

## NEWS CORP UK & IRELAND LIMITED

### Application to the Secretary of State for the Department for Digital, Culture, Media and Sport to release the undertakings given by News Corp UK and Ireland Limited under Schedule 18, paragraph 62 of the Communications Act 2003 relating to The Times and The Sunday Times

#### 1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This application is submitted to the Secretary of State for Department for Digital, Culture, Media and Sport (**DCMS**) on behalf of News Corp UK & Ireland Limited (**News UK**). The application is in relation to the undertakings accepted by the Secretary of State on 22 July 2019 under Schedule 18, paragraph 62 of the Communications Act 2003 (the **Undertakings**), which varied the conditions relating to The Times and The Sunday Times approved by the then Secretary of State for Trade and Industry in January 1981 (the **Conditions**).
- 1.2 The Conditions included 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. The Undertakings made only a minor variation to the Conditions, to allow for sharing of journalistic resources between the Times and the Sunday Times, whilst retaining in full the requirement for the two titles to be published as separate and editorially independent newspapers under the supervision of the INDs.
- 1.3 News UK now wishes to apply to the DCMS to release the Undertakings in their entirety. Since the imposition of the Conditions newspaper markets have changed radically and there have been further material change of circumstances even since the most recent variation, which resulted in the Undertakings.
- 1.4 The financial difficulties faced by the newspaper industry have accelerated and intensified as result of the COVID-19 crisis. A 20% decline in print circulation as a result of the pandemic is estimated, roughly double the historic rate. The impact on advertising revenues is equally acute, with an estimated annual decline for newspaper publishers of 21% across print and online in 2020. These effects are likely to be long term and irreversible, with much of what is lost predicted to never reappear. Against this background News UK is the only publisher that is required to operate on the basis of Undertakings that place an additional burden on its finances and ability to sustain high quality journalism, as well as on its ability to react quickly to a dynamic market where quality news provision is more important than ever.
- 1.5 Since acceptance of the Undertakings, the UK newspaper sector has also seen further consolidation, through the acquisition by Daily Mail and General Trust of JPI Media Publications Limited, publisher of the 'i' UK national newspaper and website in November 2019 (the **DMGT/JPI Transaction**). As DCMS is aware, a Public Interest Intervention Notice was issued in relation to both the DMGT/JPI Transaction and the March 2018 acquisition by Reach plc of certain publishing assets of Northern & Shell Media Group Limited, including the Daily Express, Sunday Express, Daily Star and Daily Star Sunday newspapers (the **Reach/N&S Transaction**), with the Secretary of State concluding that neither transaction gave rise to public interest concerns. The DMGT/JPI Transaction resulted in a merged entity with 3.63% 'share of references' (**SoR** - Ofcom's metric for share of news voice). After its acquisition of N&S, Reach had an SoR of 3%. These figures compare to the current combined SoR of News UK (including Wireless Group stations) of 2.6%.
- 1.6 News UK therefore finds itself as the only national newspaper publisher that is subject to the direct and indirect costs of compliance with the Undertakings and the operational restrictions that they

impose. This uneven playing field and the direct and indirect costs of maintaining the Undertakings in the current circumstances risks adversely impacting the quality of journalism at The Times and The Sunday Times and, ultimately, the economic viability of the two titles. In these unprecedented times, when the demand for trusted news sources has become increasingly important, it is imperative that News UK is not disadvantaged relative to other newspaper publishers and has the same operational flexibility to respond quickly to rapidly changing and unpredictable market conditions.

- 1.7 While News UK has demonstrated a deep commitment to the printed newspaper, TNL now produces content across the landscape of media including the digital editions across seven days, podcasts, social media output and a link up with Times Radio. TNL requires teams to join together and both titles have pledged to lead with a “digital first” policy with a view to transforming the newsroom. The “separation of titles” is fast becoming an artifice and impedes necessary innovation at both titles, which is required to ensure their viability. Restrictions placed on the News UK in 1981 are now outdated and unsuited to the needs of a rapidly changing modern news media. The lack of a level playing field amongst competitors in the market exacerbates the problem further.
- 1.8 The imposition of oversight on the operations and structure of a media organisation by a Government Department and the CMA must remain under constant review. There are particular sensitivities around the relationship of the free press and government and any restriction or oversight must be justifiable upon clear evidence. Such oversight must only be continued where there are serious and necessary reasons to believe that it is still required. Any changes to the conditions under which the oversight was imposed must result in careful consideration as to whether the requirement for that oversight is still justified. It is submitted that the changes that have occurred in the media landscape since 1981 are profound, indeed it can be said that the landscape is unrecognisable. News UK submits that the reasons for the imposition of the Undertakings nearly forty years ago no longer apply and these changes in circumstances necessitate the removal of the restrictions.
- 1.9 News UK respectfully submits that the release of Undertakings in these circumstances would not give rise to any adverse effect on the relevant public interest considerations set out in Section 58 Enterprise Act 2002:
  - (i) 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 the two titles. There is therefore no reasonable basis to conclude that release of the Undertakings would have any adverse effect on the accurate presentation of news.
  - (ii) There are equally no reasonable grounds to conclude that release of the Undertakings would have any adverse effect on the free expression of opinion in newspapers. The continued success of both The Times and The Sunday Times is inextricably linked to their longstanding reputation for quality and independent journalism.
  - (iii) Any attempt by the proprietor to restrain or inhibit the editorial position of either The Times or The Sunday Times would be economically irrational and likely to result in a sharp decline in circulation numbers, subscribers to the digital editions and both print and online advertising revenues, at a time when all of these metrics are already under significant long and short term pressure.
  - (iv) Reflective of this, upon release of the Undertakings News UK will amend the employment contracts of the Editors of the two titles to include contractual provisions which will guarantee editorial independence in terms equivalent to the Undertakings. News UK will also set up an independent committee to monitor and mediate any disputes between Editors and the company relating to independence. It is anticipated that the independent committee will at the outset be appointed from amongst the current independent directors. Contractual

safeguards will ensure the independence of the committee and their powers. The Editors will have the power to veto any proposals for appointment by the Company.

