

OFT Consultation on Newspaper and Magazine Distribution

Amicus is the UK's second largest trade union with 1.2 million members across the private and public sectors in a range of industries including manufacturing, financial services, print and media, construction and not for profit sectors, local government, education and the NHS. Amicus-GPM (formerly the Graphical Paper & Media Union) represents the workers in newspaper, magazine and book printing, publishing and distribution.

Introduction

Amicus is responding to the current OFT consultation on its draft Opinion of May 2006, in view of the issues raised for availability of newspaper and magazine titles, and economic and social consequences of a regulation-free market for distribution and sale. We believe that if the final Opinion reached by OFT is in accordance with its draft there will be serious repercussions for workers in wholesale newspaper and magazine distribution, for the community at large in terms of reduced range of newspapers and magazines available for purchase with a consequent significant curtailment of the facility of a free and diverse press, and the likely ultimate collapse of newsagents shops in the face of supermarket control of the supply of newspapers and magazines with further implications for urban and rural high street survival.

We last gave evidence in 1997 to the Trade and Industry Select Committee on Newspaper and Magazine distribution in view of the gravity of the investigation and inquiry, the general issues involved for workers in the

newspaper and magazine printing, publishing and distribution industry, and matters of public interest with particular regard to press freedom and diversity.

Executive Summary

1. The present distribution process
2. The likely effect of the proposed changes on local independent retailers and the local community
3. The effect on the terms and conditions of employment for employees both within the distribution and retail sectors.
4. Press diversity will be undermined by supermarkets refusing to stock particular publications.
5. The alternative way forward.

The Amicus case in detail

1. The Present distribution process

1.1 The Office of Fair Trading is consulting on the premise that the “current arrangements for distributing both newspapers and magazines that award local monopolies to wholesalers may harm consumers and be difficult to justify in terms of competition law”. It has devised a framework for assessment that applies to both newspaper and magazine agreements:

“Agreements that come within the scope of section 2 of the Competition Act 1998 will be prohibited unless they meet all the conditions in section 9 of the Act (the exemption criteria), ie if an agreement:

- a) contributes to: 1) improving production or distribution; or
2) promoting technical or economic progress while allowing consumers a fair share of the resulting benefit; but

- b) does not:

- 1) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and
- 2) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.”

(OFT statement 31st May 2006)

1.2 The OFT oversaw the introduction of the Newspaper Code of Practice in 1994. This Code created a universal service obligation on wholesalers, and effectively endorsed the concept of absolute territorial protection within exclusive territories.

1.3 Under the Code, which has been through two OFT reviews since its introduction, wholesalers are required to supply national newspapers (Code cl 1.5) any retailer that meets the Minimum Entry Level (MEL) conditions and agrees to pay carriage charges that ‘shall be determined by reference to the wholesaler’s published tariff’. (Code cl.4). Previously, in 2005, the OFT saw “this obligation – which ensures that even small and remote retailers can stock a full range of newspapers – as one of the key benefits justifying the current system for newspaper distribution.” It means that whereas all national newspapers have a guaranteed route to market via the wholesalers, magazines do not.

1.4 Absolute territorial protection (ATP) as endorsed under the Code of Practice has been a feature of the publisher-wholesalers contracts in existence since the late 1980s and which the Monopolies and Mergers Commission concluded was not against the public interest.

1.5 Absolute territorial protection is also a feature of distribution systems in European Union countries, with the larger countries having similarities in their structure of distribution via regional wholesalers with exclusive distribution rights.

1.6 National competition authorities within such countries as Austria, Germany, France, Italy and the Netherlands have considered the territorial arrangements and have generally recognized the special importance of newspaper and magazine distribution, the unique nature of the product and the need to ensure efficient distribution throughout the country.

1.7 Under the present system of distribution, ATP guarantees for publishers the widest possible availability of their titles and provides an efficient, orderly and open route to market as, subject to the provisions of the Code, the wholesaler has to provide national newspapers to every outlet as requested within the territory. Supermarkets, larger retail, petrol station and railway station outlets supply volume publications which assist the cost of supplying smaller orders of publications and to newsagents.

