy by making proposals to the Board, or to other shareholders, which would require support on their merits if they were to be accepted. We have indicated our doubts whether Mr Sullivan would be content with such a role. If, in accordance with our finding in the preceding paragraph, Mr Sullivan were not allowed to gain a controlling interest it would still be possible for him to attempt to build up a significantly larger holding than he at present holds and to act in the way he has suggested if he so wishes. His record as such a shareholder would doubtless be a factor to be taken into account if at any stage in the future he wished to make a further application for consent to the transfer of newspaper assets, either in BEP or in another company.

6.21. We are required, under section 61(2) of the Act, to consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent the transfer from operating against the public interest. Mr Sullivan indicated that he would be prepared to give undertakings on editorial freedom and to consider the appointment of a public figure to monitor their observance. We do not believe that undertakings of this kind on editorial freedom would prove effective in these circumstances, when a shareholder with an active interest in the content of the newspapers had secured a 25 per cent interest or effective management control.

6.22. Mr Sullivan also suggested that, if we had concerns about whether he would carry out his stated intentions, it would be appropriate to attach to any consent a recommendation that if Mr Sullivan subsequently moved to increase his shareholding beyond 29.9 per cent, the Secretary of State should make a further reference under the general merger provisions of the Act. In view of our finding that the acquisition of a 25 per cent holding may be expected to operate against the public interest, it is not necessary for us to consider this suggestion.

6.23. We are therefore unable to recommend any conditions which might be attached to consent to the transfer to prevent it from operating against the public interest. We accordingly recommend that the Secretary of State should not give his consent to the transfer of a controlling interest in BEP to Mr Sullivan.

H H HUNT (Chairman)

A BURNET

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S N BURBRIDGE (Secretary)

4 May 1990