

**DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT  
NOTICE OF CONSULTATION ON THE PROPOSED UNDERTAKINGS GIVEN BY NEWS  
CORP UK & IRELAND LTD (NEWS UK) UNDER PARAGRAPH 2 OF SCHEDULE 10 OF  
THE ENTERPRISE ACT 2002, AS APPLIED TO THIS SITUATION BY VIRTUE OF  
PARAGRAPH 62(7)(a) OF SCHEDULE 18 OF THE COMMUNICATIONS ACT 2003 TO  
VARY THE CONDITIONS RELATING TO THE TIMES AND THE SUNDAY TIMES  
APPROVED BY THE THEN SECRETARY OF STATE FOR TRADE IN JANUARY 1981**

**Views are sought by 10am on Monday 15 July 2019 on the changes proposed by News UK to conditions agreed with the then Secretary of State for Trade in January 1981; the new undertakings now include stronger measures to strengthen the governance arrangements.**

### **Background**

1. On 25 October 2018 Allen and Overy (AO) on behalf of News UK informally approached the Department for Digital, Culture, Media and Sport to explore options on a possible application to vary some of the conditions related to their acquisition of The Times and The Sunday Times approved by the then Secretary of State for Trade in 1981.
2. On 10 January 2019, AO submitted a formal request to vary the 1981 conditions. The proposed changes would allow The Times and The Sunday Times to share journalist resources subject to the agreement of both newspapers' editors. The 1981 conditions included various binding conditions which were intended to maintain The Times and The Sunday Times as two distinct and separate publications with separate journalistic teams and with requirements to protect editorial independence.
3. On 18 January 2019, DCMS issued a statement<sup>1</sup> and published an Invitation to Comment on the application submitted by News UK. The Secretary of State sought views on whether the proposed changes were warranted given the changes in the newspaper market since 1981, and whether the changes proposed would have an adverse effect on the relevant public interests in s.58 Enterprise Act 2002. The Department received a total of six responses from interested parties to the Invitation to Comment<sup>2</sup>.
4. On 11 April, the Department wrote to News UK, on behalf of the Secretary of State, after the Secretary of State had carefully considered the application and the representations he received to the Invitation to Comment. The Secretary of State concluded that there had been a material change of circumstances since 1981 which warranted his consideration of News UK's application. The Secretary of State also concluded that the change of circumstances justified the variation in the conditions, as the effect of News UK's proposed changes to the 1981 conditions will not materially impact on the public interest considerations. Therefore the Secretary of State was minded to accept News UK's application. The Secretary of State also updated Parliament of his decision.
5. The Secretary of State considered News UK's application to amend the 1981 conditions as the offer of new undertakings in accordance with Paragraph 62 of Schedule 18 to the Communications Act 2003 ("CA 2003"). In considering the proposed undertakings as a whole, the Secretary of State noted that the existing governance arrangements lacked clarity

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<sup>1</sup>

<https://www.gov.uk/government/news/statement-on-proposed-undertakings-by-news-uk-in-respect-of-the-times-and-sunday-times>

<sup>2</sup> These are available at : <https://www.gov.uk/government/publications/responses-to-invitation-to-comment>

and certainty over roles and responsibilities and that these arrangements needed to be updated and adjusted to better reflect corporate best practice before he could give his final approval to the new undertakings.

6. The Secretary of State asked DCMS officials to meet with News UK, their legal representatives, the Editors of both newspapers and representatives of the Independent National Directors in order to agree to a number of changes to governance arrangements.