1.8 For their part, under the Code, the wholesale companies secure exclusive rights to deliver papers (and magazines by ATP) in a particular region; they guarantee to distribute them to every shop that wants to sell them, however small it is. They must supply the title as requested by the newsagent.

1.9 Newsagents are able to stock any title, and to charge the same price as the big chains moving thousands of copies. It is largely because of this agreement that, while all other specialist retailers have been collapsing, independent newsagents have been growing: from 45,000 in 1995 to 54,000 in 2005; with 99% of people living within a five minute drive of one. (Hansard 20th July 2005 and Monbiot) These figures have to be qualified though by acknowledgement that this includes all the outlets. 4000 news delivery outlets had closed over the previous 10 years, including full-service newsagents. (NFRN June 2005)

1.10 If ATP is removed by the Office of Fair Trading with the effect that retailers will be allowed to choose their own supplier, the economic balance of the existing distribution process would very quickly degrade. Supermarkets will be able to use their sheer volume buying power; the rest of the outlets –

mostly the newsagents - will be obliged to accept whatever is available rather than supplying to order of the customer. Wholesaler prices will be governed by the likely formation of national distribution contracts with the supermarkets. It becomes immediately uneconomic to supply one or two titles or small numbers to local newsagents, the result being either higher wholesaler charges or no supply.

1.11 Publishers will lose sales, and the result would be reduction in numbers of magazine and newspapers printed, and closure of titles, as has proved to be the case in the United States. Although magazines would be particularly hard hit, a diverse national press would not survive in its present form, with smaller titles likely to be edited out by supermarkets. All the large multiples edit their magazine ranges, and prevent sale of minority newspaper titles for they are traders not newsagents.

1.12 There are many problems and newsagents in particular have felt particularly aggrieved at the handling of issues such as carriage charges in relation to the wholesalers and inserts and weight of publications in relation to the newspaper and magazine publishers. However these are issues which should be dealt with by means of an improved and strengthened Code of Practice for newspapers, extended to include magazines, or a separate code for magazines and the establishment of an industry ombudsman for the resolution of industry disputes and differences. Amicus agrees with the other organizations that have made similar statements with regard to the need for an industry regulator and extended Code. If there is a significant disturbance of the economic balance, by which at present a living can be made by newsagents and retailers, wholesalers and publishers, so that instead the supermarkets gain the controlling influence over the whole of the publishing and distribution chain, then the competition definitions as described in the draft Opinion will indeed be relevant judging such influence and control to be against the public interest.

1.14 The OFT referred to some elements which are outside of the competition issue in its statement presenting the draft Opinion, OFT 31st May 2006:

1: complaints in relation to excessive wholesaler carriage charges and wholesaler fault for delivery problems should be able to be raised and dealt with through means of an industry disputes and differences procedure and Ombudsman.

2: late deliveries would also involve the publishers and printers of newspapers and magazines and the hauliers and distributors who transport the publications from the printers to the wholesalers.

3: the astonishing waste of newspapers and magazines is incorrectly laid at the door of wholesalers. An issue for the publishing industry, as it is the newspaper and magazine publishing companies who decide on numbers to be printed based on market surveys and circulation returns, not the wholesalers.

1.15 Conclusion: The Newspaper Code of Practice effectively fulfils two of the essential requirements of the framework of assessment devised by the OFT for assessing whether newspaper and magazine agreements comply with competition law: **1)** the agreements contribute to production or distribution by virtue of the requirements of Code clause 1.5 the Limitation of Refusal to Supply. Magazine distribution benefits indirectly from the route of compulsory supply established for newspapers but should be subject to an appropriate Code of Practice itself.

2) the Agreements do not impose restrictions which are not indispensable to the attainment of the objectives as the Code sets out regulations to control the conduct of wholesalers and provides for an appeals procedure regarding applications to supply. The Code only refers to newspapers: the Code could be expanded to provide for appeals/dispute resolution on other matters such as carriage charges and publisher matters

such as inserts and weight, and a comparable Code should be established for magazines.