- (v) In view of the Secretary of State's recent decisions on the Reach/N&S Transaction and the DMGT/i Transaction, there is no credible basis to conclude that the removal of the Undertakings would result in plurality concerns. Unlike those transactions, removal of the undertakings would have no impact on external plurality. Moreover, News UK will retain strong commercial incentives to maintain the distinct editorial voices of The Times and The Sunday Times and, even if some reduction in internal plurality was assumed, the UK newspaper sector remains highly plural despite the challenges facing the newspaper industry.

1.10 The editors of The Times and The Sunday Times are supportive of the Undertakings being removed and do not consider that this would give rise to any concerns over the proprietor seeking to restrict or inhibit the editorial output of their respective newspapers. The INDs have also been consulted regarding this application and the proposed new arrangements outlined above, and agree that the changes in circumstances since 1981 mean that the Undertakings are no longer necessary.

1.11 The remainder of this application is structured as follows:

- (i) **Section 2** summarises the Undertakings and the legal background to them;
- (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 challenges that the newspaper industry has continued to face since the Undertakings were accepted, and how these trends have accelerated and intensified in an irreversible way as a result of the COVID-19 crisis;
- (v) **Section 6** explains the significant direct and indirect costs that the Undertakings impose on News UK, and why their release is needed to ensure that News UK has the same operational flexibility as other newspaper publishers to respond to these rapidly changing market conditions;
- (vi) **Section 7** explains why release of the Undertakings (together with the actions News UK would take on removal of the Undertakings) would have no adverse effect on the public interests considerations set out in Section 58 of the Enterprise Act.

## 2. THE UNDERTAKINGS AND THEIR LEGAL CONTEXT

2.1 Prior to the Secretary of State giving his consent under section 58(3)(a) of the Fair Trading Act 1973 to the transfer of The Times and The Sunday Times newspapers to News UK (then called News International Limited) (the **Transfer**), 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.

2.2 The key operative parts of the Conditions, which continue to have effect since acceptance of the Undertakings, are summarised below:

- (i) that the Times and the Sunday Times 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.

2.3 The only substantive variation brought about by the Undertakings that were accepted by the Secretary of State on 22 July 2019 under schedule 10 of the Enterprise Act 2002 is the addition of explicit wording to allow for the sharing of resources and services, including journalists, between The Times and The Sunday Times (to the extent agreed by the editors of the two titles).<sup>1</sup> Crucially, the Undertakings make no changes to the requirement under the Conditions to continue to publish the two titles as separate newspapers, or any relaxation of the elements of the Conditions intended to maintain the editorial independence of the titles from their proprietor. Moreover, the role of the INDs in overseeing and ensuring compliance with these requirements is preserved and enhanced under the Undertakings.

2.4 Paragraph 62(5) of Schedule 18 to the Communications Act states that the Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing undertakings accepted under that paragraph. In accordance with that provision, paragraph 7 of the Undertakings provides that they shall remain in force until such time as they are varied, released or superseded, and that in the event of a material change of circumstances, the Secretary of State may, in response to a written request from News UK, vary or release all or part of the Undertakings.

### 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 four groups of companies that form the main "divisions" of News UK. These comprise TNHL, News Group Newspapers Limited (NGN), Newsprinters Limited (News UK's print and logistics arm) and the radio station operator Wireless Group.<sup>2</sup>

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. **The Times** and **Sunday Times** in combination have a total daily reach of 2,472,000 across print and digital, and within this 1,001,000 for print, according to Pamco. (Note that Pamco's latest available figures for print predate COVID-19).<sup>3</sup>

3.4 NGN owns and publishes the **The Sun** and **The Sun on Sunday**. In combination they have a total daily reach of 9,477,000 across print and digital, and within this 2,417,000 for print.

3.5 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) and, since acceptance of the

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<sup>1</sup> As part of the process, the TNHL and TNL Articles were also updated to reflect enhanced monitoring and reporting requirements for the INDs and changes in company law since the Conditions came into force in 1981.

<sup>2</sup> 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.

<sup>3</sup> This and subsequent newsbrand reach figures from Pamco 3, 16th September 2020, unless otherwise specified. Underlying data from April 2019 to March 2020 for print and June 2020 for online.

Undertakings, some sharing of journalistic resources between The Times and The Sunday Times, the two titles otherwise operate as entirely separate newspapers. In particular, from an editorial perspective the two newspapers continue to operate entirely separately, with the editors (John Witherow for The Times, and Emma Tucker for The Sunday Times) retaining sole control over political comment and opinion published in their newspaper, as well as the appointment, disposition and dismissal of journalists working for their respective papers.

3.6 There are now shared journalistic teams in the following areas: Sport, Sport production, Travel, Property, Money and Features production. Whilst maintaining the independence of The Times and Sunday Times news desks, News UK currently intends to take further steps to integrate feature desks across seven days, and to merge editorial services across both titles including pictures, graphics, subbing and production.

#### 4. OVERVIEW OF THE UK NEWSPAPER INDUSTRY

4.1 Despite the challenges facing the newspaper sector (as described in section 5 below), it continues to be highly plural. There are 14 daily and 11 Sunday national<sup>4</sup> newspapers, published by a total of nine 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 DCMS is aware, on 29 November 2019, DMGT acquired JPI Media Publications Limited, publisher of the ‘i’ UK national newspaper and website. The Daily Mail and Mail on Sunday in combination have a total daily reach of 8,601,000 across print and digital, and within this 2,386,000 for print. The Metro has a daily reach of 4,727,000 across print and digital, and within this 2,301,000 for print. The i has a total daily reach of 576,000 across print and digital, and within this 385,000 for print.
- (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. In 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. The daily total and print reach of Reach’s titles is: Daily Mirror, Sunday Mirror and Sunday People<sup>5</sup>, 6,038,000 / 889,000; Daily Express and Sunday Express, 4,219,000 / 525,000; Daily Star and Daily Star Sunday, 1,633,000 / 434,000; Daily Record and Sunday Mail 1,110,000 / 338,000.
- (iii) Telegraph Media Group: publishes the Daily Telegraph and Sunday Telegraph newspapers. In combination they have a total daily reach of 2,730,000 across print and digital, and within this 780,000 for print.
- (iv) Guardian Media Group (**GMG**): owned and financially supported by the Scott Trust Limited, GMG publishes The Guardian and The Observer, with a combined daily reach of 6,575,000 across print and digital, and within this 634,000 for print.
- (v) Nikkei: owner of the Financial Times. Reach figures for the FT are not available, but its UK print circulation was 46,000 in September 2020.<sup>6</sup>
- (vi) The Lebedev Foundation: publishes of the Evening Standard (in print and online), as well as the online only Independent. The Standard has a total daily reach of 2,910,000 across print and digital, and within this 1,179,000 for print. The Independent’s daily reach is 3,807,000.

