

NEWS CORP UK & IRELAND LIMITED

Application pursuant to paragraph 62 of Schedule 18 to the Communications Act 2003 for acceptance of undertakings in place of conditions imposed under the Fair Trading Act 1973

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This application is made on behalf of News Corp UK & Ireland Limited (**News UK**) in relation to the conditions attached by the Secretary of State for Trade and Industry to his consent to the transfer of the of The Times and The Sunday Times newspapers to News UK (then called News International Limited) (the **Transfer**) on 27 January 1981 (the **Conditions**). Pursuant to paragraph 62 of Schedule 18 to the Communications Act 2003 (**CA 2003**), News UK seeks that the Secretary of State for Digital, Culture, Media and Sport (the **Secretary of State**) accepts proposed undertakings (the **Proposed Undertakings**) in place of the Conditions, in the form attached at Annex 1.¹
- 1.2 The Conditions include provisions relating to the continued publication of The Times and The Sunday Times as separate newspapers, to the number and power of the independent national directors (**INDs**) of Times Newspapers Holdings Limited (**TNHL**), and to editorial control over the journalists working for, and political comment and opinion published in, each of The Times and The Sunday Times.
- 1.3 The variation sought by News UK in the Proposed Undertakings relates solely to the sections of the Conditions which stipulate that ultimate control over the resources, including journalists, available to each title is kept separately with the editor of each newspaper. The Proposed Undertakings make only a modest variation to these provisions, so as to permit greater sharing of resources and services, including journalists, between The Times and The Sunday Times. News UK considers such sharing of resources to be a necessary step to mitigate the financial challenges that the two titles will face going forward, without making cuts that could impact upon their quality.
- 1.4 The CMA guidance on variation of competition undertakings (which News UK understands the Secretary of State will have regard to in considering this application) recognises that material changes in market conditions – including those brought about as a result of changes in technology – may constitute a change of circumstances that can lead to variation of undertakings or orders. There can be no doubt that the seismic market developments in the newspaper industry since the Commitments were entered constitute a change of circumstances for these purposes, nor that the Conditions constrain News UK's ability to respond to these changes:
- (a) The difficulties facing the UK newspaper industry today are well-known. The circulation and readership of print newspapers has declined sharply as news consumption has shifted online, eroding publishers' revenue from copy sales and print advertising. Digital advertising, meanwhile, is dominated by the internet giants, Facebook and Google, which together capture more than half of UK digital advertising revenues. The result is that, despite newspapers' efforts to grow their digital revenues, the increase has offset only a small proportion of lost print revenues.
- (b) In response to the decline in print revenues, News UK has not only sought to grow its online advertising revenues, but has also developed innovative digital subscription models for The Times and The Sunday Times. It has also undertaken a careful cost efficiency review that has achieved substantial savings in relation to material, distribution, marketing and corporate costs. Editorial costs have also been cut back as far as possible over recent years; to the

¹ For ease of reference and to illustrate the minimal variation sought, the Proposed Undertakings are provided as a mark-up of the text of the Conditions.

point where any further editorial cuts would begin to impact upon the quality of The Times and The Sunday Times.

- (c) The most obvious way to achieve further cost savings without affecting the quality of journalism at The Times and The Sunday Times is to remove unnecessary duplication in costs inherent in running entirely separate Monday to Saturday and Sunday newspapers; in particular, by sharing journalists between the two newspapers. Indeed, virtually all the other major UK national papers have substantially integrated their Monday to Saturday and Sunday editions in recent years – separate publication is an obsolete approach. At present, however, for News UK to move in this same direction would risk contravening the provisions of the Conditions that require that each title’s editor control the appointment, disposition and dismissal of journalists on his or her newspaper.

1.5 The variation to the Conditions requested by News UK in the Proposed Undertakings is strictly limited to that necessary to achieve the savings described above. In particular, News UK does *not* seek any relaxation of the elements of the Conditions designed to safeguard the editorial independence of the titles from their proprietor. The Conditions currently require that the editor of each title be appointed and removed only with the approval of a majority of the INDs, and guarantee that the editor, rather than the proprietor, gives instructions to journalists. These safeguards would remain unchanged. Moreover, the Proposed Undertakings provide explicitly that sharing of resources would take place only to the extent agreed by the editors.

1.6 The Proposed Undertakings would also not create any risk of an adverse effect on the public interests protected by the Conditions:

- (a) News UK will retain every commercial incentive to preserve The Times and The Sunday Times as high quality newspapers in which news is presented accurately and opinion expressed freely. The Proposed Undertakings would facilitate this. At the same time, the content of the two newspapers will continue to be determined independently of their proprietor under the authority of their respective editors, whose suitability and freedom of action will continue to be guaranteed by the INDs.
- (b) Nor (to the extent this is relevant to the Secretary of State’s consideration of this application) could the Proposed Undertakings have any potential adverse effect on media plurality, since each title will remain under separate editorship. Rather, the Proposed Undertakings would benefit media plurality by contributing to the sustainability of the titles going forward.

1.7 The remainder of this application is structured as follows:

- (i) **Section 2** summarises the Conditions and the legal background to them, and the relevant provisions of the CA 2003 that allow the Secretary of State to accept new undertakings in place of the Conditions;
- (ii) **Section 3** describes how News UK’s business is currently structured;
- (iii) **Section 4** provides an overview of the UK newspaper industry as it stands today;
- (iv) **Section 5** describes in more detail the change in circumstances in the newspaper industry since the Conditions were entered into, and how other publishers have sought to address them through greater sharing of resources between titles, and, in many cases, by moving to a full ‘seven-day’ operation;
- (v) **Section 6** explains how News UK has sought to meet these challenges to date, and how the Conditions hinder it from taking further steps necessary to secure the future of the titles;

- (vi) **Section 7** describes the modest changes to the provisions of the Conditions that are made by the Proposed Undertakings; and
- (vii) **Section 8** explains why the Proposed Undertakings would have no adverse effect on the public interests protected by the Conditions.

2. THE CONDITIONS AND THEIR LEGAL CONTEXT

Relevant legal provisions

- 2.1 The Secretary of State gave his consent to the Transfer under section 58(3)(a) of the Fair Trading Act 1973 (**FTA 1973**) without a reference to the Monopolies and Mergers Commission (**MMC**) in light of the financial circumstances of the two newspapers at that time.²
- 2.2 Under section 59(3) of the FTA, were such a reference to have been made, the substantive test that the MMC was required to consider was:
- "...whether the transfer in question 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."*³
- 2.3 Although section 58 of the FTA 1973 was repealed by section 373 of the Communications Act 2003 (**CA 2003**), conditions attached to a consent under section 58 continue in effect under paragraph 59 of schedule 18 to the CA 2003.
- 2.4 The transitional provisions for newspaper merger consents in schedule 18 to the CA 2003 give the Secretary of State an express power to accept undertakings in place of any or all of the conditions attached to a consent under section 58 FTA 1973. Paragraph 62 of Schedule 18 provides that:
- (1) *The Secretary of State may, instead of any or all of the conditions attached to a consent given by him (or treated as so given) under section 58 of the Fair Trading Act 1973 (c. 41)), accept undertakings under this paragraph to take, or refrain from taking, action specified or described in the undertakings.*
 - (2) *If, and so far as, the Secretary of State accepts an undertaking under this paragraph instead of a condition, that condition shall cease to have effect.*
- 2.5 Schedule 18 to the CA 2003 does not refer to the circumstances under which the Secretary of State may accept undertakings in place of conditions attached to a consent under section 58 FTA 1973. However, News UK understands that the Secretary of State would expect the process to follow the general approach used by the CMA is considering the variation of competition undertakings under the Enterprise Act 2002, which requires a consideration of whether there has been a change in circumstances such that the requested variation is warranted.⁴

² Section 58(3)(a) of the FTA states that "Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then (a) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section".