2 The likely effect of the proposed changes on local independent retailers and the local community.

2.1 Amicus emphasizes that the current distribution system for newspapers and magazines is different from that of foodstuffs and commodities, and needs to be. Magazines and newspapers are both time sensitive and cannot be treated as other consumer goods. This is aside from the question of the unique nature of newspapers and magazines as purveyors of information and news and therefore shapers of opinion, culture and education. Newspapers and magazines are distributed via the same routes and outlets, therefore the cost of distributing small volumes of titles whether newspapers or magazines is offset or balanced by the carriage of large volume and daily material. It is our belief that opening up the distribution market to reflect that of other goods does not protect the public interest as commercial considerations arising from the need to compete will have the effect of reducing or curtailing the supply chain. This is in addition to the negative implications for small independent retailers and traditional newsagents, the communities they serve and the employees who work within the sector.

2.2 The narrow remit that the OFT is working to in this consultation could result in a market which currently allows consumers access to a relatively diverse range of newspapers and magazines being sacrificed in the interests of the type of competition that means that the larger retail chains gain while the small newsagents lose.

2.3 The Periodical Publishers Association believes that 'if supermarkets were able to control the magazine distribution system they would undermine the wholesale distribution economics and force a greater proportion of the

fixed costs of distribution onto the independent retailer – as we believe they have done in the grocery trade’.

2.4 At the same time as OFT is examining the newspaper and magazine distribution process with the possibility of opening up the sector to larger players i.e., the supermarkets, it is also looking at the negative impact of supermarkets on the small retailers in the grocery sector. Clearly if the supermarkets have a negative impact on the small general retailer they are going to have the same impact on the small retailer or newsagent.

2.5 Professor Paul Dobson of Loughborough University, who has examined the newspaper and magazine distribution market in detail, claims that “the impact ...would be that between 12,000 and 20,000 independently owned retail outlets could exit the market. Even though these figures are disputed, it is clear that the most vulnerable are small retailers, the majority of which are in rural or socially deprived areas.

2.6 The same expert notes that ‘if small retailers sought to obtain supplies in an open competition system they would have no buyer power whatsoever in respect of obtaining competitive terms – instead, all beneficial terms would simply go to multiple retailers. The result would be thousands of small retailers exiting the market, leading to a considerable fall in circulation levels and lost income for the industry as a whole. Consumer detriment would then arise from reduced outlet choice and, in the longer term, higher cover prices and perhaps reduced product choice’.

2.7 Mike Newman , Circulation Director, Associated Newspapers & Chair of Newspaper Publishers Assoc believes that ‘If supermarkets are allowed to exert the same power and influence over the newspaper and magazine markets as they have exercised over hundreds of other markets in recent years, we would rapidly face a number of unpleasant and possibly unforeseen consequences. Some parts of this country would be denied access to newspapers and magazines, because many small or rural retailers which currently make a substantial part of their living selling newspapers and

magazines would close.” (Parliamentary Forum for Media and Marketing Debate, 2005).

2.8 The OFT itself decided earlier this year to refer the grocery market to the Competition Commission. Featuring among the concerns for small retailers is that since 2000 the number of convenience stores owned by the supermarkets had jumped from 54 to more than 1300 by 2005, with traditional small local retailers and full-service newsagents continuing to go out of business.

2.9 The National Federation of Retail Newsagents cites the example of 28 independent newsagents that closed in the Exeter area in the 12 months to May 2006; of these 18 were in the catchment area of national supermarkets new stores.

2.10 Independent Newsagents are not in a position to compete with the supermarkets over price as the supermarkets clearly have the advantage of being able to bulk buy and are in a far stronger negotiating position in relation to the distributing companies.