<sup>4</sup> Following ABC’s classification of ‘national’.

<sup>5</sup> The Sunday People and Sunday Mirror share an editorial team.

<sup>6</sup> ABC

- (vii) DC Thompson & Co Ltd: publishes the Sunday Post (reach figures are unavailable, but it had a print circulation of 74,305 as at September 2020), as well as regional titles.
- (viii) City A.M. Limited: publishes the free City A.M. newspaper, with average circulation of 85,738 as at February 2020, across London and the Home Counties. (Note that City AM suspended print publication in mid-March due to COVID-19.)

4.2 In addition, 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 JPIMedia.

## 5. CONTINUED CHALLENGES FACING THE UK NEWSPAPER INDUSTRY AND IMPACT OF COVID-19 CRISIS

5.1 The challenges facing the newspaper industry have been widely reported and are well recognised. In accepting the Undertakings, the Secretary of State confirmed that there had been a material change of circumstances since the Conditions came into effect in 1981, noting the conclusions of the Cairncross Report into Press Sustainability that “the news publishing business is undergoing an extraordinary period of contraction in both its traditional sources of revenue: advertising and circulation”, and that the continuing decline in traditional print revenues is only going to continue as print sales decline further.<sup>7</sup>

5.2 As further described below, the trend of long-term decline of print circulation has continued in the period following acceptance of the Undertakings, further eroding both print circulation and print advertising revenues. At the same time, increases in digital revenues have not offset lost print revenues, due to the proliferation of online news sources and the systemic issues in online advertising markets that have been recognised in the Furman Report and are subject to ongoing investigation by the CMA.

5.3 The COVID-19 crisis has intensified and accelerated these trends, at a time when the demand for trusted news sources has become increasingly important. For the reasons described in more detail below, the crisis is expected to have a long term and irreversible impact on News UK's operations and the UK newspaper sector more generally.

### **The decline in print circulation continues and has accelerated as a result of the COVID-19 crisis**

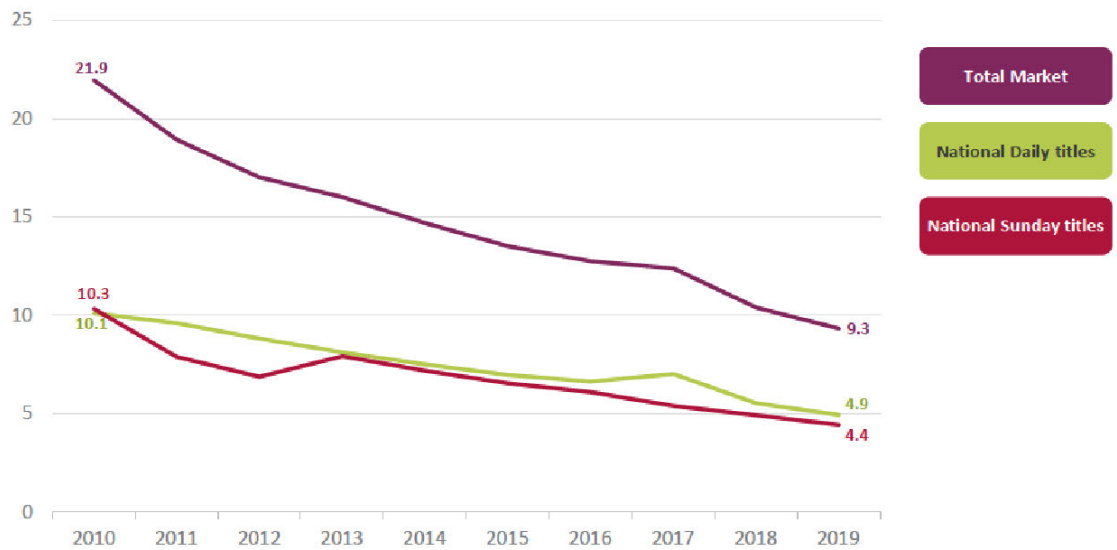
5.4 The decline of print newspaper circulation was noted as a key trend affecting the industry in Ofcom's advice to the Secretary of State on the DMGT/JPI Transaction. The following diagram (excerpted from Ofcom's advice) show how the circulation of newspapers generally has declined sharply between 2010 and 2019, with the total market for national newspapers more than halved during this period, as a result of changing consumption habits.

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<sup>7</sup>

Letter from DCMS to Allen & Overy, dated 10 April 2019.

**Figure 1: Average UK net circulation of newspapers, 2010-2019**



Source: Audit Bureau of Circulation (ABC)

- 5.5 Consistent with this overall trend, the print circulation of both The Times and The Sunday Times has declined substantially. From June 2010 to March 2020, the print circulation of The Times fell by 27%, while that of The Sunday Times fell by 40%. The Sun and Sun on Sunday have seen even steeper declines, with circulations down 59% and 64% respectively over the same period.<sup>8</sup> These declines are before the impact of COVID-19.
- 5.6 The COVID-19 pandemic is causing the structural decline in print circulation to accelerate. A report by Enders Analysis primarily attributes this to access challenges, as consumers stay away from the retailers and transport hubs where they might previously have picked up newspapers.<sup>9</sup> UK newspapers are particularly vulnerable because they rely more on news-stand sales than papers in many other markets. In April circulation of paid dailies fell by 20% against the previous month, and free dailies by 59%. While paid dailies have recovered somewhat as the lock-down eased, they were still down 20% year on year as of August (roughly twice the rate of historic decline).<sup>10</sup>
- 5.7 News UK expects that the effects of COVID-19 on print circulation will be long term and to a large extent irreversible. Print newspaper consumption is significantly driven by habit. For example, the great majority of newspaper circulation declines over the last 40 years are not due to individuals ceasing to buy papers. Rather, with each passing year, new consumers were less and less likely to start buying newspapers, and these ‘non-buyers’ have come to dominate the population, even as older consumers continue their print habit. However, once a habit is broken, it may not be readily re-established.
- 5.8 Again, this is in line with the finding of Enders Analysis, who predict that even a short-term decline in circulation would be partially permanent, with plummeting circulation drastically impacting the cashflow of many publishers, which they expect will result in the hollowing out of newsrooms. In this respect, some analogies can be drawn with the impact of the closure of the News of the World in 2012, which resulted in rival titles, including the newly launched Sun on Sunday, picking up only

