

TRINITY MIRROR'S RESPONSE TO THE CONSULTATION ON MEDIA OWNERSHIP RULES

Trinity Mirror continues to believe that the specialist provisions of the Fair Trading Act 1973 under sections 57-62 should be repealed leaving newspaper mergers and acquisitions subject to general merger control regimes. We also believe that Schedule 2 to the Broadcasting Act 1996 does not go far enough in liberalising cross-media ownership restrictions, that the 20% rule is outdated and that any percentage restriction on cross-media ownership - be it by cumulative sector-specific limits or "share of voice" - would be entirely subjective in detail. Any law that allows convergence in broadcasting and radio must be synchronised with liberalisation of the special regimes that govern newspaper mergers and mergers between newspapers and other mediums.

We should be offered the same opportunity to expand within our own market and into new markets both on a national and regional level as other industries. We continue to believe the competition authorities are the best placed arbiters of the validity of any media merger and that all newspaper mergers should be subject to general merger control regimes in the same way as other industries.

In essence, we continue to argue for a level playing field for newspaper publishers so we too can compete successfully in developing communications markets as new and old mediums converge.

As we are given an understanding that Government continues to be wedded to a specialist newspaper regime Trinity Mirror would like to contribute to the debate. Our attempt to offer some suggestions following the publication of the media ownership consultation document should be viewed as a reluctant fall-back position. We urge the Government to adopt measures that result in significant de-regulation in the two specific areas of newspaper mergers and cross-media mergers.

NEWSPAPER MERGERS

The potential role of OFCOM

We understand and appreciate the desire to remove as much political involvement from the newspaper merger process as possible to make it consistent with general merger control reform. However, we don't believe that creating a new tier of regulation through OFCOM will achieve this goal or the Government's other goal of being more de-regulatory. Adding a new tier of regulation, while retaining the decision-making powers of both the Secretary of State and the competition authorities, might be viewed as creating a more not less restrictive regime.

Trinity Mirror cannot argue more strongly against this suggested new tier. OFCOM will not be well placed to consider areas of "freedom of expression" and "editorial independence" and as such must not be given decision-making powers over such concerns. The freedom of the press is the acknowledged cornerstone of democracy. Newspapers are a physical representation of citizens' right to free speech. Our self-regulatory regime is not there to offer the newspaper industry special favours but to protect a democratic right. The idea that OFCOM would have finite jurisdiction over matters involving "freedom of expression" and "editorial independence" is deeply worrying.

If OFCOM were to have an authoritative role over agreeing a merger on these grounds, Trinity Mirror would worry that a degree of opaque executive influence could be wielded over that decision. Secondly, on a practical level, the experts within OFCOM will mostly be chosen or appointed from the worlds of broadcasting and telecommunications and will be familiar with a mode of regulation alien to newspapers. Thirdly, this panel would work within the OFCOM secretariat and would therefore operate within the broadcast-centric mindset of that environment. Fourthly, if OFCOM is to give expert advice to the Secretary of State on the matters suggested,

we presume a specialist newspaper panel would have to be assembled every time a newspaper merger were to be considered. This is impractical and shows a lack of continuity in a process that will only benefit from more not less certainty.

Trinity Mirror believes civil servants within the DTI and DCMS, who already consider a wide-range of issues pertaining to newspapers, have the expertise and sophistication to consider such matters. We believe their advice would be more educated and helpful to the Secretary of State in coming to a decision over whether or not to refer a newspaper merger. A panel staffed by senior civil servants used to turning a hand to varied issues is preferable to any body suggested in the consultation document. And a civil service panel would retain transparent independent status while reaching its recommendations.

Newspaper Merger Option 1, Post-Acquisition Clearance

Trinity Mirror believes that newspaper-owning companies should not be forced to operate at an economic disadvantage to non newspaper-owning companies in respect of the purchase or sale of a newspaper title. The establishment of a level-playing field must be a priority for Government. We suggest that any new regime should normally operate post-acquisition and include an exceptional public interest gateway that could trigger the discretionary involvement of the Secretary of State.

In place of the normal merger control qualifying thresholds a public interest gateway should operate over the sale of a newspaper with a paid-for circulation of over 100,000 (**see note**) if the purchase of that title were by a newspaper proprietor whose titles have a combined circulation of over 500,000.

The Secretary of State could use discretionary powers to call in a merger that qualified using this gateway and lean on the advice of a specialist panel of civil servants to decide whether to refer

the merger to the competition authorities. If the sale is referred and the competition authorities suggest refusal, the addition of conditions or demand divestiture then the Secretary of State would be obliged to consider that recommendation but would retain final decision-making powers over that merger.

