

Response of the Newspaper Society to the DCMS/DTI Consultation on Media Ownership Rules

The Newspaper Society represents the regional newspaper industry. This submission is supported by all member companies and reflects the industry's consensus on the media ownership consultation paper in respect both of newspaper transfers and cross-media ownership.

Reform of the media ownership regime is a matter of crucial concern to the industry. Its future development will be shaped by the Government's decisions upon the regulatory framework and their impact upon the regional and local media. It is vital that changes to newspaper ownership and cross-media ownership are made concurrently.

The industry remains united and firm in its view that general competition law ought to replace out-dated media ownership controls. In particular, the industry wants the abolition of the unique controls that restrict the merger of newspaper companies and transfer of newspaper titles. It supports further liberalisation of the cross-media ownership restrictions. It opposes adoption of regulatory models, such as those suggested in the consultation paper, which would impose stricter controls at regional level, and might even require divestment of current interests.

The Newspaper Society's response to the Communications White Paper included the independent report by NERA (National Economic Research Associates) which provided a strong case for wholesale reform of the newspaper provisions of the Fair Trading Act 1973, by substitution of general competition law, and for the progressive reform of the Broadcasting Act 1996. It pointed out that the competitive market place provided adequate safeguards for the maintenance of plurality and diversity of opinion. It stated that the newspaper provisions were predicated on plurality, but the Competition Commission in effect had accepted that local newspapers need to be edited in a way that reflects local issues and concerns if they are to survive and prosper, so owners would not impose damaging changes that harmed their businesses. The DTI/DCMS media ownership consultation paper endorses this view. The newspaper industry does not therefore accept the consultation paper's assertion that the case for media-specific regulation remains strong on democratic grounds.

We are pleased that the Government has acknowledged the validity of our criticisms of the current newspaper transfer regime. We welcome, in particular, its recognition that the burden of complying with the regime is particularly disproportionate in relation to the acquisition of local newspapers.

We are glad that the Government has acknowledged:

- That in no case had the Competition Commission found that the acquisition of local newspapers would be against the public interest on freedom of expression grounds.

- That for the reasons outlined above, Ministers had been prepared to accept very high concentrations of local newspaper titles.
- That it was not clear that the regime had played any significant role in preserving freedom of expression by, for instance, preventing the tabling of contentious merger bids.
- That non-newspaper proprietors are put at a clear commercial advantage because they can complete a transaction before regulatory clearance is obtained, under the general merger regime and are not caught by the special regime.
- That criminal sanctions which uniquely underpin the regime have never been used and are unnecessary.
- The significant costs that the regime has placed upon the industry, yet out of 172 cases considered in the past two decades only three have been refused and five approvals subjected to conditions.

The newspaper industry does not therefore accept the consultation paper's assertion that the case for media-specific regulation remains strong on democratic grounds.

The Newspaper Society submits that the Government should abolish the special merger regime so that regulation of newspaper mergers should be subject to the general merger regime and general competition law.

The Government's current consultative proposals are predicated on its desire to retain the ability to intervene. We have discussed options with the DCMS and DTI. As the Government Departments appreciate, it is difficult to comment upon the merits of any particular part of any option in isolation, given some of the variables postulated. The Society has therefore identified elements of crucial importance to any proposal for a special newspaper transfer regime.

All proposals must be analysed to ensure that the reformed regime is truly deregulatory in every way. In general, the following tests must apply:

- **Any transfer of any title between UK newspaper publishers that is not subject to the special FTA regime at present, should not be caught by a new regime.**
- **Any new regime must not introduce further layers of regulation, (e.g. additional competition or freedom of expression hurdles; the intervention of new regulatory authorities; introduce more imprecise tests; give rise to new uncertainties; introduce new burdensome procedures; or increase legal and administrative costs).**

In respect of the options proposed any future regime should include the following elements:

- **Regional and local newspapers should be excluded from any special regime.**
- **Prior consent requirements should be abolished.**
Parties should be able to pursue and complete their transaction, without threat of criminal or civil sanctions, subject only to the same range of possibilities of divestment open to companies subject to general merger law alone.
- **Criminal sanctions and void transactions should be abolished.**
- **OFCOM should not have any role in determining newspaper ownership.**
Under the current regime, the Competition Commission has established specialist expertise, experience and jurisprudence in respect of the newspaper industry, including plurality issues. There seems little deregulatory benefit in the introduction of any additional regulatory hurdle, analysis or assessment, exercised by a new regulatory body which was primarily intended to regulate broadcasting and telecommunication industries and would have no antecedent experience of any media that is not predicated upon licencing controls.
- **No public interest test.**
Regional news is underpinned by the regional newspaper industry's editorial investment, including the training and employment of editors and journalists. As the Consultation Paper accepts, to maintain or increase circulation, local and regional newspapers must reflect the views and concerns of readers in their areas and local editors are best placed to judge the interests of those readers. This is a matter not only of principle, but also of sound commercial practice. The business and publication would fail if any newspaper publisher, whether a long established company or local business entrepreneur, sought to confine the news agenda, prohibit expression of local opinion and otherwise deny editorial freedom.
- **Transfers of newspaper assets should be excluded from any special regime.**

Cross-media ownership

The Newspaper Society supports the further liberalisation of cross-media ownership controls to produce true deregulation for regional and local media.

The Society opposes both of the consultation paper's suggested models, in respect of 'share of voice' and rationalisation of sector-specific limits. When attempts are made to apply these at regional and local levels, they threaten to produce a regime that is more restrictive than current cross-media controls.

Regional newspaper companies should continue to be able to own outright media outlets in their titles' core circulation areas, with no new restrictions. We note the Radio Authority's helpful proposal for abolition of the cross-media public interest test. However we believe any application of its formula to ownership of local radio stations ought to take into account the BBC as well as commercial radio stations and

no new restrictions should be introduced upon regional press ownership of any regional or local station or regional multiplex.

The Government must consider the position of the BBC, in view of its strong, varied and ever developing commercial and editorial activities, licence funded and otherwise, with which regional newspaper companies compete.

Our members are also concerned at the proposal that local authorities should be allowed to own media companies. We would draw your attention to the reservations recently expressed by the DTI on local authorities' website and other activities. There is unease at the prospect of extension of government controlled broadcasting, at local and regional level, perhaps funded by public money and carrying advertising, and the potential for commercial and other conflicts of interest.

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