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Dear [REDACTED]

**The Times and The Sunday Times - Application by News Corp UK & Ireland Limited to vary conditions approved by the then Secretary of State for Trade in 1981**

I refer to News Corp UK & Ireland Limited's ("News UK"), application of 10 January 2019 to vary conditions approved by the then Secretary of State for Trade in 1981. The proposed changes would allow The Times and The Sunday Times to share journalist resources subject to the agreement of each newspapers' editor. As set out in our letter of 3 December 2018 and in the Invitation to Comment published on 18 January 2019, the Secretary of State is treating this as an application to replace the 1981 conditions with new undertakings in accordance with Paragraph 63 of Schedule 18 to the Communications Act 2003 ("CA 2003").

**Summary**

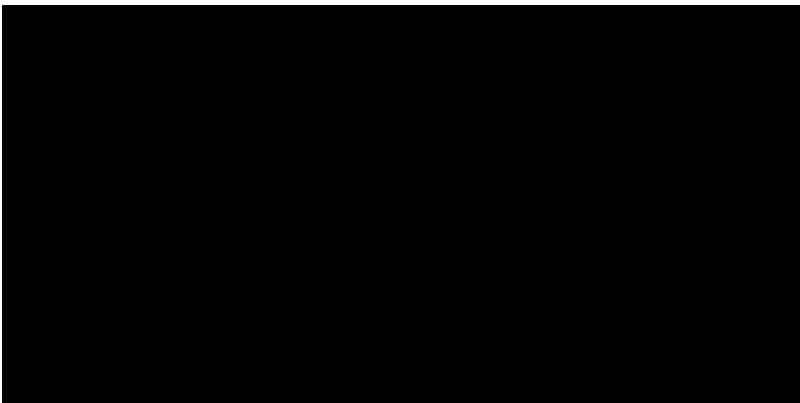
The Secretary of State has now considered News UK's application and the representations he has received to the Invitation to Comment. The Secretary of State has concluded that there has been a material change of circumstances since 1981 which warrants him considering News UK's application to vary the 1981 conditions. The Secretary of State has also concluded that the change of circumstances justifies the variation, as the effect of News UK's proposed changes to the 1981 conditions will not materially impact on the public interest considerations contained in Section 58 Enterprise Act 2002. He is, therefore, minded to accept News UK's application.

However, in considering the proposed new undertakings as a whole, the Secretary of State noted that the existing governance arrangements - agreed in 1981 - lack clarity and certainty over roles and responsibilities and that these arrangements need to be updated and adjusted to better reflect current modern day corporate best practices before he can give his final approval to the new undertakings.

We set out in the attached Notice more detail on the Secretary of State's reasoning in coming to his minded to decision to accept News UK's application to vary the 1981 conditions subject to changes in the operation of the governance arrangements.

### **Next Steps**

The Secretary of State has asked officials to discuss these issues with News UK and to consider any new proposals from News UK to update the proposed undertakings in a way which addresses his concerns. If News UK is able to offer undertakings which meet the Secretary of State's concerns, the next stage of the process will be for Government to consult of the new conditions as set out in Schedule 10 EA 2002. This will need to take place before the undertakings can be finalised.



Deputy Director - Media  
DCMS - Media Team

## **The Times and The Sunday Times - Application by News Corp UK & Ireland Limited (News UK) to vary conditions approved by the then Secretary of State for Trade in 1981**

### **Background to the Secretary of State's approach**

1. As set out in the Invitation to Comment, the Secretary of State has followed the broad approach used by the Competition and Markets Authority (CMA) when assessing applications to vary undertakings made under the Enterprise Act 2002. This involves the Secretary of State establishing:

- whether there has been a material change in circumstances since the conditions were imposed in 1981; and if so
- whether the change justifies the proposed variation.

2. In considering this matter, the Secretary of State has taken into account evidence - including from the representations made to the Invitation to Comment published on 18 January 2019<sup>1</sup> - on the potential impact of the variation on the public interest. A total of six responses were received to the Invitation to Comment. Of these, four responses raised points relevant to the Secretary of State's decision. One submission, from Hacked Off, attached a petition with more than 5,000 signatures. We will publish the substantive responses where consent from the respondent has been received. These will be made available on the GOV.UK website.