³ This provision has since been replaced by the Enterprise Act 2002 (**EA 2002**) which specifies the following as relevant public interest considerations: the need for accurate presentation of news (s.58(2A)(a)); the need for free expression of opinion (s.58(2A)(b)); and the need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom (s.58(2B)).

⁴ Competition and Market Authority, CMA 11: Remedies: Guidance on the CMA's approach to the variation and termination of merger monopoly and market undertakings and orders, January 2014 (revised August 2015).

The Conditions

- 2.6 Prior to the Secretary of State giving his consent to the Transfer on 27 January 1981, on 22 January 1981 it was publicly announced in a press statement that undertakings had been given by Rupert Murdoch to the Editorial Vetting Committee of TNHL. These undertakings were incorporated as the Conditions to the Secretary of State's consent to the Transfer.
- 2.7 The Conditions are set out in full at **Annex 2** of this application. For convenience, the most relevant operative parts of the Conditions are summarised below:
- (i) that the two titles continue to be published as separate newspapers;
 - (ii) that amendments be made to the Articles of Association of Times Newspaper Holdings Limited (TNHL) to include a requirement for there to be six independent national directors (INDs); and
 - (iii) that amendments be made to the Articles of Association of Times Newspapers Limited (TNL) to require: (i) that the majority of the independent national directors of TNHL approve the appointment or dismissal of each the editors of the two titles; (ii) that the editors of each of the two titles retain control over political comment and opinion; (iii) that the editors of each of the two titles are the only persons to give instructions to journalists; (iv) that the editors of each of the two titles retain control over the appointment and dismissal of journalists (subject only to any annual budget for editorial space and expenditure determined by the directors of TNL); and (v) that disputes between the editors or either of them and the directors of TNL be determined by the INDs.
- 2.8 In addition, the Conditions stipulate that News UK should not dispose of or transfer its interest in the titles without the consent of the majority of INDs and that the Articles of Association of TNHL and TNL not be altered in any way which affect or which may affect, the operation of the Conditions except with the written consent of the Secretary of State.

3. NEWS UK'S CURRENT OPERATING STRUCTURE

- 3.1 News UK is the principal UK subsidiary of News Corporation, a global diversified media and information services group which operates primarily in the United States, Australia and the UK.
- 3.2 News UK in turn wholly-owns five groups of companies that form the five main "divisions" of News UK. These comprise TNHL, News Group Newspapers Limited (NGN), Newsprinters Limited (News UK's print and logistics arm), the radio station operator Wireless Group and Unruly Holdings Limited (an advertising services technology company).⁵ News UK is also the holding company for other parts of the News Corporation group, including Harper Collins and News Australia.
- 3.3 TNHL is the direct holding company of the publishing company Times Newspapers Limited (TNL), which owns The Times Limited and The Sunday Times Limited. TNL owns and publishes the following titles:
- (i) **The Times.** The Times is published in print and digital format from Monday to Saturday and as at October 2018 had an average daily paid print circulation of approximately 421,000 and paid digital subscribers of approximately 231,000.

⁵ News Corp also operates in the UK through Dow Jones, which owns The Wall Street Journal (amongst other businesses). Other businesses owned by News UK include The Times Literary Supplement and Storyful, which licenses and distributes social media content.

- (ii) **The Sunday Times.** The Sunday Times is published each Sunday in print and digital format and as at October 2018 had an average paid print circulation of approximately 723,000 and paid digital subscribers of approximately 254,000.

3.4 NGN owns and publishes the following titles:

- (i) **The Sun.** The Sun is published Monday through Saturday and as at October 2018 had an average daily paid print circulation of approximately 1,405,000. As at October 2018 the Sun Online had approximately 42.0 million monthly unique browsers from the UK.⁶
- (ii) **The Sun on Sunday.** The Sun on Sunday is published each Sunday and as at October 2018 had an average paid print circulation of approximately 1,202,000.

3.5 The Articles of Association of TNHL and TNL reflect the Conditions.

3.6 While there are some shared services across non-editorial areas of News UK's business (such as marketing, finance and procurement, logistics, paper and ink), The Times and The Sunday Times otherwise currently operate as entirely separate print newspapers. In particular, to ensure compliance with the Conditions, from an editorial and journalistic perspective the two newspapers operate entirely separately, with the editors (John Witherow for The Times, and Martin Ivens for The Sunday Times) having exclusive authority to appoint, remove and give instructions to journalists working for their respective papers.

4. OVERVIEW OF THE UK NEWSPAPER INDUSTRY

4.1 Although the UK newspaper industry is facing significant challenges (as described in section 5 below), it continues to be highly plural. There are 14 daily and 11 Sunday national⁷ newspapers, published by a total of 10 publishing groups. In addition to News UK, these include:

- (i) Daily Mail and General Trust (**DMGT**): publishes the Daily Mail and Mail on Sunday, as well as the widely-distributed free newspaper Metro. As at October 2018, the Daily Mail and Mail on Sunday had an average print circulation of 1,228,002 and 1,038,743 respectively. The Metro's average print distribution was 1,452,609 in the same period (making it the largest UK print title). DMGT also operates one of the most widely used news websites, MailOnline, with approximately 52.0m monthly unique browsers from the UK in October 2018.
- (ii) Reach plc (**Reach**): formerly known as Trinity Mirror plc, publishes the Daily Mirror, Sunday Mirror, Sunday People, Daily Record and Sunday Mail, and a wide range of regional papers. As DCMS is aware, on 1 March 2018, Reach completed the acquisition of certain publishing assets of Northern & Shell Media Group Limited, including the Daily Express, Sunday Express, Daily Star and Daily Star Sunday newspapers. That transaction was the subject of a public interest intervention notice issued by the Secretary of State, but was cleared unconditionally on 20 June 2018. As at October 2018, the average print circulations of Reach's titles were: Daily Mirror 553,531; Sunday Mirror 451,736; Daily Star 346,545; Daily Star Sunday, 213,368; Sunday People 176,008; Daily Record 121,710; Sunday Mail 126,409; Daily Express 327,001; and Sunday Express 284,482.
- (iii) Telegraph Media Group: publishes the Daily Telegraph and Sunday Telegraph newspapers, with average print circulation as at October 2018 of 360,117 and 283,691 respectively.

⁶ The Sun Online, which includes digital content from the Sun and the Sun on Sunday, does not have paid digital subscribers since its content is available free of charge.

⁷ Following ABC's classification of 'national'.

- (iv) Guardian Media Group (GMG): owned and financially supported by the Scott Trust Limited, GMG publishes The Guardian and The Observer, with average print circulation as at October 2018 of 135,330 and 167,821 respectively.
- (v) Johnston Press: publishes the i newspaper, as well as a range of local and regional titles. The i's print circulation as at October 2018 was 239,443 (Johnston Press went through a pre-pack administration in November 2018, with creditors taking control).
- (vi) Nikkei: owner of the Financial Times, with print circulation of 181,205 and circulation of its digital edition of 6,510 as at October 2018.
- (vii) The Lebedev Foundation: publishes of the Evening Standard (in print and online), as well as the online only Independent. As at October 2018, the Evening Standard's print circulation stood at 862,916.
- (viii) DC Thompson & Co Ltd: publishes the Sunday Post (with print circulation of 110,683 as at October 2018), as well as regional titles.
- (ix) City A.M. Limited: publishes the free City A.M. newspaper, with average distribution of 85,872 as at October 2018, across London and the Home Counties.

