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**Date: Monday 23 April 2018**

**By Email**

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**ACQUISITION BY TRINITY MIRROR PLC OF PUBLISHING ASSETS OF NORTHERN AND SHELL MEDIA GROUP LIMITED  
PUBLIC INTEREST INTERVENTION NOTICE**

I refer to the acquisition by Trinity Mirror plc (“Trinity Mirror”) of certain publishing assets of Northern and Shell Media Group Limited (“Northern and Shell”) (“the merger”) in relation to which a merger notice was submitted to the Competition and Markets Authority (“CMA”) on Tuesday 10 April 2018. On Wednesday 11 April 2018, under section 57(1) of the Enterprise Act 2002, the Competition and Markets Authority (CMA) formally brought the acquisition to my attention.

The Secretary of State for Digital, Culture, Media and Sport (“the Secretary of State”) is considering whether to issue a public interest Intervention Notice (“PIIN”) in relation to the merger under section 42(2) of the Enterprise Act 2002 (“the Act”). He is currently minded to issue a PIIN for the following reasons.

He has reasonable grounds for suspecting that it is or may be the case that the merger has resulted in the creation of a relevant merger situation as defined in section 23 of the Act. No reference of the merger has been made under section 22 of the Act, nor has any decision been made not to make such a reference, nor is any reference prevented from being made under section 22(3)(za), (a) or (e) of the Act or by EU law.<sup>1</sup>

The Secretary of State believes that it is or may be the case that the following public interest considerations specified in section 58 of the Act are relevant to a consideration of the merger:

- the need for free expression of opinion in newspapers (“free expression of opinion ground”); 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 (“plurality ground”).

Section 44 and 44A of the Act provide that, when a PIIN has been issued, the Competition and Markets Authority (“the CMA”) and Ofcom shall, respectively, provide reports on certain issues relevant to the merger and on the specified public interest considerations, and for each to summarise any representations received about the case within such period as the Secretary of State may require.

At this stage, the Secretary of State considers that the two public interest considerations may be relevant to a consideration of the merger, and that the appropriate course is for him to receive reports from the CMA and Ofcom before deciding whether to make a reference under section 45 of the Act for a more detailed consideration of these matters by the CMA.

### **Free expression of opinion ground**

In relation to the free expression of opinion ground, paragraph 5.7 of the statutory guidance on public interest interventions in media mergers under the Act (“the Guidance”)<sup>2</sup> notes that previous cases have focussed on the potential impact on editorial decision-making of the transfer of the newspapers in question, i.e. the extent to which the transaction would affect the freedom of editors to operate without interference. The Secretary of State considers that a similar approach should be taken in the present case.

The Secretary of State notes that the merger has resulted in national newspapers owned by Northern & Shell (the Daily Express, Sunday Express, Daily Star, Daily Star Sunday) coming under the ownership and control of Trinity Mirror. Prior to the merger, Trinity Mirror already owned a number of national newspapers (the Daily Mirror, Sunday Mirror, Sunday People, Daily Record, Sunday Mail – the latter two being Scottish titles), as well as a number of regional and local titles, operating over 100 news brands overall.

Trinity Mirror, in its letters of 9 February 2018 and 13 April has sought to reassure the Secretary of State that all titles would maintain their editorial independence, based on the way in which it operates its existing portfolio, but also because preserving the identity of each publication and its readership is commercially critical. Similar sentiments were set out in Trinity Mirror’s announcement<sup>3</sup> of the merger (then at proposal stage) (see pages 5-6):

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<sup>1</sup> These are the conditions for the application of section 42(2), as set out in section 42(1) of the Act.

<sup>2</sup> Department for Trade and Industry, Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004. Available at: <http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.bis.gov.uk/files/file14331.pdf>

<sup>3</sup> Trinity Mirror plc, Proposed acquisition of Northern & Shell’s publishing assets, 9 February 2018.