2.11 Supermarkets operate ‘approved supplier lists’ resulting in pressure being applied on publishers and distributors to provide discounts and rebates in order to secure and maintain contracts. (Quoted from GPMU report “Pack It In” 1999 calling on the Government to address certain supply chain powers exerted by UK supermarkets). As they will be highly dependent on supermarket contracts the publishers and distributors will have no choice but to conform to supermarket demands

2.12 The supermarkets along with WH Smiths have already developed a policy of providing offers to those customers who buy a particular newspaper; these offers may involve for example cut-price confectionery and free bottled water. Small retailers and newsagents could not possibly compete with such trading. As distribution of a free national newspaper extends nation-wide in the larger cities and morning and evening free newspapers in London, the

newspaper *buying* community is shrinking as potential readers become attuned to only free newspapers. It is easy to envisage a range of newspapers and magazines being given away as part of in-store supermarket promotions. Promotions at the tills of railway station retailers involving newspapers and magazines, fizzy drinks and bars of chocolate has already become a familiar feature for commuters and travellers as they decide whether to *buy* a newspaper in addition to their free Metro. Only economics is driving these developments; and only the very richest of the media groups are in a position to do it. There is no possibility whatsoever of any newsagent, or group of newsagents being able to compete with the supermarkets and multiples if the distribution system ceases to be the utility it is currently and becomes a subject of availability depending on contract price.

2.13 Given the present developments arising from the extended contract for distributing the Metro at railway and underground stations, national newspapers are under major threat with many consequences for freedom of thought and information and therefore the nation's democratic life as well as economic consequences for publishers, wholesalers and newsagents. Bearing in mind that the cover price of newspapers does not reach the cost of production – they are dependent on advertising for profit and some measure of costs – newspapers have always been sold at a low price relative to cost of production. Despite the comments of the OFT there is no realistic prospect of price reduction other than the fierce intermittent price-war played out by the tabloids and one owner of quality newspapers. News International's launch of a London free newspaper to rival Associated Newspapers' Metro reinforces the point that only wealthy organisations are able to compete in the publishing sector.

2.14 During the period since the launch of the Metro both the Sun and Mirror have seen a decrease in sales at a greater rate than other daily newspapers. These free newspapers are unregulated and outside the scope of the Code, and pose a far greater threat to the public interest than the ATP which, whilst limiting competition at wholesaler level, operating in tandem with

the supply guarantee ensures right of an appearance with an opportunity for sale in the newsagents.

2.15 The Association of National Magazine Wholesalers noted in 2002 that 'The current system ensures that a 'universal service' allowing 14 million newspapers to be delivered to over 54,000 news retail outlets, within a 3-4 hour window, 364 days a year, thereby ensuing widespread availability of national newspapers. Abandonment of territorial exclusivity would leave wholesalers with little choice but to 'cherry pick' the most lucrative retail accounts, thereby threatening 9,000 – 12,000 retailers particularly in socially excluded locations', and thus aiding acceleration of the process of increasing supermarket dominance at the expense of local newsagents.

2.16 Conclusion: 1) The framework for assessment provided by the OFT requires that Agreements will be prohibited unless they contribute to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit. Widespread availability and compulsion to supply subject to MEL goes a long way towards fulfilling the requirement for a free and diverse press and totally complies with the framework stipulation of promotion of technical and economic progress given the informative, cultural and educational nature of newspapers and magazines, which benefits consumers.

2) the framework for assessment also requires that an agreement does not afford the undertakings concerned the possibility of eliminating competition. Clearly, competition between publishers is unending, but competition between supermarkets and local traders and traditional newsagents would be utterly one-sided. The present structure of wholesale distribution via ATP is a restriction but one of the benefits is that, in addition to the condition of universal distribution, irrespective of how many or how wholesalers there are, it allows newsagents trade in the same products as supermarkets.

3. The effect on the terms and conditions of employment for workers both within the distribution and retail sectors.

3.1 Employment in the distribution and retail sector is already recognised as being low paid, with long and unsociable hours. The break-up of the APT will only exacerbate that further as companies attempt to reduce costs in order to compete.