<sup>8</sup> Sun on Sunday in 2020 compared to News of the World in 2010.  
<sup>9</sup> Enders Analysis: News media challenges brought to a head, 7 April 2020.  
<sup>10</sup> ABC

around 60% of News of the World circulation, with around 40% dropping out of the market entirely.<sup>11</sup>

**Advertising spend continues to decrease in line with dropping circulation numbers, with COVID-19 putting unprecedented pressure on marketing budgets**

- 5.9 In its advice on the DMGT/i Transaction, Ofcom observed that in the period between 2010 and 2018, print advertising revenues have declined at a faster rate than circulation numbers – from £1,826m in 2010 to only £658m in 2018.
- 5.10 As with print circulation, the COVID-19 pandemic has expedited these trends and is expected to have a long term and irreversible impact. Advertisers are pulling out of print media on mass, with newspaper publishers experiencing rapid declines in revenues. The Guardian and DMGT reported 80% and 69% drops respectively in print advertising due to COVID-19.<sup>12</sup> Similarly, Reach plc issued a trading update that reported a 31% drop in revenue in April once lockdown took effect, with print revenues down 32% and digital 23% (despite a 57% increase in page views).<sup>13</sup> There has been some recovery since, but PWC still expects UK print advertising to be down 24% year-on-year.<sup>14</sup> AA/WARC predicts a 25% drop for national newsbrands (including their digital revenue).<sup>15</sup> Enders Analysis suggest that publishers should plan for up to half of what is lost to never reappear.<sup>16</sup> (Certainly much of the print advertising lost in 2009 was permanent).
- 5.11 Advertising expenditure by key categories of press advertiser has been particularly impacted by the crisis. Entertainment and leisure spend was down £207m during lockdown (driven primarily by lack of sporting events and cinema releases). Travel and transport was down £138m. Food and drink spend was also badly hit. McDonalds cut its spend by 97%, for example.<sup>17</sup>

**Online revenues continue to offset only a small proportion of lost print revenues, and increased use of publisher websites during the COVID crisis has not corresponded to an increase in online revenues**

- 5.12 A driver of the decline in print circulation in recent years is the shift in news consumption to online sources. Ofcom's most recent News Consumption Survey shows that these trends have continued into 2020, with only 35% of those surveyed using print newspapers as one of their sources of news, compared to 65% using the internet.<sup>18</sup>
- 5.13 While newspapers have well established online offerings to capture some of this consumption, it is proving challenging to monetise. The online ad market is fiercely competitive, and newspapers must compete with digital platforms that have cost advantages, advantages of scale, deeper knowledge of consumers to use for ad targeting and so on. Further, these platforms are often intermediaries between newspapers and audiences, and take a share of generated ad revenue. Ofcom's survey shows that social media is now the most popular way to consume news online, with 45% of those surveyed, saying they use apps such as Facebook, Twitter and WhatsApp for news.

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11 See, Enders Analysis: More news under the Sun, 27 January 2012.

12 Guardian, Covid-19 leaves news and entertainment industries reeling, 17 April 2020; Guardian, Daily Mail publisher to cut up to 100 jobs as revenues fall, 13 August 2020.

13 Reach plc, [Reach plc trading update for the 4-month period to 26 April 2020](#), 7 May 2020.

14 PWC, Entertainment & Media Outlook 2020-2024 (UK edition), September 2020.

15 AA/WARC, 2021 UK adspend forecast for slower recovery, 29 October 2020.

16 Enders Analysis: Journalism on the Precipice, 15 May 2020; Enders Analysis: News media challenges brought to a head, 7 April 2020.

17 WARC, Lockdown sees 48% decline in traditional ad spend, 5 August 2020.

18 Ofcom News Consumption Survey, 2020.



- 5.14 Reflective of this, newspapers' advertising income remains dependent on print (which accounts for over 67% of total newsbrands advertising revenues),<sup>19</sup> with increased digital revenues of newspaper publishers not offsetting declines in print revenues. In its advice on the DCMS/JPI Transaction, Ofcom recognises that the dynamics of online advertising and the rise of large online players account for a significant part of the challenge, with Google and Facebook alone estimated to have captured 60% of all UK digital advertising revenues in 2019.<sup>20</sup> As DCMS is aware, the distortive effects of Google and other digital platforms on competition in the online advertising sector have been considered in detail in the Furman Report, and the extensive CMA report following its market study.
- 5.15 COVID-19 saw a huge uplift in visits to publisher websites, reflective of the value and importance of trusted news sources during the crisis. For example, ComScore reported that visits to general news websites and apps rose 44% in the UK the week commencing 9 March compared to 30 December 2019, and 51% the week starting 16 March. However, this did not corresponded to an increase in online advertising revenues, due to a combination of the general decline in advertising spend across print and online, and the systemic issues with the online advertising sector described in the preceding paragraph. Enders reports that online display advertising rates fell by 'significantly more' than 20% as demand dried up.<sup>21</sup>
- 5.16 The impact of the crisis on publishers' online advertising revenues has been made more acute by the use of 'blocklists' by advertisers. Blocklists are a tool used by advertisers in the open display ad market to avoid bidding for placements on pages that mention certain topics. They followed the rise of brand safety concerns, where advertisers became worried that they were appearing next to unsuitable content that would harm their brands. Coronavirus has been added to many of these lists, or at least automatically bundled into policies avoiding disease/disaster stories. As a result, news publishers are seeing particularly acute pressure on ad revenue, since so many of their stories relate to COVID-19 and therefore are being blocked by advertisers. Newsworks, on behalf of and with support from the news industry, published an open letter to advertisers on 1 April stating that if the pandemic lasts another three months, the total loss to news brands would be £50m as a result of blocking the term 'coronavirus'.<sup>22</sup>