### **Assessing whether there has been a material change in circumstances to warrant consideration**

3. The first consideration, as set out in the Invitation to Comment, is whether there has been a material change in circumstances to warrant consideration of News UK's application.

4. News UK's formal application includes an assessment of the changes to the UK's news landscape since the 1981 conditions were approved. News UK's argument is that there has been a "material change in market conditions - including those brought about as a result of changes in technology - that may constitute a change of circumstances that can lead to a variation of undertakings or orders"<sup>2</sup>. News UK cited evidence of market changes to support its application.

5. The Media Reform Coalition (MRC) response argued that the application should not succeed on the basis that "there had been no material changes in circumstances that would justify any diminution or revision of the agreed conditions"<sup>3</sup>. The MRC also argued changes to the UK's news media landscape have limited effect on the availability of news, and that "if

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<sup>1</sup> News Corp UK and Ireland Limited - Invitation to Comment on a request to accept undertakings in place of conditions relating to its acquisition of The Times and The Sunday Times newspapers in 1981 - DCMS 18 January 2019

<sup>2</sup> News UK/Allen and Overy Submission - 10 January 2019 - paragraph 1.4

<sup>3</sup> Media Reform Coalition (MRC) response - 11 February 2019 - paragraph 2

anything market changes have underlined the need to maintain robust structures of independence between The Times and The Sunday Times newspapers”<sup>4</sup>.

6. Other respondents also argued that the commercial pressures facing The Times and The Sunday Times, cited by News UK, were not relevant to a consideration of whether or not to vary the 1981 conditions. The submission by the MRC argued that the current financial pressures facing the newspaper industry are a continuation of a long-term trend started by TV news that weakened the former dominance of newspapers<sup>5</sup>. Hacked Off<sup>6</sup> also rejected News UK’s argument that the changes were needed to ensure that The Times titles continue to be viable, pointing to a £9.6m profit for Times Newspapers Ltd in the year ending 2018.

7. The Secretary of State looked at a variety of data on newspaper consumption trends. He noted the conclusions of Dame Frances Cairncross’s Report into Press Sustainability and in particular her observation that “the news publishing business is undergoing an extraordinary period of contraction in both its traditional sources of revenue: advertising and circulation”<sup>7</sup>. He also noted Dame Frances’s conclusion that the continuing decline in traditional print revenues is only going to continue as print sales decline further.

8. Having considered News UK’s application, the representations received and other relevant information on the UK Newspaper market and reports on future trends, the Secretary of State has concluded that there has been a significant change to market conditions in terms of the consumption of newspapers since 1981. The Secretary of State also believes that this does represent a material change of circumstances and that this provides grounds to consider the application from News UK.

### **Assessing the impact of News UK’s application on the media public interest**

9. In order to assess whether the change in circumstances justifies the variation of the 1981 conditions, the Secretary of State has considered the impact the substance of the proposed changes may have on the public interest considerations as set out in Section 58 Enterprise Act 2002 (which were based on the public interest tests in the Fair Trading Act 1973 and applicable at the time the conditions were imposed in 1981) namely:

- (a) accurate presentation of the news in newspapers;
- (b) free expression of opinion in newspapers; and
- (c) a sufficient plurality of views in newspapers in each market in the UK or part of the UK.

#### **(a) Accurate Presentation of News**

10. None of the representations suggested that the changes to the 1981 conditions proposed by News UK would directly affect the accuracy of the news provided by The Times and The Sunday Times. Some respondents to the Invitation to Comment suggested,

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<sup>4</sup> Media Reform Coalition (MRC) response - 11 February 2019 - paragraph 4

<sup>5</sup> Media Reform Coalition (MRC) response - 11 February 2019 - paragraph 6

<sup>6</sup> Hacked Off response - February 2019 - page 2, paragraph 3

<sup>7</sup> The Cairncross Review - A Sustainable Future for Journalism - Feb 2019 - Exec Summary - Page 5

however, that an indirect consequence of allowing editors to share journalist resources would mean that each newspaper had less capacity to do in-depth, investigative journalism and that increased workloads could lead to more errors and a less accurate presentation of the news. Hacked-Off's view was that:

"It is equally arguable that the "sharing" of journalists and resources envisaged by the new clause would lead to redundancies in like-for-like roles between the organisations, and the requirements for remaining staff to produce more content to cover both titles. A reduced workforce, which might easily include merging the investigatory agendas of two titles into one – would inevitably compromise quality rather than enhance it." <sup>8</sup>

11. Whilst it may be the case that fewer journalistic resources may limit the scope for The Times and The Sunday Times to cover the same range and number of in-depth and investigative stories, the Secretary of State is satisfied that this alone will not result in a compromise on the quality or accuracy of news reporting given the need for both newspapers to maintain readers and their presence in the market. The Secretary of State is therefore satisfied that the proposed variation would not negatively impact on the accurate presentation of the news by either title.

#### **(b) Free expression of opinion in newspapers**

12. In order to assess the impact of the proposed variation on the free expression of opinion in newspapers, the Secretary of State has considered whether the level of control exercisable by News UK over the editors of newspapers is or is likely to increase as a result of News UK's application to vary the 1981 undertakings.

13. The consultation responses, on the whole, did not address this point directly. However, in their response, Hacked Off's response said:

"Two former editors (Sir Harold Evans and James Harding) have made credible and disturbing allegations that News UK's ownership have consistently ignored the 1981 Conditions.".....

"Recent Times editor James Harding has also indicated that Rupert Murdoch may have played a decisive role in his resignation, possibly in breach of the conditions."<sup>9</sup>

14. The Secretary of State has concluded that these points are relevant to his consideration but noted that neither Sir Harold Evans nor James Harding chose to respond to the Invitation to Comment. He also noted that the matters raised cover events a number of years ago. Finally, the Secretary of State believes that irrespective of the veracity of the claims, Hacked Off's submission did not evidence how the variation in the conditions could increase the control or influence News UK will have over the editors.

15. The Secretary of State did agree with the views expressed by respondents that there was a potential risk that the sharing of journalistic resources could weaken the position of one

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<sup>8</sup> Hacked Off response - February 2019 - page 2, paragraph 2

<sup>9</sup> Hacked Off response - February 2019 - page 4, paragraph 1

or both of the editors, affecting their ability to operate independently. However, the Secretary of State believes that the risk here is small and that the continuing presence of an effective structure of oversight by the Independent National Directors (INDs) is capable of remedying any potential impact.

### **(c) Impact on media plurality**

16. The media plurality consideration is set out in Section 58(2C)(a) of the Enterprise Act 2002 as the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be, to the extent reasonable and practicable, a sufficient plurality of persons with control of the media enterprises serving that audience. In assessing whether the News UK application raises any media plurality concerns, the Secretary of State has considered:

- the current distinctiveness of The Times and The Sunday Times; and
- the extent to which the changes would impact on media plurality.

#### **Current distinctiveness of The Times and The Sunday Times**

17. In order to assess whether the change has any impact on newspaper plurality, the Secretary of State considered the degree to which the two newspapers are currently seen as being separate in terms of their being read by broadly the same readers; and in terms of pursuing different editorial lines on topical issues. Whilst there is evidence of a distinctive readership of the two print editions, online subscribers are more likely to see the two papers as a single title. However, in terms of respective editorial positions, there is evidence that The Times and The Sunday Times do take different editorial lines on a range of issues and pursue different investigative areas. Overall, the evidence considered the Secretary of State suggests there is still differentiation in the customer base for The Times as compared with The Sunday Times (although this appears to be narrowing as more readers consume news online) and that two papers continue to contribute separately to wider media plurality.

#### **Extent to which the changes would impact on media plurality**

18. The Secretary of State considered the degree to which the changes proposed by News UK would affect wider media plurality. News UK has argued that the proposed variation of the conditions could have no adverse impact on media plurality, since each title will remain under separate editorship. However, the Secretary of State's view was that a reduction of journalists could impact plurality, as it could, if applied to a significant extent, increase the overlap of journalists across the two papers and reduce the potency of each newspaper as a separate voice.

