

Review of Undertakings given further to *A Report on the Supply of Newspapers in England and Wales* December 1993 Cm 2422 (the MMC Report)

The review will assess how effective the undertakings have been in addressing the adverse findings of the 1993 MMC report and the state of competition in the market for the supply of national newspapers in England and Wales. The review will determine whether the undertakings are still relevant in today's market and whether they need to be varied, superseded or removed.

The reference

In August 1992 the DGFT referred to the MMC the following matters:

- The existence or possible existence of a monopoly situation in relation to the supply by wholesale in England and Wales of national newspapers: and
- The existence or possible existence of a monopoly situation in relation to the supply for resale of national newspapers in England and Wales by their respective publishers.

Inquiry findings

The MMC found that a complex monopoly operated in favour of 77 newspaper wholesalers, and that the following newspaper wholesaler practices were against the public interest:

- refusing to supply applicants when, in the wholesalers' opinion, an area was adequately served; and
- requiring retailers to sell only by retail and only from specified outlets (thus preventing supply to sub-retailers).

MMC's Recommendations

To remedy these adverse effects the MMC recommended that existing retailers be allowed to pass copies to other outlets or to sell copies to other retailers then denied supply. The MMC was wary of a more radical remedy to open up supplies at retail level.

The Secretary of State, following the advice of the Director General, asked the industry to put forward remedies to address the adverse effects identified by the MMC. As a result the Code was developed which was accepted by the Secretary of State in lieu of a statutory order and is underpinned by statutory undertakings given by wholesalers.

The Code came into operation on 1 October 1994. 76 wholesalers agreed to comply with the Code by signing statutory undertakings in September 1994 (one of the original wholesalers had ceased business before the undertakings were signed). Voluntary undertakings were received from two additional wholesalers.

The Code

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The Code's impact is principally on the wholesaler/retailer supply chain. Its key features are described below. The Code supports the practice of publishers awarding exclusive territories to wholesalers. Exclusive territories give wholesalers local monopolies. This gives wholesalers the opportunity to (i) increase carriage charges, (ii) charge discriminatory carriage charges to different retailers and (iii) keep retail margins at the level recommended by publishers. Therefore when considering whether the Code has been effective in stimulating competition, it will be necessary to consider whether there have been changes in circumstances since the undertakings were last reviewed that render the undertakings and the Code unnecessary or ineffective and whether the undertakings need to be varied or the parties released from them.

Terms of Reference

The OFT will consider in the course of its review:

- the carrying out and the effectiveness of the undertakings; and the operation and effectiveness of the Code;
- whether there has been any change in circumstances, for example in the structure of the relevant market.

In considering the effect of the Code for newspaper distribution in England and Wales, which is binding on signatories to the undertakings, we shall also consider its wider impact on the market in the UK and the relationship with the distribution of magazines in the UK.

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