### **Publisher responses to declining revenues and the COVID crisis**

- 5.17 As a result of declining revenues, in recent years publishers have found it necessary to 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. Mediatique estimated that in the ten years to 2017, the number of front line newspaper journalists fell from 23,000 to 17,000.<sup>23</sup> Based on the accounts of UK newspaper companies (and using Mediatique's methodology), we estimate that the figure is now under 15,000.
- 5.18 An important means of reducing titles' cost bases, without compromising 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. Over recent years, most major national titles with Sunday editions<sup>24</sup> 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. In addition to savings from integration of weekday and Sunday

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<sup>19</sup> Enders Analysis: News media challenges brought to a head, 7 April 2020.

<sup>20</sup> Ofcom Online Nations report, 2019.

<sup>21</sup> Enders Analysis: Online advertising during the lockdown. 20 April 2020.

<sup>22</sup> <https://www.newsworks.org.uk/news-and-opinion/back-dont-block-british-journalism>.

<sup>23</sup> Mediatique (for DCMS), *Overview of recent dynamics in the UK press market*, April 2018.

<sup>24</sup> 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.

editions, some companies have been seeking savings from across different titles. For instance, Reach announced plans to reduce staff by 70, by combining operations across the Mirror, Express and Star.

- 5.19 In response to the market trends outlined above, the newspaper industry has also witnessed a period of significant consolidation, including the Reach/N&S Transaction and most recently the DMGT/JPI Transaction. As DCMS is aware, a Public Interest Intervention Notice was issued in relation to both transactions, with the Secretary of State concluding that neither transaction gave rise to public interest concerns. For the reasons described further in Section 7 of this briefing paper, in view of these recent precedents, there can be no reasonable basis to conclude that the release of the Commitments would have an adverse effect on the public interest.
- 5.20 The COVID-19 crisis is putting publisher costs under further and unprecedented pressure, which is unlikely to abate in the short to medium term. Numerous newspapers have already announced pay cuts and/or furloughed staff. Against this backdrop, it is expected that publishers will seek to make further operational changes, and/or look towards further industry consolidation, in an attempt to eliminate duplication of costs between titles within their portfolios. Even then, a material decline in the total number of journalists across the sector is anticipated, with Enders Analysis estimate that perhaps as much as a third of frontline journalists (c. 5,000 in total) could be at risk.<sup>25</sup>
- 5.21 Indeed, it is predicted that the impact of the crisis will go beyond redundancies and may result in titles being closed down. According to Claire Enders, “*The way things are currently looking, only two or three paper-based groups will survive this conflagration.*” According to Rasmus Kleis Nielsen, director of the Reuters Institute for the Study of Journalism, “*Top line revenues will decline and that will have direct consequences on employment and titles will close down. It’s a grim picture.*”<sup>26</sup> Nic Newman (also of the Reuters Institute) anticipates closures and “*consolidation, and cost-cutting, reorganising and rethinking what a news organisation needs to do going forward*”.<sup>27</sup> The Press Gazette has said “*The coronavirus pandemic presents the greatest threat to the global news industry since the 2008 economic crash.*”<sup>28</sup>

**6. THE CONTINUED COSTS AND OPERATIONAL RESTRICTIONS IMPOSED BY THE UNDERTAKINGS CANNOT BE JUSTIFIED IN THE CURRENT CIRCUMSTANCES**

- 6.1 Compliance with the Undertakings results in News UK incurring significant costs that no other UK newspaper publisher has to bear. The direct costs of maintaining the INDs are material, amounting to around ██████ per annum in fees and expenses. In addition to the direct costs of the INDs, News UK incurs further costs as a result of maintaining the TNHL Board. In total, direct annual costs for maintaining the TNHL Board are around ██████, as summarised in **Table 1** below. This does not include management time around preparation for board meetings and general administration.

**Table 1: Cost of maintaining TNHL Board**

Costs	Breakdown of annual costs	Total annual costs
INDs	Fees (6 x ██████)	██████

<sup>25</sup> Enders Analysis: News media challenges brought to a head, 7 April 2020. The trend is not unique to the UK; for example, an estimated 38,000 news company workers from journalists to commercial staff have been furloughed, laid off or taken pay cuts in the US since March, according to FT estimates: <https://on.ft.com/2Vfjgs8>.

<sup>26</sup> Jane Martinson, [Papers on the Brink, UK edition](#), 5 May 2020.

<sup>27</sup> Press Gazette, [Journalism after Covid-19: It’s not an extinction-level event](#), 12 June 2020.

<sup>28</sup> Press Gazette, [Coronavirus and the news industry: Everything you need to know](#), 9 September 2020.

Non-execs	Fees [REDACTED] Office support for Chairman Expenses	[REDACTED]
Others	Audit Fee Board Meetings	[REDACTED]