*“Trinity Mirror management has experience of operating a large stable of different news brands under a single combined management structure. There will be no reduction in media plurality following the Acquisition as each newspaper brand will continue with its current editorial positioning, ensuring that it continues to present the editorial content to which its readers and advertisers are accustomed. Trinity Mirror currently operates over 100 news brands and Trinity Mirror’s policy is that each is free to take its own editorial position on politics and current affairs, bearing in mind the opinions of their readers. Trinity Mirror does not interfere in the editorial positions of its titles, which remain firmly the responsibility of the individual titles’ editors and their senior editorial teams.”*

On page 4 of that announcement, it was also noted that the *“Enlarged Group will be able to improve its editorial propositions by reducing duplication, sharing content across the Enlarged Group and widening the breadth of our coverage with larger combined teams”*.

The Secretary of State has also noted public statements attributed to Simon Fox elaborating on this issue, for example, that *“there will be some pooling of editorial resources, such as creating a sports department to provide content to all titles, but that areas such as politics will remain separate”*<sup>4</sup>.

The Secretary of State notes that on the eve of completion of the merger, which took place on 28 February, the editor of the Express, Hugh Whittow, retired and the editor of the Star, Dawn Neesom, left her position to pursue a freelance career (although we understand she remains involved in the Star titles as a columnist and interviewer). Gary Jones and Jon Clark were appointed as their respective replacements. Mr Jones is a former editor of the Sunday Mirror and Sunday People, and Mr Clark a former associate editor at the Daily Mirror. Both appointments were made by Lloyd Embley, current Trinity Mirror group editor-in-chief, who it is intended in the longer term, will assume the role of group editor-in-chief for all Trinity Mirror titles and target titles. The Secretary of State considers that this change in editors of two of the 5 titles, may be relevant to the impact of the merger on the freedom of the editors to operate without interference from their proprietor.

The Secretary of State has considered Trinity Mirror’s track record in maintaining a policy of editorial independence across its range of titles and its stated policy of taking into account readership, demographics and brand strategy in its editorial decision making, and that all of its titles and editors apply the Independent Press Standards Organisation Editors’ Code of Practice. He also notes that Trinity Mirror is a listed company with no controlling or material shareholders and there may be commercial factors which may also operate as an incentive for the policy of editorial independence to continue in relation to the acquired titles. The Secretary of State is also aware of Trinity Mirror’s statement about current reporting and appointment structures including that editors are not appointed by the Board and do not report to it, but to its Group Editor-In-Chief Lloyd Embley, who is not on the Trinity Mirror Board. Nevertheless, it is unclear whether there are, or indeed whether there is a need for, any specific, formal mechanisms to ensure that editorial independence is maintained at the acquired titles. The Secretary of State considers that the above issues could usefully be investigated and reported on by Ofcom.

## **The plurality ground**

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<sup>4</sup> Mark Sweney, ‘Editors of Daily Express and Daily Star quit in wake of £200m takeover - Job cuts to save £20m loom as Trinity Mirror completes buyout of Richard Desmond titles’, *The Guardian*, UK Edition, 28 February 2018 [online], Available at: <https://www.theguardian.com/media/2018/feb/28/editors-of-daily-express-and-daily-star-quit-on-eve-of-200m-takeover>

As set out in paragraph 5.11 of the Guidance, this ground is intended to encompass the need for a diversity of viewpoints in the relevant sector of the press, and allows consideration of the structural impact of a transaction on the overall range of views and distribution in the relevant market. Paragraph 5.12 also notes that this consideration is qualified by the reference to reasonableness and practicability. It notes that the then Secretary of State's view was that this reflects the view that although plurality of views in each market is the ideal, it may not be reasonable to require this in relation to a particular part of the market, for example due to associated costs. It goes on to say that in making the assessment, it is expected that all relevant circumstances would be taken into account.

The Secretary of State in the present case considers that it is appropriate to consider the potential impact of the merger on the diversity of views in the national newspaper market, and that it is appropriate to take account of wider factors affecting the newspaper industry. In line with Ofcom's media plurality framework<sup>5</sup>, the Secretary of State considers that the type of content which is most relevant to media plurality is news and current affairs.

The Secretary of State notes that the transaction increases Trinity Mirror's standing in the national newspaper market on a number of bases.

