

Hacked Off research exposes dangerous side-effect of Murdoch bid to loosen Times independence requirements

Summary

The Times and Sunday Times are important newspapers. Some of their investigative journalism has been highly commendable.

But, under the ownership of the Murdochs, the titles' editorial independence has been repeatedly called into question. The phone hacking scandal and resulting court cases also exposed an utter disregard for corporate governance standards at the similarly Murdoch-owned title News of the World.

The agreement which allowed News International (as it was) to purchase the Times titles in the first instance was subject to specific conditions designed to prevent interference from the owners.

Now News UK are seeking to amend the conditions under which the transfer of The Times and Sunday Times was agreed in 1981. News UK seek to add a provision specifying that the titles may share resources and staff.

But one statutory side effect of amending the terms is that it converts all of the terms from being "conditions" to "undertakings". This, in practice, significantly reduces the effectiveness of all of them – including the many protections on independence and editorial integrity.

This is because, while a breach of "conditions" is a criminal offence punishable by up to two years imprisonment, a breach of "undertakings" is not a criminal offence, and only results in structural remedies from the CMA.

As such, if approved this deal risks reducing the enforceability of all conditions attached to the deal – including those which were drafted to prevent the owners from exercising influence over the titles' coverage.

Given the history of allegations about owner-interference at Murdoch-owned media enterprises and the abject corporate governance standards which were exposed at the similarly Murdoch-owned newspaper title News of the World, any attempt to water-down the independence requirements set out as conditions on the 1981 deal must be rejected.

To protect the editorial integrity of The Times and The Sunday Times, Hacked Off call on the Government to reject any Murdoch bid to weaken the guarantees set out to prevent publisher interference in The Times or Sunday Times newspapers.

Background

Murdoch's 1981 deal for The Times and Sunday Times was subject to conditions to protect the newspapers' editorial independence

1. In January 1981 the transfer of The Times and Sunday Times to News International received Ministerial Consent.
2. The transfer had conditions attached to it under the Fair Trading Act 1973. These conditions were necessary to ensure the independence of the titles.

They include:

(ii) 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 (within the meaning of Section 57 of Fair Trading Act 1973) of the Times or The Sunday Times.

(iii) Instructions to journalists shall be given only by the Editor or those to whom he has delegated authority.

3. Section 62 of that Act makes it a criminal offence, punishable by up to two years imprisonment, to be knowingly in breach of any such conditions:

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. Section 373 of the Communications Act 2003 repeals that regime:

373 Repeal of existing newspaper merger regime

Sections 57 to 62 of the Fair Trading Act 1973 (c. 41) (newspaper merger references) shall cease to have effect.

5. Schedule 18 of that Act, however, specifies that that regime, including the offence contained in s62, continues to apply in respect of historic transfers:

(1) Chapter 2 of Part 5 and any related repeals shall, subject to sub-paragraph (2), not apply in relation to—

(a) a transfer of a newspaper or of newspaper assets (within the meaning given by section 57(2) of the Fair Trading Act 1973 (c. 41)) which has been made before the coming into force of section 373 of this Act; or

(b) a proposed transfer of a newspaper or of newspaper assets in relation to which an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made before the coming into force of section 373 of this Act.

6. **This means that presently, an effective deterrent exists to prevent the conditions from being breached.**
7. Later in Schedule 18 of the Communications Act 2003 is the provision which News UK are relying on to amend the Conditions:

62

(1) The Secretary of State may, instead of any or all of the conditions attached to a consent given by him (or treated as so given) under section 58 of the Fair Trading Act 1973 (c. 41)), accept undertakings under this paragraph to take, or refrain from taking, action specified or described in the undertakings.

(2) If, and so far as, the Secretary of State accepts an undertaking under this paragraph instead of a condition, that condition shall cease to have effect.

8. This converts the “conditions” to “undertakings” (Undertakings in Lieu). There is no criminal offence for being involved in a breach of the undertakings.
9. Undertakings are instead monitored by the CMA, whose remedies (set out in Schedule 8 of the Enterprise Act 2002) are all structural.
10. As such the deterrent for breaching the conditions/undertakings would be reduced from a criminal offence – a serious deterrent for any senior individual working at The Times or Sunday Times – to a structural remedy which:
 - a. Means no individual accountability
 - b. Does not include meaningful sanctions

Pattern of disregard for editorial independence at The Times and Sunday Times

Sir Harold Evans, former Sunday Times editor, has referred to Rupert Murdoch’s significant interference and attempted manipulation of the Times and Sunday Times’ editorial position in his evidence to Leveson:

“Mr Murdoch made it clear to me, and you have documents saying which he's rebuking me for not doing what he wants in political terms, and I can give you many instances of this...”

Furthermore, in respect of the conditions attached to the 1981 deal, he said Murdoch had a *“determination to impose his will and destroy the editorial guarantees that he'd given”*.

Sir Harold also provided to the Inquiry a contemporaneous letter he had sent to the Times Independent Directors, which criticised repeated instances of interference.

James Harding has also been reported as implying that Rupert Murdoch had a hand in his resignation.

The checks on owner interference in The Times and Sunday Times which are put at risk

6.

NIL shall not without the consent of a majority of the independent national directors for the time being of Times Newspapers Holdings Limited (TNHL) do anything, or procure or permit anything to be done, which shall result in-

- (i) NIL, by reason of any transfer, ceasing to be a newspaper proprietor in relation to The Times or The Sunday Times, or*
- (ii) either TNHL or Times Newspapers Limited (TNL) ceasing to be a subsidiary (within the meaning of Section 154 of the Companies Act 1948) of NIL, or*
- (iii) TNL selling or otherwise disposing of any interest in The Times or The Sunday Times.*

7.

(a) Before either of the transfers to which this consent relates takes effect the Articles of Association of TNHL shall have been altered to give effect to the requirement set out below and a draft of the resolution so altering the Articles shall have been approved by the Secretary of State as giving effect to that requirement.

(b) The said requirement is that the number of independent national directors shall be increased from 4 to 6 and no person shall be appointed to or removed from the office of independent national director, including such additional persons, without the approval of the majority of the independent national directors at the time of the appointment or removal.

8.

(a) Before either of the said transfers takes effect the Articles of Association of TNL shall have been altered to give effect to the requirements set out below and a draft of the resolution so altering its Articles shall have been approved by the Secretary of State as giving effect to those requirements.

(b) The said requirements are that-

(i) The Editor of The Sunday Times and the Editor of The Times ("the Editors") shall not be appointed or dismissed without the approval of the majority of the independent national directors of TNHL.

(ii) 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 (within the meaning of Section 57 of Fair Trading Act 1973) of the Times or The Sunday Times.

(iii) Instructions to journalists shall be given only by the Editor or those to whom he has delegated authority.

(iv) Subject only to any annual budget for editorial space and expenditure determined by the directors of TNL, the Editor of each newspaper shall retain control over the appointment,

disposition and dismissal of journalists on his newspaper and of all other content of his newspaper except that in the case of advertisements the Editor's rights may be limited to the right to refuse to publish any advertisement and where in his newspaper advertisements in general are or an advertisement in particular is to appear;

(v) Any dispute between the Editors, or either of them, and the Directors of TNL is to be referred to the independent national directors of TNHL or such one or more of the independent national directors as they may themselves determine; and their decision shall be final and binding

9.

The Articles of Association of TNHL and TNL after alteration to comply with the foregoing requirements shall not thereafter be altered in any way which affect or which may effect, the operation of the said requirements except with the written consent of the Secretary of State.