3.2 At wholesaler level margins are very slim. Amicus fears that further cost cutting will mean jobs loss. We are under no illusion that the wholesale employers will continue to seek ways of reducing their costs. They are large employers, with very modest pay levels negotiated through a process of collective bargaining, but with a heavy reliance on atypical working hours and increasing use of self-employed sub-contractors.

3.3 Most of the other wholesaler employers have resisted trade union organization and either pay at the statutory minimum wage level with extensive reliance on overtime, or use only self-employed and sub-contractors. However, if competition sharpened any further we would anticipate likely increases in the established wholesalers of so-called contractor labour: largely self-employed van drivers without any employment status or rights, and low-paid hourly paid part-time staff who string together short shifts of 2 or three at a time across several employers and who mostly work officially or unofficially many hours in excess of the 48 hour limit. Holiday and bank holiday entitlements will also come under pressure as employers examine ways of reducing costs.

3.4 Wage rates for employees working under the collective agreement have in recent years fallen in relation to other sectors of the economy. From 1st October rates of pay will only be 25p per hour higher than the minimum wage. The employers already refer to the sector being low margin and low wage; the prospect of the supermarkets acquiring the controlling factor in the wholesale supply chain could only result in further pressure to achieve employment cost reductions in the wholesalers.

3.5 If the market is opened up as OFT is suggesting, there will be an increase in the use of contractors and 'false self employed' whereby drivers in particular are taken off the employee pay role onto a self-employment contract. Under these contracts the company to control the driver without the cost of providing any of the terms and conditions that would be required if these people were employees.

3.6 There are now fewer employees covering the same volume of work, so employees are under increased stress, the amount of unsociable hours that they are required to work increases as the number employed falls, despite the Working Time Regulations.

3.7 Similarly, workers in the retail sector are likely to see pressure on their terms and conditions as employment cost reductions will be perceived as the only way in which the local smaller retail chains and newsagents will be able to cut costs and remain in business. Newsagents and other retail organizations have been vociferous in their opposition to the Statutory Minimum Wage for instance.

3.8 Many retail employees have already seen a deferral of pay awards with the anniversary dates being put back by employers, who have argued that there is a need to coincide with the uplift in the National Minimum Wage. This deferral also of course meant that employers did not have to pay an increased rate over the time period between the annual review date and the new date determined by the employer.

3.9 Amicus is concerned that if the final OFT Opinion leads to opening up the newspaper and magazine distribution market to supermarket control, employee vulnerability will increase as cutting the wage bill is seen as the easiest reduction to make in the pursuit of increased profits and greater efficiency.

3.10 It may well be argued that retail employees are protected by the national minimum wage legislation, however many companies cut their wage

bill by cutting the number of people employed while still expecting the same output. This situation adds increased stress to employees which in turn increases the absenteeism rate.

3.11 It has also been noted that while the lowest paid employees in the retail sector are receiving increases at or above the rate of inflation to bring them into line with or just above the National Minimum Wage, higher paid employees within the companies are often receiving a lower increase.

3.12 Amicus is therefore very concerned that the situation for both employees and 'self employed' in the distribution and retail trades will deteriorate further if the OFT's draft Opinion is confirmed following the consultation.

4. Press diversity will be undermined by supermarkets refusing to stock particular publications.

4.1 Publishers have claimed that diversity of the press is endangered by tearing up a system that ensures universal distribution of all titles, arguing that retailers outside major conurbations could find themselves not being supplied.

4.2 As the Periodical Publishers Association have stated 'The supply chain would inevitably unravel, threatening the future of a free and diverse press for the benefit of consumers and the democratic process as a whole'.

4.3 If small retailers and newsagents are unable to afford a changed supply system, or are not able to obtain certain newspapers and magazines because the wholesaler doesn't have the contract to supply, their whole purpose for being in business in the first place would be completely undermined; local people will buy their papers and magazines from the supermarket or petrol station, and the newsagent goes out of business. This is the likely effect on local traders of any disruption to an important right which has been established in the context of ATP, namely the universal right of

distribution. It is a right which should be protected for the benefit of the community as a whole and is a matter of public interest, which is why ATP was permitted in the first place.