4.2 In addition, as Ofcom noted in its advice on the Trinity Mirror / Northern & Shell merger, some regional or local titles (of which there are more than 600) carry significant amounts of national or international news; with the largest publishers Reach, Newsquest and Johnston Press.⁸

5. CHALLENGES FACING THE UK NEWSPAPER INDUSTRY AS A RESULT OF A CHANGE IN CIRCUMSTANCES SINCE THE CONDITIONS WERE ENTERED INTO

5.1 News UK understands that the Secretary of State will have regard to the CMA guidance on variation of competition undertakings in considering this application. The guidance recognises that material changes in market conditions may constitute a change of circumstances that can lead to variation of undertakings or orders. Indeed, the guidance explicitly refers to changes in market conditions as a result of advances in technology – specifically, increased internet usage by consumers and advertisers – as an example of when variation of undertakings may be appropriate.⁹

5.2 There can be no doubt that the seismic market changes in the newspaper industry constitute a change of circumstances for these purposes.

5.3 In general, newspapers rely on two sources of revenue: (i) circulation revenue, derived from sales of print newspapers and, in some cases, subscriptions allowing access to paid-for digital editions; and (ii) advertising revenues, from the sale of advertising space in both print and digital editions. These two sources of revenue are interlinked: the attractiveness of a newspaper to advertisers depends upon its readership. Newspaper advertising inventory is sold at rates that (indirectly) reflect the number of readers of the particular newspaper, readership being calculated by PAMCo as a periodically-updated multiple of print circulation for each newspaper. Changes in circulation and therefore readership affect the potential audience and therefore the price commanded for newspaper advertising.

5.4 Both sources of revenue are under significant pressure. As further described below, print circulation is in long-term decline, eroding both print circulation and print advertising revenues. At the same

⁸ Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group: Ofcom's advice to the Secretary of State, 31 May 2018, paragraph 3.11.

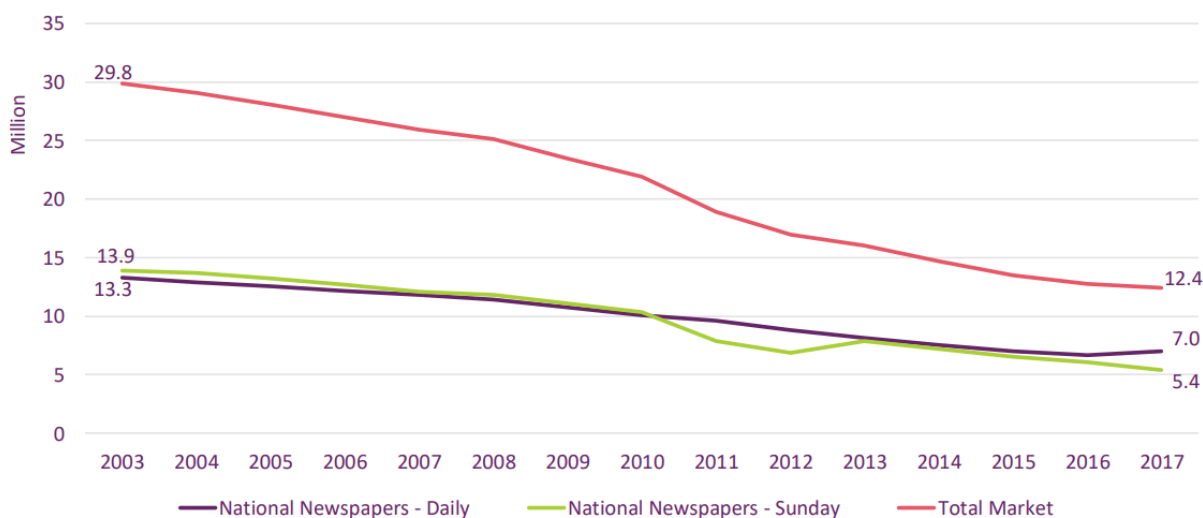
⁹ Competition and Market Authority, CMA 11: Remedies: Guidance on the CMA's approach to the variation and termination of merger monopoly and market undertakings and orders, January 2014 (revised August 2015), para 2.6.

time, increases in digital revenues have not offset lost print revenues, and the dynamics of online advertising means that they are highly unlikely to do so in the foreseeable future.

Print is in long-term decline as news consumption shifts online

5.5 The decline of print newspaper circulation was noted as a key trend affecting the industry in Ofcom’s advice to the Secretary of State on the Trinity Mirror / Northern & Shell transaction. The following diagram (excerpted from Ofcom’s advice) show how the circulation of newspapers generally has declined sharply over the past fifteen years. Average UK net circulation for national daily titles declined 47%, while that of national Sunday titles declined by 61%.

Figure 1: Average UK net circulation of newspapers, 2003-2017

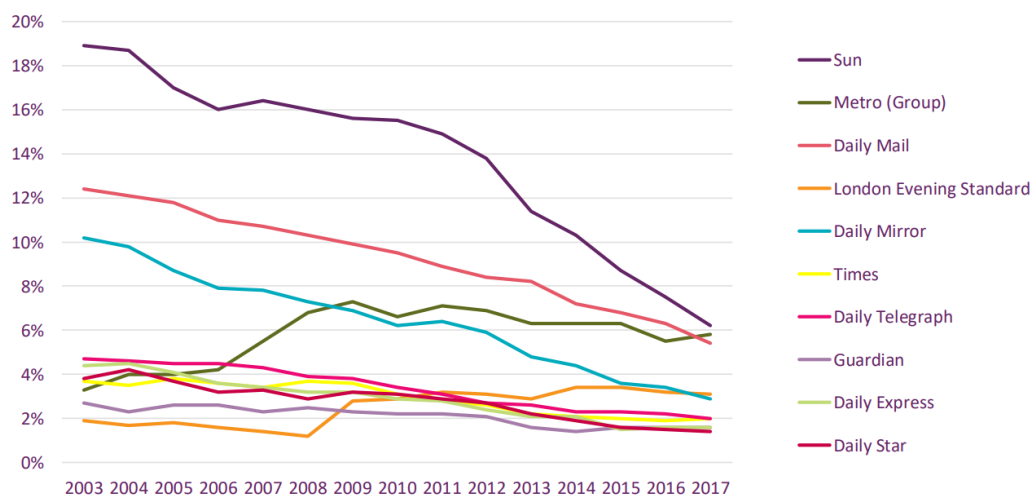


Source: Audit Bureau of Circulation (ABC)

5.6 Consistent with this overall trend, the print circulation of both The Times and The Sunday Times has declined substantially. In the same period, the print circulation of The Times fell by 33%, while that of The Sunday Times fell by 43%. Since 2017, that trend has continued, with year-on-year drops between October 2017 and October 2018 of 5.3% and 3.7% respectively.¹⁰

5.7 Similarly, the print readership of newspapers – a key factor in determining their attractiveness to advertisers - has also fallen. The following chart, also excerpted from Ofcom’s advice to the Secretary of State on Trinity Mirror / Northern & Shell, illustrates this industry trend.

¹⁰ Newsworks, Market Overview: Circulation, July 2018, available at <https://www.newsworks.org.uk/market-overview>.