The merger means that Trinity Mirror would own the largest share of national titles, owning 9 out of 20 national newspaper titles<sup>6</sup>. News UK would be the second largest with 4 national titles. The number of owners in the national newspaper market would fall from seven to six.<sup>7</sup>

The merger also results in the merged entity becoming the second largest national newspaper organisation in circulation terms with a 28% share of average monthly circulation in 2017 among national titles (daily and Sunday), closing the gap on News UK (at 37%) and overtaking DMGT (at 24%).<sup>8</sup>

The National Readership Survey<sup>9</sup> reports on the average daily print readership of national newspapers (for any purpose - not necessarily for news consumption) in the UK. Data for October 2016 – September 2017 shows that prior to the merger, Trinity Mirror titles had the third largest daily readership (by ownership group) at 8.4% of those surveyed, and Northern & Shell fourth largest (5.4%), after News UK (17.6%) and the DMGT (11.4%). As a result of the transaction, the merged entity could potentially have a combined reach (as measured by readership) of 13.8%, moving it into second place.<sup>10</sup>

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<sup>5</sup> Ofcom, Measurement framework for media plurality: Ofcom's advice to the Secretary of State for Culture Media and Sport, 5 November 2015 ("Ofcom Measurement Framework"), para 2.24. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

<sup>6</sup> In determining the number of national newspaper titles, we have included national daily and Sunday papers as listed by National Readership Survey (see October '16 - September '17 table at <http://www.nrs.co.uk/latest-results/nrs-print-results/newspapers-nrsprintresults/>), excluding Sunday Post, Sunday Herald Scotland and Scotland on Sunday, which are Scottish only papers. The Daily Record and Sunday Mail are included because these titles are, to a large extent, a direct alternative to other national titles (notably the Daily Mirror) which are not widely available in Scotland. It is recognised that other approaches could be taken, which would lead to relatively small adjustments in output figures elsewhere in this letter. The titles included are set out in Annex A.

<sup>7</sup> We have included the following ownership groups for national newspaper titles; News UK, Daily Mail Group, Trinity Mirror, Northern & Shell, The Barclay brothers' Press Holdings, Johnston Press, and Guardian Media Group. Details of titles owned by each group are set out in Annex A.

<sup>8</sup> See Annex A, National Newspaper Titles, Monthly Circulation Figures for 2017.

<sup>9</sup> National Readership Survey, NRS Readership Estimates - Newspapers and Supplements, AIR - Latest 12 Months - October 2016 - September 2017. Available at: <http://www.nrs.co.uk/latest-results/nrs-print-results/newspapers-nrsprintresults/>

<sup>10</sup> The combined reach calculation is based on the sum of the reach of the individual titles. As a result, it is acknowledged that there may be a degree of duplication in these figures, with some readers double counted if they read more than one title within an ownership group.

Ofcom's report on News Consumption in the UK: 2016<sup>11</sup> provides figures for those in the UK who consume news through newspapers.<sup>12</sup> The report provides separate figures for consumption of news via daily and Sunday newspapers.<sup>13</sup>

In relation to daily titles, the 2016 Ofcom report shows that 13% of those who consume news via newspapers use Trinity Mirror's daily titles, with 31% using News UK's daily titles and 26% using DMGT's daily titles. Post-merger, a combined Trinity Mirror and Northern & Shell would sit in third position with a potential 23% of those who consume news via newspapers using daily titles owned by the merged entity.<sup>14</sup>

With respect to Sunday titles, the 2016 Ofcom report shows that Trinity Mirror group again sits in third place with 7% of those who consume news via newspapers using its Sunday titles, compared to 19% using News UK's Sunday titles, and 15% using DMGT's Sunday titles. Post-merger, the Sunday titles of a combined Trinity Mirror and Northern & Shell would sit in third place with a potential 10% of those who consume news through newspapers.

As a result of the merger, Trinity Mirror would remain in third place for both dailies and Sunday national titles in terms of its percentage of those who consume news via newspapers, but having considerably closed the gap on News UK and DMGT respectively.

In light of the above, the Secretary of State considers that the merger has the potential to raise plurality concerns. The Secretary of State is mindful, however, that the plurality ground requires a consideration of the diversity of viewpoints available in national newspapers, not merely of ownership or other market share measures.