4.4 Ian Reeves Editor of Press Gazette commented in 2005 that 'The UK is blessed with one of the most vigorous, entertaining, informative and passionate publishing industries in the world. The crucial element of this is that, as things stand, every shop, petrol forecourt, newsagent or supermarket can effectively stock as wide range of titles as they choose, selling at the same price. The proposed legislative changes will upset this balance of power. In the name of greater competition, supermarkets are about to be handed the power, so far largely denied to them, to take control of the supply chain'.

4.5 Supermarkets will clearly only stock the most popular titles, which provide the greatest profit and will follow their head office policy on what they are allowed to stock. This policy will in turn undermine democracy by causing a knowledge and ideas void.

4.6 Supermarkets may also impose their own restrictions: for example, in the USA Wal Mart told Cosmopolitan to remove cover billings about abortion; it has delisted "lad mags" Maxim, FHM and Stuff in the UK. Also in the UK 'Tesco has asked to see copies of covers prior to publication and asked for late changes on at least one occasion'. It is clearly detrimental to those involved in producing and reading specialist magazines if the range of publications is determined by the supermarkets.

4.7 Further more Professor Dobson states that he 'believe[s] there could be wider issues at play here, including the very serious potential damage to the rights of people to universal access to news and information. In other European countries people's rights of access to information and news are enshrined within law that is why they continue to offer protection for their distribution systems-quite often due to democratic liberties.

5. The alternative way forward

5.1 It seems to be agreed by all parties that, if the Office of Fair Trading's draft Opinion is confirmed, the impact on distributors, wholesalers, independent newsagents/retailers, employees and the consumer will be detrimental. The only group benefiting from such a ruling would be the supermarkets who have already been proved to have a negative effect on small and independent retailers and those employees who work for them.

Amicus believes that the most sensible way forward would be the establishment of a new all-embracing Code of Practice for newspapers and magazines, or separate Codes, and an Industry Ombudsman. The role of newsagents in supplying these publications free from the constraints of competition with the supermarkets must also be defended and catered for in a revised Code with additional procedures to resolve differences.

5.2 The ANMW for example believes 'that a revised all-embracing Code of Practice – backed by an independent Industry Ombudsman and modified JIG process – represents a highly satisfactory outcome that balances the needs of consumers and the industry as a whole'.

5.3 Amicus believes that there is also a need for legislation establishing the universal right of distribution for newspapers and magazines. As it is only in this way that newspapers in particular can continue to be available to all people regardless of where they live. At present virtually all newspapers, except in London and Scotland, are transported from the newspaper printer to the wholesale depots by one company, TNT, or their sub-contractors. The OFT incorrectly identifies three stages in the newspaper supply chain (para 1.15); there are in fact four. Whilst this is clearly a virtual monopoly, and therefore should not be in private hands, it is at least a uniform route for the transport of all newspapers. The weakness is that it does not cover Scotland so any newspapers and minority interest titles which cannot afford air freight

do not even reach Scotland to be distributed. A strengthened Code should be extended to ensure that all parts of the UK benefit from a universal right of distribution not just England and Wales.

5.4 Part of the case for taking newspapers away from the railway system in the 1980s was that the railways were a monopoly and the market (ie that section of the supply chain to transport papers from printer to wholesaler) should be opened up to competition. We opposed that particular change for a number of reasons: but the common factor for the purpose of this OFT draft Opinion and the consultation on the Code is that the question of competition with regard to newspapers and magazines has to be judged in the context of the public interest. Means have to be developed, where they do not already exist at all or to any satisfactory extent, to protect the ability of the reading public to purchase newspapers and magazines of their choice, and to ensure that publishers of newspapers and magazines have the right to display and sell their publications in retail outlets.

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Closing date for Submission is 29th September