Figure 2: Annual print readership of national daily newspapers, 2003-2017

Source: PAMco, all days

Base: GB adults 15+

- 5.8 Although not shown in the figure above, the print readership of The Sunday Times declined by 46% over the same period.
- 5.9 As print circulation has declined, publishers have been forced to raise their titles' cover prices in an attempt to maintain print circulation revenues. By way of illustration, between 2012 and today, the cover price of the Monday-Friday editions of The Times increased from £1.00 to £1.60 and that of the Saturday edition from £1.50 to £1.90 (the cover price of The Sunday Times increased from £2.50 to £2.70 over the same period). However, such increases come at the cost of further decreases in circulation, whether through switching to other print titles or through switching to the myriad of other news sources available to consumers, including free online ones, and potentially corresponding losses in print advertising revenues. The scope for further increases is therefore tightly constrained.
- 5.10 The overall result is that the print revenues of The Times and The Sunday Times have declined greatly over the years. Overall between 2003 and 2018 print revenues have declined by 27% for The Times and The Sunday Times. Print advertising has declined by 50% for The Times and 68% for The Sunday Times. Underlying print circulation declines have been mitigated by active cover price increases. News UK expects this trend to continue into the foreseeable future.

Online revenues offset only a small proportion of lost print revenues

- 5.11 An important driver of the decline in print circulation in recent years is the shift in news consumption to online sources. In its report on Trinity Mirror / Northern & Shell, Ofcom found that between 2013 and 2016, the proportion of respondents to its news consumption survey stating that they used newspapers for news nowadays declined from 40% to 29%, while the proportion stating that they used the internet for news increased from 32% to 48%.¹¹
- 5.12 Although a proportion of online news consumption is captured by UK newspaper publishers' online presences, online also provides consumers with easy access to a plethora of other sources. These include the free to access websites of UK broadcasters such as the BBC and Sky News, as well as

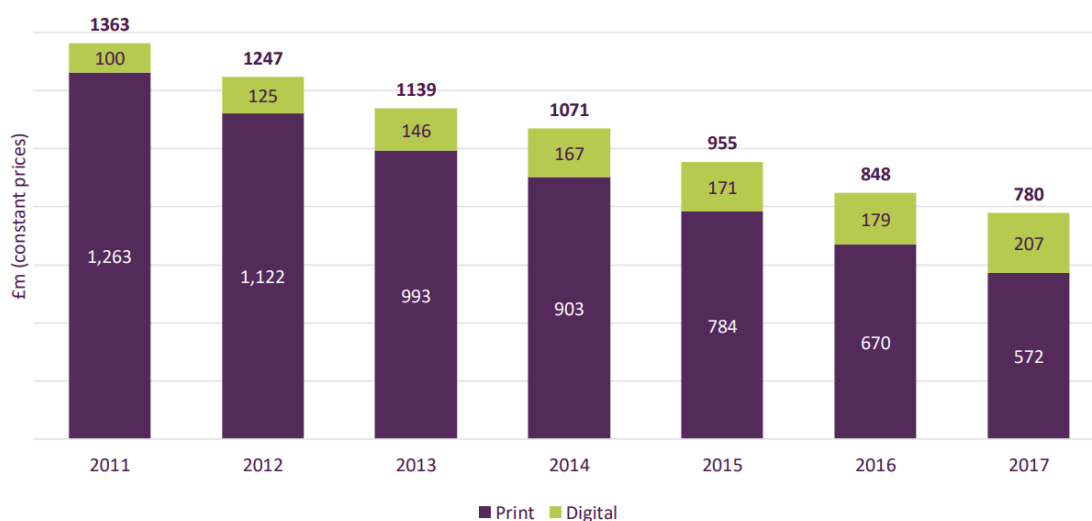
¹¹ Figure 3.2. Ofcom changed the question from 2015 onwards to refer specifically to "printed" newspapers.

those of foreign print and broadcast news providers and online-only sources such as BuzzFeed. In aggregate, these account for a large majority of online news consumption.¹²

5.13 In the face of this shift, publishers have sought to develop their digital revenues to compensate for lost print revenues, by winning digital advertising business and, in some cases, developing innovative paid online models to generate digital circulation revenues. News UK's own actions in this regard are described in detail in section 6 below.

5.14 However, as Ofcom found in Trinity Mirror / Northern & Shell, publishers' efforts to grow their digital advertising revenues have fallen well short of offsetting lost print advertising revenues. As the figure below shows, print advertising revenues declined by £691m, while digital advertising revenues increased by only £107m. Overall, Ofcom estimated that, "between 2011 and 2017, for every £1 newspapers lost in print revenues they gained only 15 pence in digital revenues (in real terms)".¹³

Figure 3: National newspaper print and digital advertising revenue (constant prices), 2011-2017



Source: AA/WARC Expenditure Report

5.15 This trend was also noted in a recent report for DCMS by Mediatique, which referred to it as "the phenomenon of 'digital pennies for print pounds'".¹⁴

5.16 There are several reasons for this:

- (i) Classified advertising has flowed to online specialists, such as Monster, LinkedIn and Rightmove.
- (ii) The targeting of advertising online has become a distinct part of the value chain, served by an array of ad tech companies (including Google and Facebook). These players capture spend that once would have gone to publishers.
- (iii) Players such as Google and Facebook have far richer data about audiences than is held by newspapers, making them more attractive to advertisers.

¹² In its report on 21st Century Fox's proposed acquisition of Sky plc, the CMA found that, on a 'time spent' metric, the BBC alone accounted for 60% of online news consumption, with BuzzFeed and Sky News the next largest players (as at August 2017). See Figure 7: "Share of time spent consuming news online" in Appendix E to the CMA's report.

¹³ Paragraph 3.26.

¹⁴ Mediatique (for DCMS), [Overview of recent dynamics in the UK press market](#), April 2018, paragraph 4.9.

- (iv) The ‘cost of production’ of a page view for the likes of Google and Facebook – who operate at scale, using servers and code – is low, and they can price their advertising accordingly. By contrast, newspapers rely on (expensive) journalists to attract audiences, and so may not be able to profitably match the pricing of the platforms.

5.17 Consequently, even newspapers that are successful in their online strategies are unlikely to replicate the levels of advertising revenue they received offline.

5.18 In its report on Trinity Mirror / Northern & Shell, Ofcom recognised the difficulties facing newspapers in generating online advertising revenues. Ofcom noted that Facebook and Google alone were estimated to have captured more than half (54%) of all UK digital advertising revenues in 2017, that “it is becoming more difficult for publishers to attract advertising revenues”, and that “the dynamics of online advertising account for a significant part of the challenge” facing newspapers.¹⁵ Mediaticque, in a report for DCMS, noted that “the digital challenge facing press operators is a major threat to their longevity and the sustainability of news provision more generally”.¹⁶

The revenues of all major UK newspaper groups have declined

5.19 The result of these trends is that the revenues of UK newspaper groups are under significant pressure. The following table from Ofcom’s advice to the Secretary of State on the Trinity Mirror / Northern & Shell transaction shows how the revenues of the leading UK newspaper groups declined over the period 2010 to 2016, with News UK’s revenues dropping by an average of 4.6% per year.