In the national market, based on a review of editorial positions conducted by Departmental officials and on research carried out by King's College London<sup>15</sup>, of the current 20 national titles (our definition of the national market is set out in footnote 6), over half (11) supported the Conservative party, five Labour and four were neutral at the 2017 General Election. With regards the referendum on membership of the European Union, overall there were slightly more national newspapers in support of the Remain position (9) than the Leave position (8), with three taking a neutral stance. Trinity Mirror's titles predominantly (but not unanimously) supported the Labour Party at the 2017 General Election and backed Remain. By contrast, Northern & Shell's Express titles which exhibit a right-wing, Eurosceptic leaning, supported the Conservative party in the 2017 General Election and backed Leave. The Star titles appear to be largely non-political and neutral. As a result of the merger, it appears that

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<sup>11</sup> Ofcom, News Consumption in the UK: 2016. Published: 29 June 2017 ("Ofcom 2016 News Consumption Report"). Available at:

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0016/103570/news-consumption-uk-2016.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/103570/news-consumption-uk-2016.pdf):

<https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/news-consumption>

<sup>12</sup> Page 8 of Ofcom's News Consumption report 2016 (references as above) states that those who consume news through newspapers make up 29% of the UK adult population.

<sup>13</sup> See figures 4.4 (daily titles) and 4.5 (Sunday titles) of Ofcom's News Consumption report 2016, references as above.

<sup>14</sup> The consumption figures cited in this letter add together the figures for individual titles within each ownership group, to arrive at a combined figure for those who consume newspapers for news by ownership group (for example adding together figures for The Sun and The Times to arrive at a consumption figure for News UK's daily titles). As a result, it is acknowledged that there may be a degree of double-counting in these figures, given that some people will consume more than one daily title in the same ownership group (for example the Times and the Sun).

<sup>15</sup> Martin Moore and Gordon Ramsay, Kings College London Centre for the Study of Media, Communication and Power, UK media coverage of the 2016 EU Referendum campaign, May 2017. Pages 3 and 4. Available at: <https://www.kcl.ac.uk/sspp/policy-institute/CMCP/UK-media-coverage-of-the-2016-EU-Referendum-campaign.pdf>

Trinity Mirror will control 3 of 11 of all the national UK newspapers supporting the Conservative Party; 3 of 5 of all national newspapers supporting the Labour Party; and 3 of 4 neutral national newspapers.

In broad terms, bringing together titles with strongly divergent viewpoints may raise concerns about a potential lessening of the plurality of viewpoints in the market in question if there is a risk that editorial positions may be aligned.

As set out above, the Secretary of State notes that, on the eve of completion of the merger the editors of the Express and Star titles were replaced by a former editor of the Sunday Mirror and Sunday People, and a former associate editor at the Daily Mirror. The Secretary of State considers that this may be relevant to the risk that editorial positions may be aligned.

While there appears to have been no change in the editorial stance of these titles since the merger completed and new editors were appointed, the Secretary of State notes that the CMA has issued an Initial Enforcement Order (as well as directions under, and variations and derogations thereto)<sup>16</sup> in relation to the merger, which essentially operates to prevent the parties to a completed merger integrating without the consent of the CMA. Given such an order may limit Trinity Mirror's ability to make changes with respect to the acquired Northern & Shell titles, it is difficult to draw any conclusions on the impact of the merger, including the editorial personnel changes so far.

Of course, the Secretary of State recognises editorial independence will serve to protect the plurality of viewpoints within a newspaper organisation, and this is discussed under the freedom of expression ground, above. As set out above, whilst recognising Trinity Mirror's track record in maintaining a diverse range of titles, and the commercial incentives that may exist to maintain the existing editorial stance of the acquired titles, the Secretary of State considers that there are matters pertaining to the freedom of expression ground that could usefully be investigated and reported on by Ofcom. An analysis of those issues is therefore also likely to inform a consideration of the plurality ground.

Given the Secretary of State considers that the merger has the potential to raise plurality concerns which need to be considered alongside questions surrounding editorial independence, he considers it appropriate to ask Ofcom to consider the potential impacts the merger may have on the sufficiency of plurality of viewpoints in national newspapers. In this regard, it may be useful for Ofcom to consider the impact that online and other news provisions may have on the assessment of what is sufficient. The Secretary of State also recognises that it is appropriate to take account of wider factors affecting the newspaper industry, including declining circulation and advertising revenues in assessing the plurality ground. These are again matters which the Secretary of State considers could be usefully considered further by Ofcom.

