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PRIME MINISTER

TIMES NEWSPAPERS

We are discussing at E Committee this afternoon the bid by News International, which is controlled by Mr Rupert Murdoch, to take over The Times, The Sunday Times and the three Times supplements which, via Thomson British Holdings (TBH), are owned by the Canadian-controlled Thomson Organisation.

Newspaper mergers are subject to special scrutiny under the 1973 Fair Trading Act: there is a presumption that they will be referred to the Monopolies and Mergers Commission (MMC) unless particular conditions apply (see Annex A). In this case I may give consent without a reference if I am satisfied that the newspaper in question is not economic as a going concern and the case is one of urgency. Advice from the Department's accountants is that I may properly be satisfied that neither The Times nor The Sunday Times is economic as a going concern, though only in the case of The Times is the issue clear cut. As for urgency, Thomson announced in October last that the papers would close at various dates in March (The Sunday Times on 8 March; The Times on 14 March) unless a buyer were found; and the Chairman of the Monopolies Commission has said he needs eight weeks for an enquiry (he cannot be allowed less than three months). To an extent, the "urgency" is of Thomson's own making: the papers have been losing money for some time and they themselves set the dates in March when they are scheduled to close; but, again, I

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am advised that I can properly be satisfied the case is one of urgency. (Acceptance of the urgency criterion here could however set a precedent of non-reference which might be used by others planning Fleet Street mergers.)

I have, this morning, seen both Mr Gordon Brunton, Chief Executive of TBH and Sir Denis Hamilton, Editor-in-Chief of Times Newspapers. I pressed them to extend their March deadlines by, say, 6-8 weeks to allow an MMC investigation. They told me that in practical terms this would not be possible: negotiations with the workforce would have to be re-opened about redundancy terms, and, as the future success of The Times and The Sunday Times is contingent on satisfactory arrangements being worked out with the unions, the necessary head of steam would disappear. There might be disruption to production; and advertising, already drifting away, might be lost. They agreed however to take the matter back for consideration by their Board and let me know their answer tomorrow.

I spoke similarly to Mr Murdoch (who was reported to have said last week that if there was a reference, the deal was off). He said that the timescale had been established by Thomson, but was now a practical constraint. He did not fear the outcome of a reference. But if it were made, with Thomsons agreeing to renegotiate with their staff to keep open for a further period, it would also be necessary for his contract with Thomsons to be renegotiated, in his favour, since the uncertainties would diminish the commercial value of the

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papers. This would take a fortnight before a monopoly reference could start. And he doubted if his negotiations with the unions could start till after the MMC enquiry was complete. Thomson would therefore need to defer closure at least until the end of April.

Under the terms of News International's bid generally satisfactory conditions to guarantee the editorial independence of both newspapers have been offered (Annex B). Nonetheless there is widespread opposition to Mr Rupert Murdoch's acquiring The Times titles - at least without a reference from the Opposition and also from our own supporters.

As I see it, depending on Thomsons' and Murdoch's response to my request, there may be three possibilities -

- i) Thomsons agree to defer the closure dates and to renegotiate with Mr Murdoch. If they reach a fresh agreement I refer this to the MMC, which effectively would determine the outcome as between Murdoch or closure.
- ii) Thomsons refuse to defer closure. I refuse my consent without a reference to the MMC. This would be a leap in the dark. Thomsons would have to consider again whether to reverse their position on closure; and whether to renegotiate with Murdoch (who for his part might withdraw) or to try to sell the title separately. In the latter case the Sunday Times and the supplements might find buyers; the position of The Times would be much less certain.

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- iii) I give consent without a reference, on condition that the undertakings which Mr Murdoch has already given bearing on the independence of the papers and editorial freedom should be entrenched: they should not only, as the companies propose, be incorporated in the company's articles of association, but thereafter could not be changed without my consent.

In deciding which course to follow we must keep in mind that if, as an arguable result of a reference, TBH closes the papers according to its present timetable, we shall be accused not only of causing TBH to lose a substantial sum of money - perhaps up to £20 million net - and some 4,000 redundancies, but also of bringing about what may prove to be the permanent closure of The Times.

I am copying this minute to all members of E Committee, the Chancellor of the Duchy, Attorney General, Chief Whip and Sir Robert Armstrong.

J. B.

(Approved by the Secretary of State and signed in his absence.)

Department of Trade  
26 January 1981

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## TIMES NEWSPAPERS LTD

## BACKGROUND NOTE

Thomson British Holdings Ltd (TBH), controlled by the Canadian-owned International Thomson Organisation Ltd, has applied to the Secretary of State for consent under Section 58(3)(a) of the Fair Trading Act 1973 to transfer The Times and The Sunday Times to News International Ltd, controlled by Mr Rupert Murdoch.