The exercise of ministerial discretion over newspaper mergers is in contrast to general merger policy. However, our fall-back position accepts a degree of transparent Government discretion for scrutiny of plurality and freedom of expression concerns through the Secretary of State who is answerable to Parliament.

Trinity Mirror believes that the only real justification for a special public interest gateway in a "post-acquisition" system is a threat to plurality and that such a threat could only arise in the case of a transfer to an existing proprietor. We have therefore suggested the retention of the "newspaper proprietor" concept at the current threshold.

Trinity Mirror believes that if we must have the addition of a specialist newspaper regime to supplement the general merger control regime it should normally operate in a post-merger environment to level the playing field. We would of course support the retention of a system of voluntary notification. We accept that the Secretary of State or the DGFT will retain her/his powers to refer a contemplated qualifying merger for review by the Competition Commission prior to completion under section 75 of the Fair Trading Act 1973 or the equivalent provision under the proposed new merger regime. And those newspapers that are not caught by the exceptional public interest gateway would be open to general competition consideration if they were bought or sold.

The above approach would throw economic risk squarely into the court of the purchaser and it would give newspaper-owning companies the ability to operate on equal bidding terms with non-

newspaper owning companies. It would also remove the criminal sanctions that currently underpin the newspaper merger regime.

Newspaper Merger Option 2, Pre-Acquisition Clearance

The Secretary of State would have to give prior consent to the sale of any newspaper with a paid-for circulation of over 100,000 irrespective of the portfolio and/or interests of the purchaser. The Secretary of State would have the discretion to refer such mergers to the Competition Commission even if the proposed merger did not qualify for referral under the general merger control regime. The Secretary of State could give her/his consent to the proposed merger (sale/purchase) if satisfied that the merger raised no plurality, freedom of expression or competition concerns without such a reference.

Trinity Mirror believes it is essential to remove the commercial advantage handed to non-newspaper owners by the present regime.

[Note: We have suggested a threshold of 100,000 as the qualifying paid-for circulation figure for a newspaper as the trigger point at which specialist provisions might operate. We acknowledge the Government's desire to take a large number of newspapers out of the regime and note their suggestion that there may be some benefit in re-defining a local or regional newspaper to remove them from the regime. We believe that such a task is impossible particularly keeping in mind concerns over plurality and freedom of expression. We have therefore suggested a paid-for circulation of 100,000 as a sensible threshold. Alternatively, the Secretary of State could publish a list of qualifying newspaper titles. We imagine that such a list would include all national newspapers and all those newspapers – including the Daily Record and the Belfast Telegraph - that the Government feels have significant influence over a UK region. This list could be amended by the Secretary of State at her/his discretion by statutory instrument.]

CROSS MEDIA MERGERS

In our first and second submissions on this subject, we argued that: “Trinity Mirror believes the “20%” rule limiting, inter-alia, ownership of terrestrial television licences by national newspapers; radio stations by national newspapers and local radio stations by local newspapers should be revoked. Cross-media mergers should simply be subject to normal competition and merger rules with no media specific legislation.” We continue to believe this to be the case.

The suggestion of establishing a plurality test to make current thresholds for cross-media ownership permeable would create more rather than less business uncertainty. Even if a post-acquisition regime were to be established there would be no indication of acceptable degrees of permeability. Would 25% be too high in one merger while 30% acceptable in another? And giving OFCOM decision-making powers over the operation of this plurality test introduces a tier of regulation that is both unwelcome and unnecessary.

We continue to argue that a “share of voice” system is unworkable. And the introduction of a new sector-specific media ownership model as suggested in paragraph 6.5.11 would not help achieve either of the Government’s policy objectives of making UK home to the most dynamic and competitive communications market in the world or deliver overall deregulation between and within each sector. If such a model were to be seriously suggested we would oppose it wholeheartedly and argue vociferously against it being applied on a regional or local basis. We would argue that the UK newspaper market - regional and national newspapers - be considered as one market.

The current cross-media ownership regulations, flawed as they fundamentally are, would be preferable to this model particularly if it were applied to a regional or local market.

Trinity Mirror has continually argued that cross-media mergers should be considered on a case-by-case basis by the relevant competition authorities. The media ownership consultation document gives a nod towards levels of wide-scale convergence and consolidation in both TV and radio markets. This leaves newspaper owning companies severely disadvantaged. We urge the Government to consider its position if the policy objectives of making the UK home to the most dynamic and competitive communications market in the world are to be taken seriously.