## **Conclusion**

In the light of the particular circumstances of the case as set out above, the Secretary of State is currently minded to decide that the appropriate course is for him to receive reports from the CMA and Ofcom before deciding whether further consideration of these matters is required.

The Secretary of State makes no final determination on these matters, but in light of them, is minded to intervene on the basis that he believes that it is or may be the case that the public

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<sup>16</sup> These can be found on the CMAs website: <https://www.gov.uk/cma-cases/trinity-mirror-northern-shell-media-group-merger-inquiry>

interest in the free expression of opinion ground and the public interest in plurality ground is relevant to a consideration of the merger.

Before taking his final decision, however, the Secretary of State is giving you the opportunity to provide representations in writing. Any such representations should be sent to myself via email ( [REDACTED] ) by **12pm on Thursday 26 April**. The Secretary of State will then consider any relevant representations made before taking his final decision on whether to issue a PIIN in respect of the merger.

Yours sincerely

[REDACTED]

Head of Media Markets, Infrastructure and Technology  
Department for Digital, Culture, Media and Sport

## Annex A

### National Newspaper Titles, Monthly Circulation Figures for 2017

Publication	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Total	Average	Share (Average/ Total) %
<b>Daily publications</b>															
The Sun	1,667	1,592	1,602	1,617	1,576	1,571	1,568	1,564	1,544	1,517	1,492	1,480	18,790	1,566	13.89
Daily Mail	1,477	1,454	1,443	1,454	1,443	1,440	1,426	1,429	1,405	1,389	1,384	1,394	17,138	1,428	12.66
Daily Mirror	725	701	692	687	646	641	625	627	618	604	588	582	7,736	645	5.72
The Daily Telegraph	472	457	461	468	479	484	478	477	469	466	459	446	5,616	468	4.15
The Times	451	441	441	446	457	458	450	449	447	445	441	393	5,319	443	3.93
Daily Star	444	440	437	438	429	426	422	424	416	407	402	392	5,077	423	3.75
Daily Express	393	389	387	386	382	382	381	377	374	369	366	365	4,551	379	3.36
i	267	266	265	264	267	271	268	270	266	263	260	257	3,184	265	2.35
The Guardian	157	155	153	154	153	153	149	146	147	147	146	144	1,804	150	1.33
Daily Record	156	154	153	150	148	146	144	146	142	140	139	139	1,757	146	1.30
<b>Sunday publications</b>															
The Sun on Sunday	1,376	1,371	1,362	1,358	1,348	1,345	1,340	1,344	1,322	1,296	1,271	1,227	15,960	1,330	11.79
The Mail on Sunday	1,258	1,246	1,248	1,239	1,240	1,237	1,233	1,224	1,203	1,195	1,177	1,137	14,637	1,220	10.82
The Sunday Times	792	789	790	780	803	792	766	758	760	751	751	735	9,267	772	6.85
Sunday Mirror	629	612	604	585	563	556	543	538	536	517	506	493	6,682	557	4.94
The Sunday Telegraph	359	357	356	355	356	356	352	350	346	345	340	318	4,190	349	3.10
Sunday Express	336	334	334	335	335	329	331	334	323	324	317	303	3,935	328	2.91
Daily Star – Sunday	257	259	249	253	248	250	260	259	254	248	240	240	3,017	251	2.23
Sunday People	241	237	232	228	224	225	215	214	209	207	199	191	2,622	219	1.94
The Observer	186	184	179	182	178	193	179	177	177	177	176	175	2,163	180	1.60
Sunday Mail	168	166	161	160	157	159	153	156	151	148	147	152	1,878	157	1.39
<b>TOTAL</b>	<b>11,811</b>	<b>11,604</b>	<b>11,549</b>	<b>11,539</b>	<b>11,432</b>	<b>11,414</b>	<b>11,283</b>	<b>11,263</b>	<b>11,109</b>	<b>10,955</b>	<b>10,801</b>	<b>10,563</b>	<b>135,323</b>	<b>11277</b>	<b>100.00</b>

- News UK
- Daily Mail Group
- Trinity Mirror
- The Barclay Brothers' Press Holdings
- Northern & Shell
- Johnston Press
- Guardian Media Group

Source: ABC national newspaper print circulation figures (monthly) January - December 2017, as reported by Press Gazette