



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART V

#### MERGERS

##### *Newspaper merger references*

#### **57 Meaning of “newspaper”, “transfer of newspaper or of newspaper assets” and related expressions.**

(1) In this Part of this Act—

(a) “newspaper” means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom;

[<sup>F1</sup>(b) “newspaper proprietor” includes (in addition to an actual proprietor of a newspaper) any member of a group of persons of which another member is an actual proprietor of a newspaper.

(1A) In this Part of this Act, any reference to the newspapers of a newspaper proprietor (“NP”) is to—

(a) all newspapers of which NP is an actual proprietor, and

(b) all newspapers of which a member of a group of persons of which NP is a member is an actual proprietor.]

and any reference to the newspapers of a newspaper proprietor includes all newspapers in relation to which he is a newspaper proprietor and, in the case of a body corporate, all newspapers in relation to which a person having a controlling interest in that body corporate is a newspaper proprietor.

(2) In this Part of this Act “transfer of a newspaper or of newspaper assets” means any of the following transactions, that is to say—

(a) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become [<sup>F2</sup>—

(i) an actual proprietor of a newspaper, or

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- (ii) a person with a primary or secondary controlling interest in an actual proprietor of a newspaper;]
- (b) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper);
- (c) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication;
- and “the newspaper concerned in the transfer”, in relation to any transaction falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, means the newspaper in relation to which (as mentioned in that paragraph) the transaction is or is to be effected.
- (3) In this Part of this Act “average circulation per day of publication”, in relation to a newspaper, means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which the newspaper was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days); and for the purposes of this subsection “the appropriate period”—
- (a) in a case in which an application is made for consent under the next following section, means the period of six months ending six weeks before the date of the application, or
- (b) in a case in which a transfer or purported transfer is made without any such application for consent, means the period of six months ending six weeks before the date of the transfer or purported transfer.
- (4) For the purposes of this section a person has a [<sup>F3</sup>primary]controlling interest in a body corporate if (but only if) he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.
- [<sup>F4</sup>(5) For the purposes of this section a person (“A”) has a secondary controlling interest in a body corporate (“B”) if, without having a primary controlling interest in B—
- (a) A has a primary controlling interest in a body corporate which has a primary controlling interest in B, or
- (b) A is connected to B by a chain of any number of other bodies corporate, in the first of which A has a primary controlling interest, in the second of which the first has a primary controlling interest, and so on, the last such body corporate having a primary controlling interest in B.
- (6) For the purposes of this section a group of persons consists of any number of persons of whom the first is—
- (a) a person other than a body corporate, or
- (b) a body corporate in which no other person has a primary controlling interest, and the others are the bodies corporate in which the first has a primary or secondary controlling interest.
- (7) In determining for the purposes of subsection (6)(b) of this section whether a body corporate (“X”) is one in which another person has a primary controlling interest,

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there shall be disregarded any body corporate in which X has a primary or secondary controlling interest.]

#### Textual Amendments

- F1 S. 57(1)(b)(1A) substituted (retrospectively) for s. 57(1)(b) by 1994 c. 40, s. 8(2)(6); S.I. 1994/3188, arts. 2, 3(a)
- F2 Subparagraphs (i)(ii) substituted (retrospectively) for words in s. 57(2) by 1994 c. 40, s. 8(3)(6); S.I. 1994/3188, arts. 2, 3(a)
- F3 Word in s. 57(4) inserted (retrospectively) by 1994 c. 40, s. 8(4)(6); S.I. 1994/3188, arts. 2, 3(a)
- F4 S. 57(5)(6)(7) inserted (retrospectively) by 1994 c. 40, s. 8(5)(6); S.I. 1994/3188, arts. 2, 3(a)

## 58 Prohibition of certain newspaper mergers.

- (1) Subject to the following provisions of this section, a transfer of a newspaper or of newspaper assets to a newspaper proprietor whose newspapers have an average circulation per day of publication amounting, together with that of the newspaper concerned in the transfer, to 500,000 or more copies shall be unlawful and void, unless the transfer is made with written consent given (conditionally or unconditionally) by the Secretary of State.
- (2) Except as provided by subsections (3) and (4) of this section and by section 60(3) of this Act, the consent of the Secretary of State under the preceding subsection shall not be given in respect of a transfer until after the Secretary of State has received a report on the matter from the Commission.
- (3) Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then—
  - (a) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section;
  - (b) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he shall give his consent to the transfer, and shall give it unconditionally, without requiring such a report.
- (4) If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 25,000 copies, he may give his consent to the transfer without requiring a report from the Commission under this section.
- (5) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for any number specified in subsection (1) or subsection (4) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other number as is specified in the order.
- (6) In this section “satisfied” means satisfied by such evidence as the Secretary of State may require.

## 59 Newspaper merger reference.

- (1) Where an application is made to the Secretary of State for his consent to a transfer of a newspaper or of newspaper assets, the Secretary of State, subject to the next following

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subsection, shall, within one month after receiving the application, refer the matter to the Commission for investigation and report.

- (2) The Secretary of State shall not make a reference to the Commission under the preceding subsection in a case where—
- (a) by virtue of subsection (3) of section 58 of this Act he is required to give his consent unconditionally without requiring a report from the Commission under this section, or
  - (b) by virtue of subsection (3) or subsection (4) of that section he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power,
- or where the application is expressed to depend on the operation of subsection (3) or subsection (4) of that section.
- (3) On a reference made to them under this section (in this Act referred to as a “newspaper merger reference”) the Commission shall report to the Secretary of State whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

## 60 Time-limit for report on newspaper merger reference.

- (1) A report of the Commission on a newspaper merger reference shall be made before the end of [<sup>F5</sup>such period (not being longer than three months beginning with the date of the reference) as may be specified in the] reference or of such further period (if any) as the Secretary of State may allow for the purpose in accordance with the next following subsection.
- (2) The Secretary of State shall not allow any further period for a report on such a reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the [<sup>F6</sup>period specified in the newspaper merger reference]; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.
- (3) If on such a reference the Commission have not made their report before the end of the period specified in [<sup>F7</sup>the newspaper merger reference] or of any further period allowed under subsection (2) of this section, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates.

### Textual Amendments

- F5** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 2\(1\)\(a\)\(2\)](#)
- F6** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 2\(1\)\(b\)\(2\)](#)
- F7** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 2\(1\)\(c\)\(2\)](#)

## 61 Report on newspaper merger reference.

- (1) In making their report on a newspaper merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and

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- (b) such a survey of the general position with respect to the transfer of a newspaper or of newspaper assets to which the reference relates, and of the developments which have led to that position, as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where on such a reference the Commission find that the transfer of a newspaper or of newspaper assets in question might operate against the public interest, the Commission shall consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent the transfer from so operating, and may, if they think fit, include in their report recommendations as to such conditions.

## **62 Enforcement provisions relating to newspaper mergers.**

- (1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.
- (2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) No proceedings for an offence under this section shall be instituted—
- (a) in England or Wales, except by, or with the consent of, the Director of Public Prosecutions, or
  - (b) in Northern Ireland, except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

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