Figure 4: UK national newspaper publisher revenues (nominal terms) 2010-2016

Publisher newspaper division	2010 revenues (£m)	2016 revenues (£m)	2010-2016 revenues CAGR (%)	2010 operating profit (£m)	2016 operating profit (£m)
News UK (News Corp)	1,047	788	- 4.6%	- 24.1	- 36.7
DMG Media (DMGT)	813	706	- 2.3%	95.0	77.0
Trinity Mirror Group	762	572	- 5.6%	137.8	79.5
Telegraph Media Group (Press Acquisitions Ltd)	324	296	- 1.5%	60.1	32.2
Guardian News & Media (Guardian Media Group)	221	210	- 0.8%	- 33.7	- 68.7
Express Newspapers (Northern & Shell)	289	174	- 9.6%	0.3	16.3

Source: Enders Analysis

5.20 Looking at the performance of The Times and The Sunday Times specifically, TNL recorded turnover of approximately £319.5m in its 2017 financial year, down from £392.8m in 2010 – a drop of 19% (or 29% adjusted for inflation).

¹⁵ Paragraph 3.27, citing eMarketer, 18 September 2017 – *Digital Duopoly to Remain Dominant in UK Ad race*, available at <https://www.emarketer.com/Article/Digital-Duopoly-Remain-Dominant-UK-Ad-Race/1016481>

¹⁶ Mediaticque (for DCMS), *Overview of recent dynamics in the UK press market*, April 2018.

Newspaper groups have been driven to adapt their business models and cut costs in response to declining revenues

- 5.21 As a result of declining revenues, publishers must make significant cost savings in order to preserve the financial viability of their titles. There have been successive rounds of job losses across the industry. Mediaticque estimate that in the ten years to 2017, the number of front line newspaper journalists fell from 23,000 to 17,000.¹⁷ There have also been changes to the content and format of titles (for example, The Guardian and the Observer moved from Berliner to tabloid format in early 2018, while the Independent abandoned print altogether in 2016). However, reduced investment in journalism ultimately puts the quality of titles at risk, and therefore threatens further reductions in revenues over the longer term.
- 5.22 An important means of reducing titles' cost bases, without comprising their quality, has been for publishers to bring about greater integration between the Monday to Saturday and Sunday editions for their papers; thereby eliminating substantial duplication of costs.
- 5.23 As described below, over recent years, most major national titles with Sunday editions¹⁸ have moved to a position where they not only share back-office functions, but have also achieved a significant degree of integration in their newsrooms; sharing reporters and editorial staff across Monday to Saturday and Sunday editions. Indeed, publishers have typically appointed either a single editor for both editions, or an editor-in-chief into which the editor of each edition reports.

Daily Star / Daily Star on Sunday (Express Newspapers / Reach)

- 5.24 The Star was reported to be moving to integrate its Monday to Saturday and Sunday editions in 2015.¹⁹ It appears this was part of a restructuring designed to reduce editorial headcount by a third across Express Newspapers. Paul Ashford, group editorial director, said in a letter to staff:

*“We are faced with a challenging commercial environment in the print publishing market and it is vital to make such painful but necessary structural changes now to properly ensure the longevity of the business”.*²⁰

- 5.25 As part of the restructuring Dawn Neesom was appointed editor-in-chief of both titles. She has since been replaced by Jon Clark.²¹ Each title has its own deputy editor. According to Express Newspapers:

*“each Express Newspapers title and each content area has its own editor/deputy editor, with title editors reporting to an editor-in-chief, who reports to the editorial director. Each editor/deputy editor is responsible for the content of his or her title”.*²²

Daily Express / Sunday Express (Express Newspapers / Reach)

- 5.26 The Express has had integrated Monday to Saturday and Sunday editions since 1996. The merger of the Daily and Sunday Express was designed to enable a 15% cut in the editorial budget.²³ At the same time the first editor-in-chief of the two titles was appointed, a structure that continues to this day.²⁴

¹⁷ Mediaticque (for DCMS), *Overview of recent dynamics in the UK press market*, April 2018.

¹⁸ The I and Financial Times are published on Monday to Saturday only, while the Metro, Evening Standard and City AM are published on weekdays only.

¹⁹ M Sweney & T Conlan, “Daily Star Sunday editor Peter Carbery expected to depart”, *Guardian*, 30 Jan 2015.

²⁰ Mark Sweney, “Richard Desmond is Britain’s greediest billionaire, claims NUJ”, *Guardian*, 24 July 2014.

²¹ Hogan Lovells (for Trinity Mirror), *Trinity Mirror plc response to DCMS questions of 11 April 2018*, April 2018.

²² Ibid.

²³ Roy Greenslade, *Press Gang: How newspapers mad profit from propaganda*, 2003 [p634]

²⁴ Hogan Lovells (for Trinity Mirror), *Trinity Mirror plc response to DCMS questions of 11 April 2018*, April 2018.

Daily Mirror / Sunday Mirror (Trinity Mirror / Reach)

- 5.27 Trinity Mirror first moved towards integrating its Monday to Saturday and Sunday editions in 2012. Reporting and production were partially merged, though each paper continued to have *"a bespoke editorial team ... to protect their unique identity"*.²⁵ An editorial headcount reduction of 75 was anticipated. Later in the year Trinity Mirror appointed a single editor for both Mirror titles.²⁶
- 5.28 In 2014 it moved to full integration, creating a single newsroom for the titles (and the Sunday People).²⁷ Roy Greenslade of the *Guardian* commented *"it could be argued that Trinity Mirror's merger ... is somewhat belated"*.

Daily Record / Sunday Mail (Trinity Mirror / Reach plc)

- 5.29 These Scottish titles merged their news and features departments in 2016. Murray Foote was appointed editor-in-chief of the two papers. Trinity Mirror commented:

"[L]ike all publishers we are having to carefully manage costs. We are therefore merging the Daily Record and Sunday Mail into an integrated seven-day operation covering print and digital. ... As a result up to 15 jobs could be at risk at the Record and Mail".²⁸

Daily Telegraph / Sunday Telegraph (Telegraph Media Group)

- 5.30 The newsrooms for these titles were merged in 2013 as part of a move to save 80 editorial headcount (out of 550). As part of the restructuring, a new 'director of content' role was created, into which the editors of the two titles report.²⁹
- 5.31 At the time of the merger, Telegraph Media Group CEO Murdoch MacLennan explained to staff:

"When I last wrote ... I made clear how difficult our commercial situation was. That position has not improved and, if anything, has deteriorated. ... We must adapt and transform how we function as a business and urgently diversify our revenue streams, to guarantee our position in the longer term.

We are ... going to have to restructure our editorial operation to produce a root and branch change in the way we function. To this end, it will be merged into one unified operation".

- 5.32 Certain aspects of editorial had been integrated even earlier. A single editor to oversee business coverage across both titles (and the website) was appointed in 2007.³⁰

Independent / Independent on Sunday (Independent Print Ltd)

- 5.33 These titles moved to integrated Monday to Saturday and Sunday editions in 2013, with the appointment of Chris Blackhurst as editor of both titles. (There was also some integration with two other Lebedev-owned outlets, the Evening Standard and London Live). Twenty job losses were expected.³¹ The two papers had already merged their business and photo desks and pooled their feature writers as early as 2007.³²

²⁵ Trinity Mirror, *Trinity Mirror Announcement*, 1 February 2012.

²⁶ Trinity Mirror, *Daily and Sunday Mirror move to seven day publishing*, 30 May 2012.

²⁷ Roy Greenslade, *"Daily Mirror, Sunday Mirror and People newsrooms to merge"*, *Guardian*, 17 July 2014.

²⁸ Freddy Mayhew, *"News team merger to create seven-day operation at Sunday Mail and Daily Record puts 22 jobs at risk"*, *Press Gazette*, 13 October 2016.

