



OFT Consultation on the National Newspaper Code

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 and summary

Amicus is responding to the current OFT consultation on the Newspaper Code in view of the issues raised for availability of newspaper and magazine titles. We are mindful of the need to maintain public access to the whole range of newspapers and magazines available for purchase and the need for protection of the facility of a free and diverse press, including in the event of any changes to the economic structure of the supply chain. We have confined our comments to the distribution and supply issues only, including proposals for the expansion and strengthening of the Code, its expansion to include magazines, or alternatively a new Code for magazines, and the establishment of a national newspaper and magazine industry Ombudsman. Our proposals do not include reference to the growing national free newspaper market.

The Amicus case in detail

- 1.1** In addition to consulting on the structure of competition and distribution agreements the Office of Fair Trading is also consulting on the National Newspaper Code.
- 1.2** The Newspaper Code of Practice was introduced in 1994 and included creation of a universal service obligation on wholesalers. This important feature provides an essential right to the buying and reading public as well as providing a key condition to the economic relations between the various suppliers.
- 1.3** Under the Code (cl 1.5) wholesalers are required to supply national newspapers to 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 all national newspapers have a guaranteed route to market via the wholesalers, although magazines do not.
- 1.4** Absolute territorial protection (ATP) as subsequently endorsed under the Code of Practice has been a feature of the publisher-wholesalers contracts in existence since the late 1980s.
- 1.5** The universal service obligation is also a feature of distribution systems in European Union countries, with the larger countries having similarities to ATP 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
- 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 would very quickly degrade and therefore so too the supply chain and thus the universal service obligation would collapse. Supermarkets would be able to use their sheer volume buying power; the rest of the outlets – mostly the newsagents - would be obliged to accept whatever is available rather than supplying to order of the customer. Wholesaler prices would be governed by the likely formation of national distribution contracts with the supermarkets. It would become 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 Therefore, irrespective of whether ATP is ruled in or out by the OFT the National Newspaper Code must retain the universal service obligation, and it must apply to all including the supermarkets.

1.12 The Code should be expanded, to include magazines so that all publications have the benefit of the universal service obligation, and all retailers and wholesalers of magazines are subject to fair regulation.

1.13 There are many daily problems with such a complex national process of distribution. Newsagents in particular have felt 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. 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.

1.14 Issues such as failure to deal with 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. These matters could also be dealt with by means of an improved and strengthened Code of Practice for national newspapers and magazines. Or a separate code for magazines could be considered in consultation with the industry parties.

1.15 An industry Ombudsman is required to assist with the resolution of disputed matters where no settlement has been found.

1.16 Amicus agrees with the other organizations that have made similar statements with regard to the need for an industry regulator and extended Code.

1.17 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.

- 1.18** 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.
- 1.19** Other than industry approved trading methods and mechanisms, supermarkets and multiples should be subject to the same regulation as the newsagents and independents and should be forbidden to edit their ranges by refusal to supply on request.
- 1.20** In order to preserve the principles of universal service, retailers and suppliers should not be able to give away copies of paid-for national newspapers as part of in-store or other promotions. 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 instead becomes a subject of availability depending on contract price based on an ability to run massive promotions and heavy discounts.
- 1.21** Widespread availability and compulsion to supply subject to MEL goes a long way towards fulfilling the need for a free and diverse press and allows newsagents to trade in the same products as supermarkets. The role of newsagents in supplying these publications free from the constraints of economic competition with the supermarkets must also be defended and catered for in a revised Code.
- 1.22** To protect employees in a highly competitive market the Code should include provision for employers at all levels in the sector to be required

to observe the range of good employment practice - including health and safety in relation in particular to personal security, and long working hours - for directly employed workers and the self-employed.

1.23 The universal right of distribution should be protected for the benefit of the community as a whole. It is a matter of public interest and should continue to be enshrined in the Code irrespective of any changes to ATP agreements to enable every shop, petrol forecourt, newsagent or supermarket to effectively stock as wide range of titles as they choose, selling at the same price.

1.24 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.

1.25 At present virtually all newspapers, except in London and Scotland, are transported from the newspaper printer to the wholesale depots by one company or their sub-contractors. Although it is uniform route for the transport of all newspapers 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 ensure that all parts of the UK benefit from a universal right of distribution not just England and Wales.

1.26 For the benefit of consumers and the democratic process the distribution of newspapers and magazines has to be judged in the context of the public interest. Means have to be developed, including by virtue of a strengthened Code where they do not already exist at all or to any satisfactory extent, and including statutory protection where necessary, to safeguard 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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