

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

**INVITATION TO COMMENT:**

Publication Date: 2 May 2018

Closing Date for Responses: 8 May 2018

## Introduction

- 1.1 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.
- 1.2 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.
- 1.3 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”).<sup>1</sup>
- 1.4 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.
- 1.5 Ofcom has today published a guidance note on our website<sup>2</sup>, setting out the process and timetable for preparing our report on the public interest considerations set out by the Secretary of State.

## The free expression of opinion ground

- 1.6 Ofcom has not previously been asked to consider a merger in which the Secretary of State has intervened in relation to the free expression of opinion ground.
- 1.7 Statutory guidance on this ground notes that cases under the previous regulatory system for newspaper mergers<sup>3</sup> focussed on the potential impact on editorial decision-making of the transfer of newspapers in question. These cases considered the extent to which the transaction would affect the freedom of editors to operate without interference from the proprietor.
- 1.8 Our provisional view is that we will consider the free expression of opinion ground in light of any measures which the parties may have put in place to preserve editorial freedom.

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<sup>1</sup> Section 58 (2A) and (2B) of the Enterprise Act.

<sup>2</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-3/public-interest-test-trinity-mirror-plc>

<sup>3</sup> Department for Trade and Industry, Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004, paragraph 5.7. Available at <http://webarchive.nationalarchives.gov.uk/20100512170615/http://www.bis.gov.uk/files/file14331.pdf>

We will also consider the extent to which those measures are sufficient to address the concerns (if any) which may arise from the bringing of the newspapers subject to the acquisition under common control.

- 1.9 We are seeking views on all the issues set out above and any other issues respondents think we should consider in relation to the impact of this acquisition on the free expression of opinion ground.

## The plurality ground

- 1.10 We will consider the plurality ground in light of the relevant statutory framework whereby Parliament has attached significance to the need for sufficient media plurality in the functioning of a healthy and informed democratic society.
- 1.11 Whilst the Act has specific public interest considerations for newspapers, our provisional view is that in undertaking an initial investigation of this ground and providing advice and recommendations to the Secretary of State, the reasoning we set out in our measurement framework for media plurality, published in 2015, is likely to be relevant.<sup>4</sup>
- 1.12 Subject to responses to this invitation to comment (ITC), we therefore provisionally consider news and current affairs to be the relevant genres to consider. Specifically, we will consider:
- availability;
  - consumption;
  - impact; and
  - contextual factors.
- 1.13 **Availability metrics** measure the number of news providers available at the point of consumption. Both the number of different news sources available on each media platform and across all media are relevant.
- 1.14 **Consumption metrics** measure the number of people using news sources and the frequency and/or time that they spend consuming it. Metrics capable of quantifying cross-media consumption are particularly important. Sector-specific consumption metrics should also be used.
- 1.15 **Impact metrics** help inform how news content can influence the formation of people's opinions. While measuring the impact and influence of news sources on consumers is complex, proxies for impact can be used. Proxies to consider include personal importance, impartiality, reliability, trust and the extent to which a news source helps people make up their minds about issues in the news
- 1.16 **Contextual factors:** are an integral part of our measurement framework which help to interpret the quantitative data. Contextual factors may include but are not limited to:
- governance models;
  - funding models;

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<sup>4</sup> Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/media-plurality-framework>

- potential power or editorial control exercised by owners, proprietors or senior executives;
- internal plurality (i.e. the range of internal voices and opinions within an organisation);
- market trends and potential future developments, including changes to news consumption online and via social media; and
- regulation and oversight (role of the Independent Press Standards Organisation (IPSO), IMPRESS and editorial complaints frameworks of some newspaper groups).

1.17 We are seeking views on all the issues set out above and any other issues respondents think we should consider in relation to the impact of this acquisition on the plurality ground. In particular, we welcome views on whether there are any matters which are not covered in the framework which may be of particular relevance to newspapers.

## Advice and recommendation to the Secretary of State

1.18 Overall, Ofcom will consider how the completed acquisition may affect each of the public interest considerations, taking account of representations and analysis of relevant information.

## How to make submissions

1.19 Ofcom invites written submissions to be made by **8 May 2018**. We are seeking responses that provide views, supported by evidence, on the specific questions detailed above, or on other considerations stakeholders consider relevant. Due to timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.

1.20 Please make representations via:

- a) The online web form at: <https://www.ofcom.org.uk/consultations-and-statements/category-3/public-interest-test-trinity-mirror-plc>
- b) By email - especially for larger submissions - particularly those with supporting charts, tables or other data – to [PublicInterestTest2018@ofcom.org.uk](mailto:PublicInterestTest2018@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response

1.21 Responses may alternatively be posted to the address below, marked with 'Trinity Mirror/Northern and Shell public interest test'.

Rebecca Taylor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

1.22 We do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

1.23 Ofcom strictly observes confidentiality in all aspects of its operations. This applies to material supplied in response to this invitation to comment. We will give the Secretary of State (and the CMA in the event that this acquisition is referred by the Secretary of State)

all relevant submissions (including confidential ones) to enable him to make his decision. If your submission includes material which is confidential, we will require a full version with confidential information omitted, together with reasons why the submission should be treated as confidential, in order to help establish what it may and may not be appropriate to refer to publicly in the course of this work.

- 1.24 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.<sup>5</sup>

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<sup>5</sup> Section 117 Enterprise Act 2002