

**COMPLETED ACQUISITION BY THE DUNFERMLINE PRESS LIMITED OF BERKSHIRE REGIONAL NEWSPAPERS FROM TRINITY MIRROR PLC**

**PROPOSED UNDERTAKINGS TO BE GIVEN BY DUNFERMLINE PRESS LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002**

**WHEREAS:**

- (a) On 29 July 2007, DPL acquired BRN from Trinity Mirror plc;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of BRN to the CC;
- (f) The OFT further considers that the undertakings given below by DPL are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision; and
- (g) DPL offered initial undertakings pursuant to section 71 of the Enterprise Act 2002, which the OFT accepted on 28 November 2007, in respect of the Acquisition. These initial undertakings cease to be in force on the acceptance of the undertakings in lieu given below by DPL.

**NOW THEREFORE** DPL hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

### **Effective date of the undertakings**

- 1.1 These undertakings shall take effect from the date that, having been signed by DPL, they are accepted by the OFT.

### **Divestment of the Divestment Business**

- 2.1 DPL shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement to divest to the satisfaction of the OFT the Divestment Business to the proposed purchaser, Baylis, on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, DPL shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the Divestment Business if desired by the proposed purchaser of the Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, the Parties shall take the following measures to the extent they may be necessary in the opinion of the OFT, to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
  - (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
  - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
  - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
  - (d) the formation or winding up of a company.

### **Approval of purchaser and terms of divestment**

- 3.1 For the purposes of the OFT approving Baylis as a proposed purchaser for the Divestment Business in accordance with these undertakings, DPL shall, save as required or permitted by the OFT, satisfy the OFT that:
  - (a) the acquisition by the proposed purchaser of the Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the proposed purchaser is independent of and unconnected to DPL and the Group of Interconnected Bodies Corporate to which DPL belongs and any Associated Person or Affiliate of DPL or such Group of Interconnected Bodies;
- (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability) and incentive to maintain and operate the Divestment Business as part of a viable and active business in competition with DPL and other competitors in the provision of local newspapers in Slough and Windsor;
- (d) the proposed purchaser must reasonably be expected by the OFT to obtain all necessary approvals and consents from any regulatory authority plus all relevant consents; and
- (e) the acquisition by the proposed purchaser of the Divestment Business is not expected to result in a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require DPL and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

#### **Interim action**

- 4.1 Pending completion of the divestment of the Divestment Business, DPL shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, the Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Divestment Business on the basis of its pre-merger plans;
  - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Business or the management responsibilities within the Divestment Business;
  - (c) except with the prior written consent of the OFT, the Divestment Business is maintained and preserved, including facilities and goodwill;

- (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of the Divestment Business is maintained;
- (f) except in accordance with paragraph 2.1, no assets of the Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no integration, or further integration, of the information technology used by DPL with that used by the Divestment Business and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to the Divestment Business shall pass, directly or indirectly from the Divestment Business (or any employees, directors, agents or Affiliates of the Divestment Business) to DPL (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
  - (i) the transfer of any accounting information necessary to allow DPL's Chief Executive, Deputy Chief Executive and Group Secretary and the DPL Board to monitor and review the financial performance of the Divestment Business provided that such accounting information is not passed on to any other person within DPL;
  - (ii) the transfer of any information required in connection with DPL's dealings with the OFT; or
  - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the businesses and including for the avoidance of doubt the compilation of consolidated accounts in line with DPL's existing accounting practices;
  - (iv) any steps necessary in order for DPL to comply with these undertakings;

provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by DPL in relation to that Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed.

### **Continued separation**

5.1 Except with the prior written consent of the OFT, following the divestment of the Divestment Business, DPL or any member of the Group of Interconnected Bodies Corporate to which DPL belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (i) any Interest in the Divestment Business;
  - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of DPL or of any members of the Group of Interconnected Bodies Corporate to which DPL belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
  - (iii) other than in the ordinary course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

## **Compliance**

- 6.1 DPL shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; and/or
  - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 6.2 DPL shall procure that any member of the same Group of Interconnected Bodies Corporate as DPL complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as DPL shall be attributed to DPL for the purposes of these undertakings.
- 6.3 Where any Affiliate of DPL is not a member of the same Group of Interconnected Bodies Corporate as DPL, DPL shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **Provision of Information**

- 7.1 DPL shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## **Interpretation**

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

8.4 For the purposes of these undertakings:

**"Acquisition"** means the acquisition on 29 July 2007 by DPL of BRN from Trinity Mirror plc;

**"the Act"** means the Enterprise Act 2002;

**"Affiliate"** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**"Associated Person"** means a person or persons associated with DPL within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**"Baylis"** means Baylis & Co (The Maidenhead Advertiser) Limited;

**"BRN"** means Berkshire Regional Newspapers, formerly a business unit of Trinity Mirror PLC and now incorporated into Berkshire Media Group Limited comprising the assets acquired by DPL from Trinity Mirror plc by agreement completed on 29 July 2007.

**"business"** has the meaning given by section 129(1) and (3) of the Act;

**"CC"** means the Competition Commission;

**"Confidential Information"** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

**"Control"** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**"the Decision"** means the OFT's decision under section 22 of the Act dated 4 February 2008 in connection with the Acquisition;

**“the Divestment Business”** means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, as operated at the date of entry into a legally binding agreement for the sale of these titles by DPL, including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (c) all or substantially all contracts, vehicle leases, commitments and customer orders of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express which are capable of being transferred;
- (d) all customer, credit and other records of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express (in hard copy only);
- (e) all trading names associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, but not including the Maidenhead Express title; and
- (f) the personnel employed by DPL in relation to each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, other than the member of staff within BRN with responsibility for overseeing the installation of the production IT platform across the whole of the BRN business.

**“DPL”** means The Dunfermline Press Limited;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Group of Interconnected Bodies Corporate”** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“Key Staff”** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

**"OFT"** means the Office of Fair Trading;

**"Subsidiary"** shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated; and

**"UK"** means the United Kingdom of Great Britain and Northern Ireland.

FOR AND ON BEHALF OF DPL

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
(Director)		Director/Company Secretary	