- 6.2 News UK considers that removal of these costs alone would provide sufficient justification for release of the Undertakings. However, these costs are secondary to the constraint that the Undertakings place on News UK's ability to make organisational changes that may be necessary in response to the rapidly changing and uncertain market conditions.
- 6.3 As described in Section 2 of this Briefing Paper, since acceptance of the Undertakings, there has been some sharing of journalistic resources between the Times and The Sunday Times. There are now shared journalistic teams in the following areas: Sport, Sport production, Travel, Property, Money and Features production. The full annualised savings will be approximately [REDACTED] in FY21. Whilst maintaining the independence of The Times and Sunday Times news desks, News UK will take further steps to integrate feature desks across seven days, and to merge editorial services across both titles including pictures, graphics, subbing and production.
- 6.4 However, News UK is concerned that further integration of editorial and journalistic resources between The Times and The Sunday Times could be viewed as incompatible with the Undertakings, in particular the requirement for the two titles to continue to be published as separate newspapers, with the editors retaining control over the appointment and dismissal of journalists on their respective newspapers. As described in Section 5 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). However, such steps would arguably go beyond what is permissible under the Undertakings.
- 6.5 This uneven playing field and the direct and indirect costs of maintaining the Undertakings places News UK at a material competitive disadvantage and risks critically constraining News UK's ability to rapidly adapt its organisational structure as may be required to respond and adapt to changing and unpredictable market conditions, without compromising the journalistic quality of the two titles. Whilst maintaining the independence of The Times and Sunday Times news desks, News UK will take further steps to integrate feature desks across seven days, and to merge editorial services across both titles including pictures, graphics, subbing and production. News UK aims to making savings as a result of these changes and from reducing the headcount of the editorial team.
- 6.6 Furthermore the impact of changes from print to digital have already had a profound effect on the management and methodology of content production. The reality of a seven-day digital operation is that it requires flexibility in order to produce content across the week and the sharing of resources to an ever greater extent. The separation of titles is fast becoming artificial in this space and will hold back innovation at both titles. Content is produced for the digital edition across seven days as well as podcasts and social media interaction. The recent introduction of Times Radio has also sought to complement the titles and does so across seven days. The requirement to consider how each decision is in line with the "separate titles" doctrine is burdensome and outdated, aside from the fact that it is not a requirement imposed on any other media organisation seeking to remain viable in these rapidly changing times. The Undertakings have become a barrier to innovation and change.

**7. RELEASE OF THE UNDERTAKINGS WOULD HAVE NO ADVERSE EFFECT ON THE PUBLIC INTEREST**

- 7.1 The release of the Undertakings would have no adverse impact on the public interest considerations as set out in Section 58 of the 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). News

UK therefore respectfully submits that there would be no reasonable basis for the Secretary of State to conclude that the material change in circumstances described in this Briefing Paper do not justify the full release of the Undertakings.

### **Accurate presentation of the news in newspapers**

- 7.2 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"*.<sup>29</sup>
- 7.3 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 2020 news consumption survey: 75% of regular users rated The Times and The Sunday Times as *"accurate"*, the third-highest percentages for all newspapers (behind the Guardian / Observer and FT on 77% and 81% respectively),<sup>30</sup> and higher than any television news source, including the BBC.<sup>31</sup>
- 7.4 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. The COVID-19 pandemic illustrates the demand for, and importance of, trusted news sources. To do otherwise would risk serious and long-term damage to the reputation and ultimately the revenue generated by those two newspapers. There is therefore no reasonable basis to conclude that release of the Undertakings would have any adverse effect on the accurate presentation of news. On the contrary, their release is necessary precisely to ensure that The Times and The Sunday Times can continue to sustain accurate and quality coverage of the widest array of topics.
- 7.5 News UK also notes that the Public Interest Intervention Notices in relation to both the Reach/N&S Transaction and the DMGT/JPI Transaction did not even include the accurate presentation of news as potentially relevant public interest consideration on these transactions, and Ofcom was not asked to advise the Secretary of State on this point.

### **Free expression of opinion in newspapers**

- 7.6 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."*
- 7.7 In assessing the impact of releasing the Undertakings on this public interest consideration, it is therefore necessary to consider the restrictions on proprietor influence that the Undertakings currently impose. The requirement under the Undertakings is that 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."* This Undertaking is redundant. The current restrictions do not prevent the news proprietor from expressing views, directly or indirectly, in relation to the editorial output of the Times or the Sunday Times. In practice, the newspaper proprietor will have no incentive to impose restraints or inhibition in opinion being expressed and news being reported as the editors see fit.

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<sup>29</sup> 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.

<sup>30</sup> Ofcom News Consumption Survey 2020.

<sup>31</sup> *Ibid.*, Figure 11.5 ("Attributes of TV sources (1) – 2019") – the BBC scored 71%, behind CNN and ITV (both on 74%) and Sky News (73%).



7.8 Moreover as with the accurate presentation of news public interest consideration, News UK will have every commercial incentive to maintain the editorial independence of the Times and The Sunday Times. Put simply, the continued economic success of both titles is inextricably linked to their longstanding reputation for quality and independent journalism. This is reflected in Ofcom's 2020 news consumption survey, with 77% of regular users rating the two titles as "high-quality", 73% rating them as "trustworthy" and 58% ranking them as impartial. It is therefore abundantly clear that any attempt by the proprietor to restrain or inhibit the editorial position of either The Times or The Sunday Times would be economically irrational and likely to result in a sharp decline in circulation numbers, subscribers to the digital editions and both print and online advertising revenues, at a time when all of these metrics are already under significant strain as a result of the COVID-19 crisis.

Figure 2: Attributes of Newspaper sources – 2020<sup>32</sup>

% of regular users rating each source highly (7-10)	The Times/Sunday Times	The Sun/Sun on Sunday	Daily Mail/Mail on Sunday	The Metro	The Guardian/Observer	Daily/Sunday Mirror	Daily/Sunday Telegraph	Local daily newspaper	Evening Standard	Daily/Sunday Express
Importance	75%	56%	66%	53%	72%	63%	65%	62%	62%	59%
Quality	77%	55%	62%	54%	79%	60%	76%	56%	70%	63%
Accurate	75%	54%	61%	60%	77%	60%	71%	61%	72%	58%
Trustworthy	73%	53%	56%	61%	76%	56%	74%	65%	64%	57%
Impartial	58%	48%	47%	59%	56%	52%	61%	60%	60%	47%
Range of opinions	70%	58%	59%	55%	67%	55%	67%	53%	66%	59%
Helps me make up my mind	65%	55%	54%	55%	69%	58%	63%	46%	64%	59%
Helps me understand what's going on	75%	62%	65%	60%	78%	60%	71%	45%	66%	57%
Depth of analysis and content	72%	53%	55%	48%	74%	54%	67%	46%	62%	51%

7.9 Reflective of this, the editors of The Times and The Sunday Times are supportive of the Undertakings being removed and do not consider that this would give rise to any concerns over the proprietor seeking to restrict or inhibit the editorial output of their respective newspapers. Nor are they aware of any attempts of the proprietor to do so while the Undertakings or the Conditions have been in force.