2 The Thomson Organisation acquired The Sunday Times in 1959 and The Times in 1966. The latter acquisition was considered and cleared by the Monopolies Commission (MMC). The present Lord Thomson and his father gave non-statutory assurances concerning the maintenance of the separate identities of The Times and Sunday Times and the independence of their editors. They also gave a 21-year assurance to provide funds to keep the two papers in being. However, this latter assurance was subsequently qualified and stated to depend on the cooperation of the workforce.

3 Times Newspapers Holdings Ltd (which owns The Times, the Sunday Times and the three supplements) has lost substantial sums since 1966. (The eleven and a half months suspension in 1978-79 over manning and new technology was an important factor). Trading losses for 1980 are likely to be about £13m. Placing the blame on the unions, the Thomson Organisation announced on 22 October last its decision to close the five papers by March 1981\* unless buyers could be found. The deadline for bids was 31 December 1980.

4 Several bids were made for the titles. TBH announced on 22 January that it had reached conditional agreement for the transfer of the five publications to News International Ltd, subject to the satisfactory outcome of negotiations between Mr Murdoch and the unions. (Mr Murdoch has set a three week deadline for their completion). Mr Murdoch has given a series

\* Sunday Times 8 March, Supplements 13 March, Times 14 March





of undertakings concerning the editorial independence of the newspapers and future disposal of their titles (see Annex B ). The Murdoch bid (including the undertakings) has been approved by a vetting committee consisting of the Editor in Chief of Times Newspapers, the Editors of The Times and The Sunday Times, together with the "national" (ie independent) directors of Times Newspapers Holdings Ltd. TBH has now sought the consent of the Secretary of State for Trade to the proposed transfer under Section 58(3)(a) of the Fair Trading Act 1973.

5 The Fair Trading Act provides for special scrutiny of newspaper mergers: a reference to the MMC is mandatory except in special circumstances. Where the transfer of a newspaper to a newspaper proprietor will result in a combined circulation of 500,000 or more, the consent of the Secretary of State is required. Such consent cannot be given without an MMC reference unless the Secretary of State is satisfied that the newspaper concerned is not economic as a going concern and as a separate newspaper. In this case -

- (a) he may give his consent without an MMC report, provided he is also satisfied that the case is urgent if the newspaper is to continue as a separate newspaper;
- (b) he must give his consent unconditionally and without a reference to the MMC if he is satisfied that the newspaper is not to continue as a separate newspaper.

As in the present case an application can be made conditional on the Secretary of State's consent being given under S58(3)(a) or (b), in which case he must either reject the application or approve it without a reference to the MMC. If transfer of a newspaper is to be referred to the MMC this must be done within one month of receipt of the application. The deadline for completion of the report is three months, but the Secretary of State may extend this





for one further period not exceeding three months. Any transfer without consent would be void and subject to criminal proceedings.

6 The Secretary of State is not bound to follow the Commission's findings on whether the merger is in the public interest; and he can attach whatever conditions he wishes to consent, regardless of whether the merger has gone to the MMC and of any conditions the MMC may have recommended. Breach of any conditions imposed by the Secretary of State would also be subject to criminal sanctions.

7 The circulations of the papers concerned and Mr Murdoch's status as a "newspaper proprietor" have the result that the proposed transfer of The Times and The Sunday Times would require the Secretary of State's consent. (The three supplements, not being "newspapers" do not require such consent). In deciding whether he has discretion not to refer, the Secretary of State must consider whether each newspaper concerned is economic as a going concern and as a separate newspaper. This involves looking at the finances of each newspaper separately even though (as in this case) they may share certain production and management costs. In considering whether a newspaper is economic as a going concern there can be no speculation about what the position might be under different ownership or circumstances.

8 An analysis of the financial position and prospects of the newspapers concerned (on the basis of material supplied to the bidders) has been carried out by the accountants of the Department of Trade. This concludes that, allowing for the inevitable arbitrariness of allocating fixed overheads representing the division of shared costs, neither The Times nor The Sunday Times is economic as a going concern and as a separate newspaper, although the issue is only clear-cut in the case of The Times. The Solicitor to the Department advises that the accountants' report





provides a basis on which the Secretary of State could properly decide that neither publication was economic as a going concern and as a separate newspaper.

