

**DCMS Consultation on Media Ownership Rules**  
**Views of Northcliffe Newspaper Group Limited**

**1. Introduction**

- 1.1 As you are probably aware, Northcliffe is the regional and local newspaper arm of the DMGT Plc group (“DMGT”), and is a sister company of Associated Newspapers Limited (“Associated”).
- 1.2 This submission sets out Northcliffe’s views on that part of the Consultation Paper dealing with ownership of the press (section 6.4). Northcliffe has seen the replies submitted by both DMGT and Associated. The views expressed in this reply therefore compliment those expressed by those other companies in the DMGT group. Northcliffe has also seen the submission of the Newspaper Society which has taken account of the views expressed by Northcliffe as a leading player in the regional newspaper industry.
- 1.3 For those reasons, Northcliffe’s submission will necessarily be shorter than the ones mentioned above and will highlight those principal points on which Northcliffe has strong views and, therefore, would wish to express an independent opinion.

**2. Defects in the Current Newspaper Merger Regime**

- 2.1 During the last 10 years Northcliffe has become very familiar with the operation of the current system for regulating newspaper mergers in the Fair Trading Act 1973 (“FTA”). It has been involved, as the acquiring party, in two newspaper merger references to the MMC/CC (in 1994, when DMGT sought consent to acquire the Nottingham Evening Post; and again, in 1996 when it sought consent to acquire Aberdeen Journals Limited). In addition to this, it has made numerous applications to the Secretary of State for consent to acquire local titles without reference to the CC.
- 2.2 Northcliffe has also expressed its views, as a third party, in the context of almost every transaction referred to the MMC/CC in recent years. In this context, Northcliffe has emphasised that the ability of the regional press to continue to play a unique role in the social fabric of the UK was dependent, in essence, on its commercial strength. It has stressed that this commercial strength could only, in the face of increasing pressures on advertising revenues from an increasing range of competing media, come from the ability to consolidate regionally. Northcliffe has also emphasised that regional consolidation did not represent a threat to diversity of opinion since the commercial fundamentals of newspaper publication dictated that a title had to represent and reflect the interests of its readership in order to attract advertisers, and thus to survive.
- 2.3 It is noteworthy that, despite the considerable consolidation that has taken place in the industry during the last 15 years, there has been no criticism levelled at the regional and local newspaper industry in relation to “freedom of expression” issues. The fact is, the regional/local press remains as, if not more, diverse than it was 15 years ago.

- 2.4 All of the above comments provide an equally valid backdrop to the current debate. The fact is that the current newspaper merger regime in the FTA now represents a heavy-handed approach to the regulation of consolidation in the industry. It does so for two principal reasons: first, newspaper proprietors are generally placed at a significant regulatory disadvantage compared to non-newspaper owners. Second, the current regime catches far too much: it is critical that a means is found of lightening the regulatory burden (and costs associated with it) in relation to transactions of no public interest sensitivity.

Each of these issues is dealt with separately in the following sections.

### **3. There needs to be a level regulatory playing field**

- 3.1 If the acquisition of newspapers raises issues of public interest sensitivity it is, as a matter of logic, critical that those issues can be raised whether or not the acquirer is a newspaper proprietor (and irrespective of the copies of paid for newspapers sold by newspaper proprietors). If there is to be continued sensitivity attaching to newspaper ownership, any “freedom of expression” public interest test must apply to all categories of potential newspaper owners alike.
- 3.2 The second aspect critical to the constitution of a level playing field is the removal of the requirement for prior written consent from the Secretary of State. The fact that so few of the cases to be considered under the current regime have proved problematic (in the sense that they have either been refused consent, or that consent has been conditional), is the clearest possible indication that a system of ex post facto control is the most appropriate future regulatory framework for newspaper merger control.
- 3.3 In Northcliffe’s view, all of the above defects in the current system point to the need to apply to the newspaper sector a system which is in line with that applied to all other sectors of the economy; namely, an asset/share of supply test, coupled with only ex post facto control. In this way, parties will be free to enter into unconditional arrangements, subject only to the risk of “claw back” in the event that the jurisdictional thresholds are met.
- 3.4 If considered appropriate, the general assets and share of supply thresholds could be supplemented by a further “freedom of expression” test (of the type currently in S59 (3) FTA) enabling a transaction to be “clawed back” if it raised additional concerns under this head. Northcliffe would emphasise, however, that this would not be its preference. It believes that the industry is self-regulating from a “freedom of expression” perspective in that regional and local newspapers can only retain readership if they continue to provide a high quality, relevant news service.