7.10 It is proposed however that upon release of the Undertakings News UK will amend the employment contracts of the editors of the two titles to include contractual provisions which guarantee editorial independence in terms equivalent to the Undertakings. It is proposed the amendment will be in the following terms:

[1.] *At all times during your employment, you will retain control over any political comment published in [The Times/The Sunday Times] and, in particular you 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 the Fair Trading act 1973) of the Newspapers.*

[2.] *Instructions to journalists shall be given by you either directly or as delegated by you;*

[3.] *Subject only to annual budgets for editorial space and expenditure determined by the directors of the Company [i.e. TNL] for each title you shall retain control over the appointment, disposition and dismissal of journalists on your title and all other contents of the title except that in the case of advertisements your rights may be limited to the right to refuse to publish any advertisement and where in the title advertisements in general or in particular are to appear.*

<sup>32</sup> Ofcom News Consumption Survey 2020.

[4.] Any disputes in relation to the provisions of clauses [1], [2] and [3] above shall be determined in accordance with the terms of the Independence Procedure.

- 7.11 Pursuant to the Independence Procedure referred to above, News UK will establish a committee of at least three persons whose role it will be to mediate and, where necessary, render a binding determination on any disputes between the Company, its senior management and the editors in relation to the guarantees of editorial independence set out above. It is likely these persons will at the outset be appointed from amongst the current independent directors. Contractual safeguards will ensure the independence of the committee and their powers. The Editors will have the power to veto any proposals for appointment by the Company.
- 7.12 The INDs have also been consulted regarding this application and the proposed new arrangements outlined above, and agree that the changes in circumstances since 1981 mean that the Undertakings are no longer necessary.
- 7.13 News UK also notes that while the free expression of opinion public interest consideration was (briefly) considered in the context of the Reach/N&S Transaction, it was not even included as a relevant consideration in the Public Interest Intervention Notice for the DMGT/i Transaction.<sup>33</sup> This strongly suggest that issues around proprietor influence are of less relevance in today's highly plural news landscape than was the case in 1981 when the Conditions were imposed. This is to be expected given the drastic diminution in the importance of newspapers relative to other media since that time.

#### **Sufficient plurality of views in newspapers**

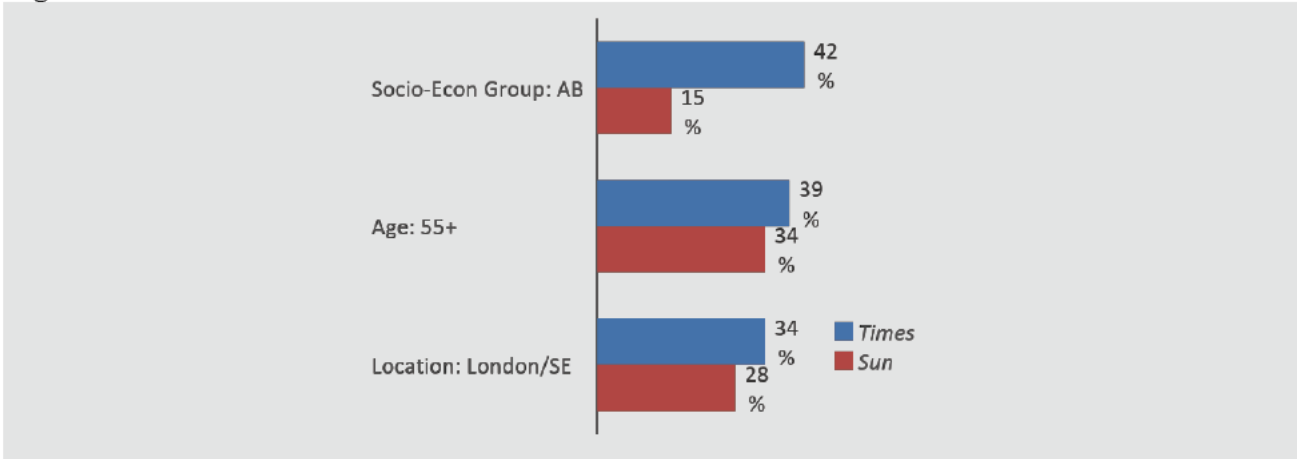
- 7.14 Unlike the accurate presentation of news and free expression of opinion public interest considerations, plurality was considered in detail in Ofcom's advice to the Secretary of State on both the Reach/N&S Transaction and the DMGT/i Transaction. In view of the Secretary of State's decisions that sufficient plurality of views in newspapers would remain after these transactions, it is simply not credible to postulate that removal of the Undertakings could give rise to plurality concerns.
- 7.15 Unlike the Reach/N&S Transaction and the DMGT/JPI Transaction, release of the Undertakings would not result in previously independent newspapers coming under common ownership (i.e. it would not result in any reduction of external plurality). Rather, any potential effects of release of the Undertakings would be limited to internal plurality between The Times and The Sunday Times. However, it is abundantly clear that there are no reasonable grounds to identify plurality concerns on this basis:
- (i) News UK will retain strong commercial incentives to maintain the distinct editorial voices of The Times and The Sunday Times. Both titles have a strong history of taking different perspectives on issues of the highest political importance. For example, they took divergent positions on Brexit, with only The Sunday Times supporting it. For as long as there is customer demand for the two titles to have separate and distinct voices, it would make no economic sense to align their editorial stance. They also attract distinct audiences. Just over 53% of Times readers do not read The Sunday Times, and 46% of Sunday Times readers do not read The Times, according to Ofcom's 2020 News Consumption survey.
  - (ii) Any alignment between the Times titles and The Sun titles is not plausible or even conceivable. The Sun titles and the Times titles target two distinct market segments and different audiences, with different interests and preferences. As can be seen from **Figure 3** below, compared to readers of The Sun, readers of The Times are of higher socio-economic group, are older and are more likely to live in London and the South East. Given these

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<sup>33</sup> Ofcom considered issues relating to the influence of Lord Rothermere, Chairman of DMGT, in its assessment of internal plurality but did not identify any concerns in this regard.

differences (amongst others) it is unsurprising that there is relatively little overlap between the two audiences. Of those who read the Sun - in print or online - just 12% report looking at any of the Times outlets. (For contrast, 34% report making use of a Mail outlet). There is strong commercial logic for this separation and this would remain regardless of the Undertakings