### **Consideration of Undertakings**

7. The Secretary of State identified a number of issues and weaknesses surrounding the governance arrangements in the undertakings. In summary, the key areas of concern were that:

- There were no term limits on Independent National Directors (INDs). There was no requirement for INDs to meet separately, to meet the editors separately or take active steps to ensure compliance with the undertakings.
- There was no requirement for the INDs to be independent from News UK and no provisions which dealt with the changes to the status of INDs after their appointment to the Times News Papers Holdings Ltd. (TNHL) board.
- There was no transparent arrangement for how the editors or other senior editorial staff can raise issues and take advice from the INDs on concerns about editorial influence.
- There were no arrangements for how issues and concerns can be reported to the Secretary of State or how the INDs can enforce the requirements in the undertakings.
- There was no annual reporting requirements on INDs or requirement to certify compliance.
- There was a lack of clarity on what would happen if the editors are unable to reach agreement on new sharing arrangements or the role of the INDs.

8. Following the conclusion of discussions between DCMS officials, News UK, the INDs, and their legal representatives, the Secretary of State has today published updated undertakings offered by News UK and revised changes to the Articles of Association of TNHL on the gov.uk website<sup>3</sup>.

9. The revised undertakings include a strengthening of the governance arrangements. In summary, News UK has now committed to introducing:

- A nine year term limit for INDs.
- A specific requirement for INDs to meet at least twice a year with each editor and to discuss with the editors issues relevant to compliance and a new role for INDs in monitoring compliance with the undertakings. The INDs will also have access to independent legal advice paid for by TNHL.
- A new, stricter definition of INDs which excludes members of the Murdoch Family and a requirement that INDs must resign if they no longer meet the definition of an IND.
- New provisions in the TNHL Articles of Association to give all staff concerned about compliance with the undertakings the ability to report concerns to the General Counsel of TNHL and for all reports to be shared with INDs.
- New provisions setting out the clear process for investigating breaches and reporting these to the Secretary of State where INDs have serious concerns.

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<sup>3</sup> All documents related to this case are available at:  
<https://www.gov.uk/the-timesthe-sunday-times-proposals-to-vary-1981-conditions>

- A new requirement to report annually to the Secretary of State and to share those reports with the CMA.
- An updated provision in the TNHL Articles of Association making clear that the sharing of resources is primarily for the editors to determine but that INDs will have a role in dealing with disputes and reporting on any concerns that resource sharing may undermine the separation of the two papers.

10. Taken as a whole, the Secretary of State believes the changes to the undertakings agreed with News UK represents a significant improvement on those contained in the original proposals. The revised undertakings:

- will strengthen the independence of the INDs and clarify their role and reporting requirements;
- remain in effect until varied, released or superseded;
- prevent the TNHL Articles of Association from being amended in any way which would affect the operation of the undertakings without the approval of the Secretary of State;
- provide a clearer requirement for the IND role to be an active one, requiring them to engage regularly with the editors; and
- now include a clear duty to report to the Secretary of State (copied to the CMA) annually on the operation of the undertakings.

11. The detailed arrangements are set out in the revised versions of the Times/ The Sunday Times undertakings which have been published for consultation today along with the Articles of Association of Times Newspapers Holdings Ltd. In the Secretary of State's view, the revised undertakings now offered by News UK provide sufficient protections for the long-term future and editorial independence of The Times and The Sunday Times, and reflect current good governance practice. In consequence of this, he now proposes to accept the News UK's revised undertakings. However, before doing so, and in line with paragraph 2 of Schedule 10 of the Enterprise Act 2002, as applied to this situation by virtue of para 62(7)(a) of Schedule 18 of the Communications Act 2003, the Secretary of State is now commencing a consultation period within which representations may be made in relation to the proposed undertakings.

## **Responses**

12. Views are sought on the News UK undertakings and the supporting documents by **10am on Monday 15 July 2019**. Responses should be sent to [media-mergers@culture.gov.uk](mailto:media-mergers@culture.gov.uk) or to DCMS Media Team, Department for Digital, Culture, Media and Sport, 100 Parliament Street, London, SW1 2BQ.

## **Related information**

13. All documents published by the Department in relation to the proposed merger are available at: <https://www.gov.uk/the-timesthe-sunday-times-proposals-to-vary-1981-conditions>

DCMS  
27 June 2019