²⁹ *"Telegraph to merge Sunday and daily papers with net loss of 30 jobs"*, *Press Gazette*, 12 March 2013.

³⁰ Stephen Brook, *"Telegraph appoints City supremo"*, *Guardian*, 18 September 2007.

³¹ Josh Halliday & Lisa O'Carroll, *"Independent on Sunday editor exits as Lebedev papers go seven-day"*, *Guardian*, 12 February 2013.

³² Stephen Brook, *"Indy and Sindy merge business desks"*, *Guardian*, 3 December 2007.

5.34 The print edition of both Independent titles ceased publication in 2016.

Mail / Mail on Sunday (DMGT / Associated Newspapers)

5.35 The Mail / Mail on Sunday have so far achieved less integration of their newsrooms than other titles, although Paul Dacre has held the title of editor-in chief of Associated Newspapers (the holding company for both titles) since 1998.³³

5.36 However, DMGT has recently further integrated editorial control, with Geordie Greig appointed editor of the Daily Mail, while also having oversight of the Mail on Sunday (where he was formerly editor).³⁴ It has been reported that this appointment is a precursor to greater integration of the newsrooms and cost savings.³⁵

Guardian / Observer (GMG)

5.37 These titles have had a common editor-in-chief since 1996. In that year GMG spoke of “*much greater co-operation and degree of integration between the editorial teams*” of the papers.³⁶ The number of editorial staff working solely on the Observer has been gradually reduced over the years.³⁷

5.38 However, the newsrooms have remained more separated than in most titles. This is in part because both titles are in a privileged financial position, receiving support from the Scott Trust on a non-commercial basis, which makes cost-cutting less essential at GMG than at other newspaper groups.³⁸

6. THE CONDITIONS HINDER NEWS UK IN RESPONDING TO THIS CHANGE IN CIRCUMSTANCES

News UK has sought to increase online revenues and cut costs without impairing the quality of The Times and The Sunday Times

6.1 In light of the challenges arising from the change of circumstances described above, News UK has enhanced ways to serve the evolving needs of its customers in a new digital world:

- (a) The Times and The Sunday Times launched a paywall in 2010 and it now offers a number of different subscription packages in the UK and internationally, across print and digital. The Times and The Sunday Times has grown its subscriber base to a total of 502,000 people, as at June 2018, 256,000 of which are digital only and whom generate annual revenues of [CONFIDENTIAL]. In comparison, between June 2010 and June 2018, print circulation for The Times and The Sunday Times declined by 14% and 32% respectively.
- (b) In 2013, three years after the launch of the paywall, The Times and The Sunday Times launched its 7 day app, which in addition to investment in the website, have been key to growing digital advertising revenues.
- (c) The Times and The Sunday Times introduced a dedicated digital sales team in 2016 which has grown to [CONFIDENTIAL] full time employees. This team is tasked to sell display, video, branded content and premium programmatic advertising.

³³ DMGT, *Annual Report and Accounts 1st October 2006*, 1 January 2007.

³⁴ DMGT, *Appointment of Editors – Mail Newspapers*, 8 June 2018.

³⁵ Jim Waterson, “[New Daily Mail editor to be Geordie Greig](#)”, *Guardian*, 7 June 2018; Ian Burrell, “[Behind the aggressive headlines, Paul Dacre was being sidelined at the Daily Mail](#)”, *The I*, 10 June 2018.

³⁶ Guardian Media Group plc, *Annual Report and Accounts 1996*, 30 September 1996.

³⁷ See, for example, Steve Busfield, “[Observer to cut sections in redesign](#)”, *Guardian*, 10 November 2009.

³⁸ The lesser degree of integration may also be attributable to opposition by the National Union of Journalists. See e.g. NUJ, *Shaping the Future*, December 2007.

- (d) In 2017 News UK launched vStudio, a full-service digital creative team specialising in creating, editing and publishing vertical mobile formats and more recently has also launched Social Amp, a new tool that takes brands' social content and amplifies it across channels.
- (e) In July 2018, News UK announced the launch of the Ozone Project alongside Guardian News & Media and The Telegraph.³⁹ Ozone offer advertisers and agencies direct and transparent access to a combined audience across the three publisher's online titles.

6.2 At the same time, to address the on-going structural changes faced by The Times and The Sunday Times, News UK has actively sought to cut costs, with sales, marketing and administrative costs for the TNL business reducing by [CONFIDENTIAL] between 2007 and 2017. Furthermore the business has restructured its workforce to better match the requirements of the TNL business, with print editorial headcount reducing by [CONFIDENTIAL] over the same period.

Unlike other publishers, News UK is subject to restrictions on making further savings by greater sharing of resources at The Times and The Sunday Times

- 6.3 As described above, all major UK newspaper publishers other than GMG have moved to substantial integration of newsrooms across their Monday to Saturday and Sunday editions. Indeed, most titles function as full 'seven-day' operations under a single editor or editor-in-chief.
- 6.4 As noted above, News UK has implemented a degree of sharing of support services covering non-editorial areas of News UK's business (such as marketing, finance and procurement, logistics, paper and ink). However, there is no further scope for material cost savings to be achieved in this way. Significant further savings would require sharing of editorial and journalistic resources across the two titles. News UK believes that this represents the only way for it to achieve further cost efficiencies and ensure that the financial position of the two titles will remain stable without compromising their quality in the future.
- 6.5 However, unlike all other newspaper publishers, News UK is subject to regulatory obligations that constrain it from realising these efficiencies.

7. THE PROPOSED UNDERTAKINGS

- 7.1 News UK intends to maintain two separate titles, The Times (published on Mondays to Saturdays) and The Sunday Times, and to preserve the separate editorship of these two titles. However, News UK wishes to remove obstacles to The Times and The Sunday Times sharing editorial and journalistic resources, just as other papers do. While reserving its position on the correct interpretation of the Conditions, News UK therefore seeks replacement of the Conditions with the Proposed Undertakings, so as to clearly permit a sharing of journalists (as well as other resources) between the two titles.
- 7.2 The Proposed Undertakings make only a modest variation to the provisions of the Conditions, to permit greater sharing of resources between the titles. In particular, News UK does not seek changes to the requirement under section 1 of the Conditions that "*Publication of the newspapers transferred shall be as separate newspapers*". Nor does News UK envisage that the titles should be brought under a single editor or editor-in-chief, as most other publishers have done.
- 7.3 The variation sought by News UK in the Proposed Undertakings relates solely to the sections of the Conditions which stipulate that ultimate control over the resources, including journalists, available to each title is kept separately with the editor of each newspaper. Sections 4(b)(iii) and (iv) of the Conditions provide as follows:

³⁹ In September 2018, Reach plc joined the Ozone project.

- (iii) *Instructions to journalists shall be given only by the Editor or those to whom he has delegated authority.*
- (iv) *Subject only to any annual budget for editorial space and expenditure determined by the directors of TNL, the Editor of each newspaper shall retain control over the appointment, disposition and dismissal of journalists on his newspaper and of all other content of his newspaper except that in the case of advertisements the Editor's rights may be limited to the right to refuse to publish any advertisement and where in his newspaper advertisements in general are or an advertisement in particular is to appear;*

7.4 The effect of these sections of the Conditions is that each newspaper has a separate editor, who in turn has control over the appointment, removal and disposition of journalists working on his or her newspaper, and exclusive authority to give instructions to journalists. News UK is concerned that sharing of journalists between the two newspapers could be seen as incompatible with these elements of the Conditions, on the basis that each editor might not be seen as having the requisite degree of control over the relevant journalists. While reserving News UK's position on the correct interpretation of the Conditions, the Proposed Undertakings therefore explicitly permit such sharing of services and resources, including journalists, between the titles, to such extent as the editors agree.