**Figure 3: Times and Sun audiences**

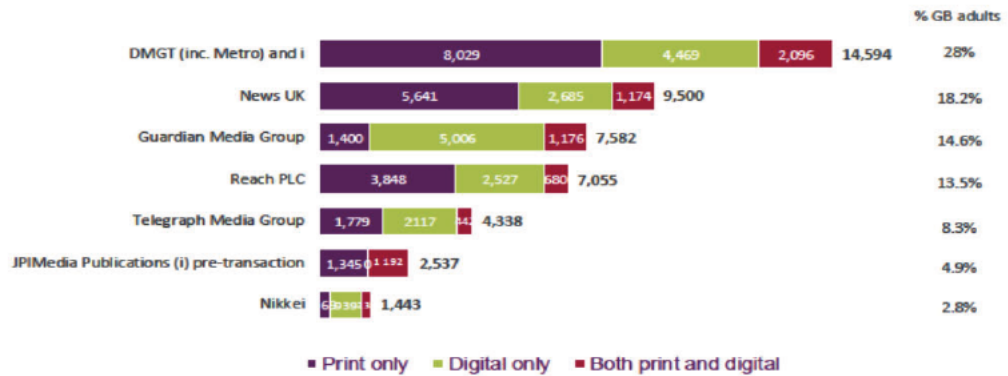


Source: Communications Chambers<sup>34</sup>

- (iii) Moreover, even if some reduction in internal plurality is assumed, it cannot be the case that this would result in insufficient plurality of views in newspapers. As described in section 2 of this Briefing Paper, despite the challenges facing the newspaper industry, UK news remains highly plural, as confirmed by both Ofcom and the Secretary of State in the context of the DMGT/JPI Transaction. As can be seen from the extract from Ofcom's advice included at **Figure 4** below, this transaction was seen as unproblematic notwithstanding that the combined DMGT/i has the largest reach of all newspaper groups in the UK (reaching around 30% of all adults in 2019). By contrast, the combined reach of News UK's titles in the same period was considerably lower at around 18% of all adults. Further, given that The Times and The Sunday Times have roughly a quarter of the reach of the Sun and Sun on Sunday (across print and online), the Times titles will only be modest contributor to the 18%.<sup>35</sup>

**Figure 4: Weekly readership (000s) of national publishing brands by GB adults, 2019**

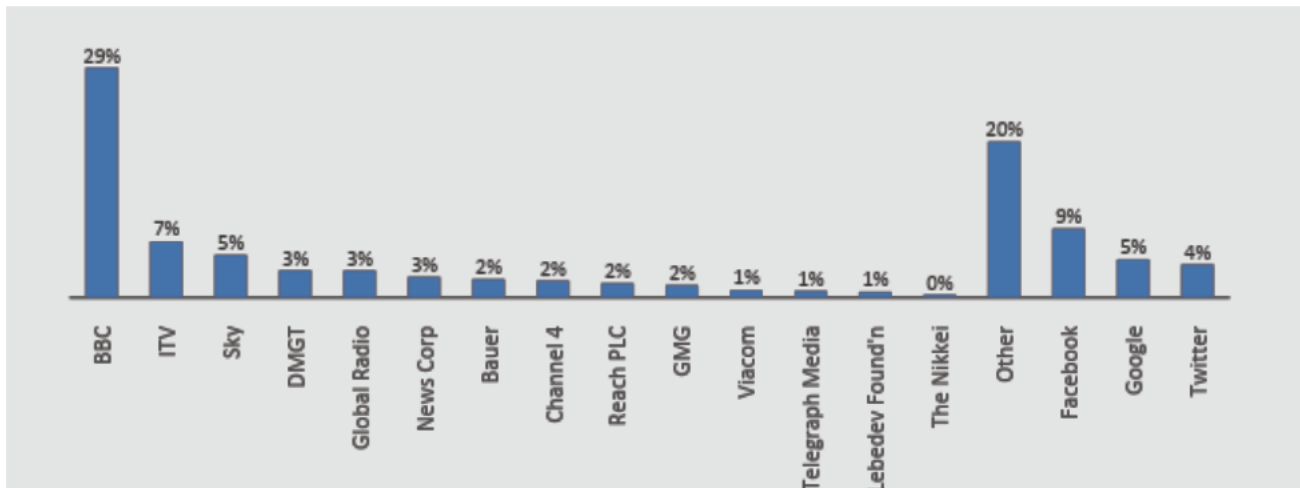
<sup>34</sup> Communications Chambers analysis of data from Ofcom, [News consumption in the UK: 2020 raw data](#), 11 June 2020. Includes weekday, Sunday and online users for each title.  
<sup>35</sup> PAMCo



Source: TouchPoints 2019, GB adults 15+. National titles only.

- 7.16 On an SoR basis, the Reach/N&S and DMGT/i mergers resulted in combined entities with SoR of 3% and 3.63% respectively. We calculate News UK’s SoR (across the Sun, Times and Wireless Group outlets) is 2.6% based on Ofcom’s 2020 News Consumption Survey. This would suggest that if News UK were buying the Times today, the issue of Undertakings would not even arise, given that these other transactions were approved without even a Phase 2 review.
- 7.17 Looking at the wider context, on SoR News UK (including the Times) ranks #9 amongst entities used for news. Even setting aside intermediaries such as Facebook and Google, it still only ranks #6. It is appreciably smaller than ITV, Sky, Global Radio and DMGT, and massively smaller than the BBC, as can be seen from our calculations of SoR based on Ofcom’s 2020 News Consumption Survey, at **Figure 5** below.<sup>36</sup> Moreover, with the partial exception of Sky, none of these larger players carry the cost of an imposed structure to support internal plurality, similar to the Undertakings.

Figure 5: Share of reference of retail providers used for news, 2020



Source: Analysis of Ofcom News Consumption Survey 2020

- 7.18 Thus, release of the Undertakings will help to secure the future of The Times and The Sunday Times as high quality newspapers, and thereby maintain, rather than reduce, media plurality.

<sup>36</sup> These rankings are consistent with Ofcom’s calculations for SoR based on the 2019 news consumption survey, which were included in Ofcom’s advice on the DMGT/JPI Transaction.



**Confidential – contains business secrets**

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