
**Guidance note for public interest test on
the completed acquisition by Trinity Mirror
plc of certain assets of Northern and Shell
Media Group Limited**

Background and Ofcom's role

On 10 April 2018, Trinity Mirror plc ("Trinity Mirror") submitted a merger notice to the Competition and Markets Authority ('the CMA') in respect of its acquisition of certain publishing assets of Northern and Shell Media Group Limited ("Northern and Shell"), including the Daily Express and Daily Star newspapers, on 1 March 2018.

On 11 April 2018, the CMA brought this acquisition to the attention of the Secretary of State for Digital, Culture, Media & Sport ('the Secretary of State') under section 57(1) of the Enterprise Act 2002 ('the Act'). The CMA considered that the transaction may raise public interest considerations under section 58 of the Act.

On 1 May 2018, the Secretary of State issued a Public Interest Intervention Notice ("PIIN") in relation to the merger under section 42(2) of the Act specifying the following public interest considerations as potentially relevant to the acquisition:

- 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").¹

Ofcom is now required to report to the Secretary of State under section 44A of the Act. The PIIN states that Ofcom's investigation and report must be completed by midnight on Thursday 31 May 2018.

This document outlines how we will proceed.

Our role is to conduct an initial investigation into the public interest considerations and to provide advice and recommendations on the Secretary of State's decision on whether he should refer the case to the CMA for further analysis. We will focus on the effects of the merger on the considerations specified by the Secretary of State and will not deal with competition issues. These fall within the jurisdiction of the CMA. Our report to the Secretary of State will also include a summary of any representations about the case that we receive from the merged parties and other interested parties.

It is for the Secretary of State to decide whether to refer the case to the CMA for further investigation in the light of our report.

Process guidance

Our process is divided into two main parts:

- information gathering and analysis; and
- defining our advice to the Secretary of State.

¹ Section 58 (2A) and (2B) of the Enterprise Act.

Information gathering and analysis

Publication of the invitation to comment: We have published an *invitation to comment* on our website on **2 May 2018**: <https://www.ofcom.org.uk/consultations-and-statements/category-3/public-interest-test-trinity-mirror-plc>. This document outlines the points on which we would particularly welcome input and explains how to make representations to Ofcom on this issue. We invite written responses, supported by evidence, to be submitted no later than **8 May 2018**. Due to timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.

Please note that if any person provides information to us in this context, which is false or misleading in a material respect, it is an offence which, on conviction, may be punished by a fine and/or two years' imprisonment.²

Engagement with the merged parties: Ofcom intends to request information from the merged parties. Soon after the requests are made, the merged parties should discuss with Ofcom the availability of the requested data and the form in which it will be made available. Ofcom may also wish to discuss points raised in the merged parties' submissions and any other associated questions.

Engagement with third parties: Ofcom may also request information from third parties where appropriate and as allowed within the timescale set by the Secretary of State.

Ofcom strictly observes confidentiality in all aspects of its operations. This applies to material supplied by both the merged parties and other interested third parties. We will give the Secretary of State all relevant submissions (including confidential ones) to enable him to make his decision. We will require a full non-confidential version of any confidential submissions, together with reasons why information should be treated as confidential.

Internal analysis: Ofcom will begin its analysis of this matter from today. This analysis will draw from stakeholders' submissions as well as information that Ofcom already has available in-house.

Defining our advice to the Secretary of State

As soon as practicable we will consolidate the results of our internal analysis and the points raised by stakeholders to reach a provisional position on our recommendation to the Secretary of State.

If our provisional position were that this case raises potentially material public interest issues we would send an *issues letter* to the merged parties, setting out the core arguments and evidence in the case. If appropriate and practicable, the letter would include the offer of an *issues meeting* where the merging parties could discuss our draft position and the analysis underpinning it.

Ofcom will finalise its report and send it to the Secretary of State by **31 May 2018**, together with any other material that may be relevant to his decision.

The Secretary of State will then decide whether the case should be referred to the CMA for further analysis. The Secretary of State will publish his decision and our report simultaneously.

If the Secretary of State makes a reference to the CMA, Ofcom will make all relevant information in its possession available to the CMA to allow it to conduct its analysis.

² Section 117 Enterprise Act 2002.