7.5 As well as placing the extent of any sharing of resources in the hands of the editors, the Proposed Undertakings do *not* seek any relaxation of the elements of the Conditions intended to maintain the editorial independence of the titles from their proprietor, or the role played by the INDs in ensuring this. The key provisions in this regard are section 4(b)(i), (ii) and (v), which provide as follows.

- (i) *The Editor of The Sunday Times and the Editor of The Times ("the Editors") shall not be appointed or dismissed without the approval of the majority of the independent national directors of TNHL.*
- (ii) *The Editor of each newspaper shall retain control over any political comment published in his newspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interest of any of the newspaper proprietors (within the meaning of Section 57 of Fair Trading Act 1973) of the Times or The Sunday Times.*
- (v) *Any dispute between the Editors, or either of them, and the Directors of TNL is to be referred to the independent national directors of TNHL or such one or more of the independent national directors as they may themselves determine; and their decision shall be final and binding.*

7.6 News UK does not seek substantive variations to these or other elements of the Conditions (notably those restricting the transfer of the titles or, as noted above, the requirements of section 1), although it has taken the opportunity to make some minor, non-substantive changes for clarity and to update the language used.

7.7 News UK also seeks permission for corresponding changes to be made to the Articles of Association of TNL. All other provisions of the Articles would remain unchanged.

7.8 The six INDs accept that some sharing of staff across the two papers is necessary in view of changes to the industry. They have been consulted on the Proposed Undertakings and do not believe they are contrary to the spirit of the original version of the Conditions. A copy of their letter supporting the proposed variation is attached at [Annex 3](#).

8. THE PROPOSED UNDERTAKINGS WOULD HAVE NO ADVERSE EFFECT ON THE PUBLIC INTEREST

8.1 Under the FTA 1973, the primary purpose of the Conditions was to protect *"the accurate presentation of news and free expression of opinion"*. The Proposed Undertakings would not have an adverse impact on either of these considerations. Nor would they harm any considerations of plurality under the successor to the FTA 1973, the EA 2002.

Accurate presentation of the news

8.2 In relation to the accurate presentation of news, the relevant Department of Trade and Industry (as it then was) guidance (the **DTI Guidance**) states that *"The impact of a relevant merger situation on accurate presentation of the news is likely to be assessed by reference to evidence of past behaviour by the enterprises in question, or by the persons with control of such enterprises"*.⁴⁰

8.3 Both The Times and The Sunday Times have a reputation for extremely high quality, accurate journalism, having collected numerous awards in recent years. This is reflected in the ranking of the two titles in Ofcom's 2018 news consumption survey: 76% of regular users rated The Times and The Sunday Times as *"accurate"*, the second-highest percentages for all newspapers (behind the Guardian / Observer on 79%),⁴¹ and higher than any television news source, including the BBC.⁴²

8.4 News UK has every commercial incentive to maintain the very high standards of accuracy that readers of both of The Times and The Sunday Times expect. To do otherwise would risk serious and long term damage to the reputation and ultimately the revenue generated by those two newspapers. The Proposed Undertakings would not, therefore, have any adverse effect on the accurate presentation of news. On the contrary, the resulting savings would free up funds to sustain accurate coverage of the widest array of topics.

Free expression of opinion

8.5 The 2004 DTI Guidance states that *"In considering the impact of a newspaper merger on free expression of opinion, the CC (and before it the MMC) has focused on the potential impact on editorial decision making of the transfer of newspapers in question i.e. the extent to which the transaction would affect the freedom of editors to operate without interference from the proprietor."* Ofcom applied this interpretation in its report on Trinity Mirror / Northern & Shell.⁴³

8.6 Again, the Proposed Undertakings would not have any effect on their editors' freedom to operate without interference from the proprietor. In particular, the provisions of the Conditions relating to the role of the INDs in the appointment and removal of editors, which guarantee this freedom, will continue to apply.

Media plurality

8.7 Finally, News UK notes that, to the extent the Secretary of State considers it relevant, the Proposed Undertakings could have no potential adverse impact on media plurality, since each title will remain under separate editorship.

8.8 Rather, the proposed variation will help secure the future of The Times and The Sunday Times as high quality newspapers, and thereby maintain, rather than reduce, media plurality. As Ofcom

⁴⁰ Enterprise Act 2002: Public Interest Intervention In Media Mergers, Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, DTI Guidance Document May 2004, para 5.5.

⁴¹ Ofcom [News Consumption Survey 2018](#), Figure 12.9 "Attributes of newspaper sources – 2018".

⁴² *Ibid.*, Figure 12.6 ("Attributes of TV sources (1) – 2018") – the BBC scored 74%, behind CNN on 78%.

⁴³ Paragraphs 5.8-5.10.

highlighted in its advice on the Trinity Mirror / Northern & Shell transaction, *“Measures that support the longer term viability of newspapers and their websites should be welcomed”*.⁴⁴

Allen & Overy LLP
10 January 2019

⁴⁴ Executive summary, p. 4.

ANNEX 1

FAIR TRADING ACT 1973

Section 58

Consent in a case of urgency to transfers of newspapers not economic as going concerns and intended to continue as separate newspapers

COMMUNICATIONS ACT 2003

Schedule 18, paragraph 62

Undertakings instead of conditions attached to the Secretary of State's consent to the transfer of The Times and The Sunday Times Newspapers to News Corp UK & Ireland Limited (formerly known as News International Limited)

Whereas –

- (1) on 27 January 1981, the Secretary of State gave his consent under section 58 of the Fair Trading Act 1973 to the transfer of each of The Times and The Sunday Times newspapers from the Thomson Organisation Limited to News Corp UK & Ireland Limited (“News UK”), then known as News International Limited, without requiring a report from the Monopolies and Mergers Commission under section 59 of that Act;
- (2) the Secretary of State's consent to the transfer was subject to the conditions set forth in that consent (the “Conditions”);
- (3) the Secretary of State may, instead of any or all of the conditions attached to a consent given by him under section 58 of the Fair Trading Act 1973, accept undertakings under paragraph 62 of Schedule 18 to the Communications Act 2003 to take, or refrain from taking, action specified or described in the undertakings; and
- (4) the Secretary of State considers it appropriate, by reason of a material change in circumstances, to accept the undertakings given below by News UK instead of the Conditions;

Now, therefore, News UK hereby gives to the Secretary of State the following undertakings instead of the Conditions:

- ~~(1) News International Limited (“NIL”) is a newspaper proprietor whose newspapers have an average circulation per day of publication, calculated in accordance with section 57(3) of the Fair Trading Act 1973, amounting, with that of The Times, to 500,000 or more copies, and also amounting, with that of The Sunday Times, to 500,000 or more copies;~~
- ~~(2) The Times and The Sunday Times are newspapers of which The Thomson Organisation Limited is a newspaper proprietor;~~
- ~~(3) the Secretary of State received on 23 January 1981 an application for his consent to the transfer of each of The Times and The Sunday Times to NIL;~~

~~(4) the Secretary of State is satisfied that neither The Times nor The Sunday Times is economic as a going concern and as a separate newspaper and that if, in each case, the newspaper in question is to continue as a separate newspaper the case is one of urgency:~~