19. The Secretary of State therefore considered News UK's proposals against the media plurality test as set out in Section 58 of the Enterprise Act 2002; namely the need - to the extent that it is reasonable and practicable - for the sufficient plurality of views in newspapers

in each market of newspapers in the UK or part of the UK. The Secretary of State had regard to Ofcom's media plurality framework in assessing plurality<sup>10</sup>.

20. The changes proposed by News UK would allow for a sharing of services and resources, including journalistic resources, for the first time and so could, potentially alter the internal plurality provided under the current arrangements. However, the Secretary of State noted that News UK propose that resources can only be shared to the extent that the two editors agree. The INDs expressed their view that this is a necessary change given the disruption that has squeezed the finances of all traditional media companies. The INDs explained that traditional media:

“have responded in various ways and with varying effectiveness but all of them have had to cut their costs.”<sup>11</sup>

21. All the substantive responses challenged this view, focusing on the risks that were created by News UK's proposals as they would weaken the separate voices provided by each title. Hacked Off argued that:

“The new clause proposed by News UK would actively undermine plurality in the newspaper market, by permitting increased journalistic and, effectively, editorial, exchange and convergence between the titles”<sup>12</sup>.

22. The NUJ's view was that the proposed changes would place both newspapers in jeopardy with impacts on plurality:

“To share staff would dilute the differences between the newspapers and have an adverse impact on media plurality. Both papers have a distinctive voice which would be irrevocably lost if cost-cutting is prioritised at the expense of quality journalism”.<sup>13</sup>

23. The NUJ also argued that it wasn't yet the norm for Daily and Sunday papers to share resources and staff<sup>14</sup>.

24. The Secretary of State noted that The Times and The Sunday Times, with their long-traditions of high quality journalism, still provide an important and independent voice and still separately set the agenda for news and current affairs coverage by the wider media. However, the Secretary of State considers that the proposed changes are not likely to have any impact on overall consumption of news in the wider market (as it will not alter the title's market share or it's share of references in terms of cross media consumption) nor will the proposals affect the degree to which each newspaper is able to shape the news agenda. However, given the limited UK sources of national news and opinionated news available to UK

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<sup>10</sup> Measurement framework for media plurality - Ofcom's advice to the Secretary of State for Culture, Media and Sport Nov 2015

<sup>11</sup> Letter from the Independent National Directors of Times Newspapers Holdings Ltd to the Secretary of State for Digital, Culture, Media and Sport - 17 December 2018

<sup>12</sup> Hacked Off response - February 2019 - page 3, paragraph 6

<sup>13</sup> NUJ response - February 2019 - paragraphs 8 and 9

<sup>14</sup> NUJ response - February 2019 - paragraphs 10

citizens, the Secretary of State concluded that he could not discount the possibility that the two titles would become more closely aligned over time, as a result of the sharing of journalistic resources, and that if this happened it would be likely to reduce overall plurality in the UK.

25. He therefore noted a small potential impact on plurality, but considered that the risk of this impact arising could be reduced by an effective structure of oversight by the INDs to maintain the separate nature of The Times and The Sunday Times.

### **Next Steps**

26. The Secretary of State - based on the evidence and the consultation responses that he has received - is therefore  minded to accept  the proposed changes to the 1981 conditions.

27. However, in the process of considering this, the Secretary of State has looked at the entirety of the 1981 conditions, and how they would appear once amended as News UK proposes. The Secretary of State believes that aspects of the conditions which were implemented in 1981 lack clarity and certainty over roles and responsibilities and need to be updated to better reflect modern day best practice. As a result, the Secretary of State is unable to accept the proposed undertakings in their current form.

28. The Secretary of State has asked officials to discuss these issues with News UK and to consider new proposals from News UK to update the proposed undertakings in a way which meets his concerns. If News UK is able to satisfy the Secretary of State and offer undertakings which meet the Secretary of State's concerns, the next stage of the process will be for Government to consult of the new conditions as set out in Schedule 10 EA 2002. This will need to take place before the undertakings can be finalised.

**DCMS**

10 April 2019