9 The Secretary of State must also satisfy himself that the case is one of urgency if the newspaper is to continue as a separate newspaper. It may be argued that there can be no claim of urgency when the Thomson Organisation had borne losses for many years, has given nearly five months' notice of closure, and presumably has the funds to keep the five papers going for at least a further short period. But a proprietor cannot be obliged to keep going an uneconomic newspaper and if he decides to close it by a certain date, the Secretary of State may properly conclude that a situation of urgency exists. In the present case, there appears to be sufficient evidence for the Secretary of State to be satisfied that the present case is 'urgent'.

10 The upshot therefore is that on the basis of available information, the Secretary of State has discretion to consent to transfer of The Times and The Sunday Times without an MMC reference and that if he did so he would be unlikely to be successfully challenged at law. Equally, he has the right to refer either or both acquisitions to the MMC before deciding whether to grant consent.

11 Pressure for the deal to be referred to the MMC is coming from both sides of the House of Commons, from editorial comment and from the NUJ. The three print unions however are in favour of the merger.



1. Independent National Directors

The system of Independent National Directors serving on the Board of Times Newspapers Holdings Limited will be preserved and enhanced. There will be an increase in the number of Independent National Directors. They will be required to approve subsequent appointments to their membership.

2. Appointment and dismissal of Editors

The Editors, to be appointed by the Board, may be appointed or removed only by the agreement of a majority of the Independent National Directors. The Independent National Directors will be available for arbitration on unresolved issues.

3. Disposition of titles

Any future sale of any of the titles will require the agreement of a majority of the Independent National Directors.

4. Maintenance of Editorial Independence

Irrespective of these rights of the Independent National Directors, Mr. Murdoch undertook to bind himself to preserve the separate identities of The Times and The Sunday Times, and to maintain the independence and authority of their Editors in the appointment and control of their staff: over the political policy of the separate newspapers; and in all respects to maintain the titles as



editorially independent newspapers of high quality.

Each of the two Editors would be free to make his own decision on matters of opinion and news and each would be free to disagree with the other and with any other newspaper in which Mr. Murdoch may have an interest.

In particular Mr. Murdoch subscribes to and undertakes to observe the following principles relating to editorial integrity.

(a) The Times and The Sunday Times are free from party political bias and from attachment to any sectional interest. They will be subject to no restraint or inhibition either in expressing opinion or in reporting news that might directly or indirectly conflict with the commercial interests or political concerns of the Proprietor. The Times is recognised to be a paper of record.

(b) In accordance with the traditions of the papers, their Editors will not be subject to instruction from either the Proprietor or the management on the selection and balance of news and opinion. They have the right to refuse to publish any advertisement.

(c) Instructions are to be given to journalists only by their Editor and by those to whom he has delegated authority.



- (d) The Editors of each of the Supplements should have the same responsibilities and prerogatives in relation to their paper as the Editors of The Times and The Sunday Times.
- (e) The Board of Times Newspapers Ltd. is to be responsible, after consultation with the Editors, for fixing an annual budget for editorial space and expenditure. The Editors are to be responsible for the allocation of space between editorial and advertising day by day, within the strategic framework set by the Board. The Editors will continue to make all appointments to the journalistic staff, subject to the constraints of the editorial budget.

NOTE:

The Articles of Association of Times Newspapers Holdings Limited and Times Newspapers Limited will be altered as appropriate to reflect the above undertakings in the event that the sale to Mr. Murdoch becomes unconditional.





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26 January 1981

THE PRIME MINISTER

TRANSFER OF TIMES NEWSPAPERS

There is one point I should raise in advance of this afternoon's meeting of "E" Committee.

2. The general rule under the Fair Trading Act 1973 is that there must be a reference to the Monopolies Commission before the Secretary of State decides whether or not to give his consent to a transfer of newspapers. But there is an exception to this under s.58(3)(a) of the Act, where a reference is at his discretion if the Secretary of State is satisfied that certain criteria are met.

3. I wish to stress that it is for John Biffen exclusively to decide whether these conditions are present for either or both newspapers. I can advise him from a legal standpoint on whether he is entitled to come to a particular view on the basis of the evidence he obtains, but apart from that Ministers must refrain from giving their own opinions or seeking to influence his. Otherwise there might be room for questioning his final decision.

4. If John Biffen does reach the conclusion that the criteria are met, then it is a proper matter for consultation with colleagues whether or not a reference should first be sought, and there can be no objection to their giving their views on this aspect.

5. As Chairman of "E" Committee you should be aware of this limitation. I think it is important that the Committee should confine itself, so far as the conditions in s.58(3)(a) are concerned, to hearing John Biffen's conclusions on whether they are

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met. The discussion and the minutes should be limited accordingly.

6. I have copied this minute to John Biffen and Sir Robert Armstrong.

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