~~Now, therefore, the Secretary of State, pursuant to section 58(3)(a) of the Fair Trading Act 1973, hereby consents to the transfer of each of The Times and The Sunday Times from the Thomson Organisation Limited to NHL without requiring a report from the Monopolies and Mergers Commission under section 59 of that Act but subject to the following conditions:~~

1. Publication of The Times and The Sunday Times (together, "the Newspapers") ~~the newspapers transferred~~ shall be as separate newspapers.
2. NHL News UK shall not without the consent of a majority of the independent national directors for the time being of Times Newspapers Holdings Limited (TNHL) do anything, or procure or permit anything to be done, which shall result in-
 - (i) ~~NHL News UK~~, by reason of any transfer, ceasing to be a newspaper proprietor in relation to ~~The Times or The Sunday Times~~ the Newspapers, or
 - (ii) either TNHL or Times Newspapers Limited (TNL) ceasing to be a subsidiary (within the meaning of Section ~~1159~~ 154 of the Companies Act ~~2006~~ 1948) of News UK NHL, or
 - (iii) TNL selling or otherwise disposing of any interest in ~~The Times or The Sunday Times~~ the Newspapers.
3. (a) ~~Before either of the transfers to which this consent relates takes effect t~~The Articles of Association of TNHL shall ~~have been altered~~ continue to give effect to the requirement set out below ~~and a draft of the resolution so altering the Articles shall have been approved by the Secretary of State as giving effect to that requirement.~~
- (b) The said requirement is that the number of independent national directors shall be ~~increased from 4 to~~ 6 and no person shall be appointed to or removed from the office of independent national director, including such additional persons, without the approval of the majority of the independent national directors at the time of the appointment or removal.
4. (a) ~~Before either of the said transfers takes effect t~~The Articles of Association of TNL shall ~~have been altered~~ continue to give effect to the requirements set out below ~~and a draft of the resolution so altering its Articles shall have been approved by the Secretary of State as giving effect to those requirements.~~
- (b) The said requirements are that-
 - (i) The Editor of The Sunday Times and the Editor of The Times ("the Editors") shall not be appointed or dismissed without the approval of the majority of the independent national directors of TNHL.
 - (ii) The Editor of each ~~n~~nNewspaper shall retain control over any political comment published in ~~h~~his~~their~~ ~~n~~nNewspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interest of any of the newspaper proprietors (within the meaning of Section 57 of Fair Trading Act 1973) of the ~~Times or The Sunday Times~~Newspapers.

- (iii) Instructions to journalists shall be given only by the Editor or those to whom heth
Editor has delegated authority.
- (iv) Subject only to any annual budget for editorial space and expenditure determined by the directors of TNL, the Editor of each ~~n~~Newspaper shall retain control over the appointment, disposition and dismissal of journalists on ~~his~~their ~~n~~Newspaper and of all other content of ~~his~~their ~~n~~Newspaper except that in the case of advertisements the Editor's rights may be limited to the right to refuse to publish any advertisement and where in ~~his~~the ~~n~~Newspaper advertisements in general are or an advertisement in particular is to appear;
- (v) Any dispute between the Editors; (or either of them); on the one hand and the Directors of TNL on the other is to be referred to the independent national directors of TNHL or such one or more of the independent national directors as they may themselves determine; and their decision shall be final and binding

5. The Newspapers may share services and resources, including journalists, to such extent as the Editors agree.

56. The Articles of Association of TNHL and TNL ~~after alteration to comply with the foregoing requirements~~ shall not ~~thereafter~~ be altered in any way which affect or which may effect, the operation of the ~~foregoingsaid~~ requirements except with the written consent of the Secretary of State.

[Signatures]

SECRETARY OF STATE FOR TRADE

27 January 1981

ANNEX 2- TEXT OF THE CONDITIONS

FAIR TRADING ACT 1973

Section 58

Consent in a case of urgency to transfers of newspapers not economic as going concerns and intended to continue as separate newspapers

Whereas –

- (5) News International Limited ("NIL") is a newspaper proprietor whose newspapers have an average circulation per day of publication, calculated in accordance with section 57(3) of the Fair Trading Act 1973, amounting, with that of The Times, to 500,000 or more copies, and also amounting, with that of The Sunday Times, to 500,000 or more copies;
- (6) The Times and The Sunday Times are newspapers of which The Thomson Organisation Limited is a newspaper proprietor;
- (7) the Secretary of State received on 23 January 1981 an application for his consent to the transfer of each of The Times and The Sunday Times to NIL;
- (8) the Secretary of State is satisfied that neither The Times nor The Sunday Times is economic as a going concern and as a separate newspaper and that if, in each case, the newspaper in question is to continue as a separate newspaper the case is one of urgency:

Now, therefore, the Secretary of State, pursuant to section 58(3)(a) of the Fair Trading Act 1973, hereby consents to the transfer of each of The Times and The Sunday Times from the Thomson Organisation Limited to NIL without requiring a report from the Monopolies and Mergers Commission under section 59 of that Act but subject to the following conditions:

5. Publication of the newspapers transferred shall be as separate newspapers.
6. NIL shall not without the consent of a majority of the independent national directors for the time being of Times Newspapers Holdings Limited (TNHL) do anything, or procure or permit anything to be done, which shall result in-
 - (i) NIL, by reason of any transfer, ceasing to be a newspaper proprietor in relation to The Times or The Sunday Times, or
 - (ii) either TNHL or Times Newspapers Limited (TNL) ceasing to be a subsidiary (within the meaning of Section 154 of the Companies Act 1948) of NIL, or
 - (iii) TNL selling or otherwise disposing of any interest in The Times or The Sunday Times.
7. (a) Before either of the transfers to which this consent relates takes effect the Articles of Association of TNHL shall have been altered to give effect to the requirement set out below and a draft of the resolution so altering the Articles shall have been approved by the Secretary of State as giving effect to that requirement.
 - (b) The said requirement is that the number of independent national directors shall be increased from 4 to 6 and no person shall be appointed to or removed from the office of independent national director, including such additional persons, without the approval of the majority of the independent national directors at the time of the appointment or removal.

8. (a) Before either of the said transfers takes effect the Articles of Association of TNL shall have been altered to give effect to the requirements set out below and a draft of the resolution so altering its Articles shall have been approved by the Secretary of State as giving effect to those requirements.
- (b) The said requirements are that-
- (i) The Editor of The Sunday Times and the Editor of The Times ("the Editors") shall not be appointed or dismissed without the approval of the majority of the independent national directors of TNHL.
 - (ii) The Editor of each newspaper shall retain control over any political comment published in his newspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interest of any of the newspaper proprietors (within the meaning of Section 57 of Fair Trading Act 1973) of the Times or The Sunday Times.
 - (iii) Instructions to journalists shall be given only by the Editor or those to whom he has delegated authority.
 - (iv) Subject only to any annual budget for editorial space and expenditure determined by the directors of TNL, the Editor of each newspaper shall retain control over the appointment, disposition and dismissal of journalists on his newspaper and of all other content of his newspaper except that in the case of advertisements the Editor's rights may be limited to the right to refuse to publish any advertisement and where in his newspaper advertisements in general are or an advertisement in particular is to appear;
 - (v) Any dispute between the Editors, or either of them, and the Directors of TNL is to be referred to the independent national directors of TNHL or such one or more of the independent national directors as they may themselves determine; and their decision shall be final and binding
9. The Articles of Association of TNHL and TNL after alteration to comply with the foregoing requirements shall not thereafter be altered in any way which affect or which may effect, the operation of the said requirements except with the written consent of the Secretary of State.

SECRETARY OF STATE FOR TRADE

27 January 1981