### **4. De Minimis Gateway Exceptions**

- 4.1 In Northcliffe’s view, far too many transactions are caught by the current regime which warrant no scrutiny at all, either from a competition or from a freedom of expression perspective. The current de minimis gateway in the FTA (section 58(4)FTA) has not been effective in remedying this detriment to the current system. First of all, the 50,000 threshold is far too low and is demonstrably arbitrary, not least in that all free newspapers, having nil paid for circulation, are deemed to fall under

the threshold. Second, its application is unpredictable in that its operation as a derogation from the usual mandatory reference rules remains dependent upon the exercise of the Secretary of State's discretion.

- 4.2 Northcliffe therefore agrees with the Government's proposal in the Consultation Paper that certain categories of local newspaper (i.e. those with limited circulation or distribution) should be removed from the remit of the legislation altogether. One way of achieving such a result in practice might be to consider applying the ordinary merger share of supply test threshold (set out in S64 FTA), as currently, in relation to a "substantial part of the United Kingdom", but to exempt from the share of supply assessment those transactions having an effect "only in a local market". The concept of "locality" will be difficult to pin down statutorily and, in Northcliffe's view, it is probably best to leave the courts to determine what is meant by "locality" or "local".
- 4.3 If such an approach were to be adopted, the claw back option would be exercisable only in the unlikely circumstances where "freedom of expression" issues arose as a result of a local transaction. If such an approach were to be coupled with an outright exemption from the system for those "newspapers" with only limited news content (again, precise definition in this respect could require further thought), this would achieve the principal aim of securing a "lighter touch" at the same time as ensuring the possibility of clawing back those transactions which were sensitive in either competition or freedom of expression terms.
- 4.4 Referred to above are the two MMC/CC investigations in which Northcliffe had been involved to date. One of these, the MMC's investigation in 1996 into Northcliffe's proposals to acquire Aberdeen Journals Limited, is a prime example of a transaction which should not be caught by any sensible newspaper merger regulation framework. First, Northcliffe published no title within hundreds of miles of Aberdeen Journals titles: there was therefore no impact upon competition either regionally or locally. The aggregation of market share in local and regional newspapers nationally to Northcliffe was 1.6% and the MMC found that DMGT's national titles in Scotland were aimed at "different markets" to Aberdeen Journals local titles in the area.
- 4.5 In terms of competition analysis, none of these findings is either complex or controversial. The fact is, this transaction raised no issues of a competition or diversity nature which should have necessitated a three month period of investigation and report (together with all of the costs, both public and private, which that entailed).
- 4.6 Under the sort of regime proposed above, Northcliffe would have been entirely free to bear the risk of a reference which, in the circumstances of that case, could only have been made on "freedom of expression" grounds. The proposals would not have met either the assets test or the share of supply test in a sufficiently substantial part of the UK (and, if they did, the local exception proposed by Northcliffe would override the "substantiality" test). The only basis for a "claw back" would, therefore, have been if that transaction raised "freedom of expression" issues.

## **5. Other aspects of the proposals**

5.1 With regard to the other principal issues on which the Consultation Paper seeks comment, Northcliffe would endorse the views of Associated. First, it is not appropriate to bring in another regulator in the form of OFCOM: the DTI and the CC have years of experience in assessing and addressing “freedom of expression” issues and there is no need to add an extra layer of regulation in these circumstances. Second, with regard to the role of the Secretary of State, Northcliffe takes the view that this should not be retained. This is not because Northcliffe views the Secretary of State’s role in this respect as having been problematic in practice, but rather because of the inherent conflict of interest that such a role poses.

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