Association of News Retailing

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THE NEWS GROUP OF acs

Tomorrow's NEWS

Tomorrow's NEWS

Contents

Introduction:

The news industry is currently the subject of two OFT inquiries: the first into the Vertical Agreements between publishers and wholesalers; the second a review of the 1994 Newspaper Code.

The OFT is also considering whether to refer the industry to the Competition Commission for a full market investigation.

Is there a desire for change? Recent research carried out for ACS shows that there is a desire for change amongst independent retailers. *Ask Research* asked 1015 independent retailers whether they would like "*more choice over where they source their newspaper and magazines*", with 65% stating they would like more choice, illustrating clear desire for change.

The same research shows that the current self-regulation process is not widely understood by retailers, and this supports the view that these systems are not working effectively. When asked whether they recognised various industry initiatives, only 35% were aware of the Industry Standard Service Agreement (ISSA), and only 17% were aware of the Joint Industry Group (JIG). This compares with 14% who claimed to be aware of a fictitious structure, the "News Best Practice Protocol" – therefore recognition levels of actual initiatives in the news industry is perhaps even lower than the results suggest.

It is natural that change is resisted or even feared by those affected by it, but this does not make change wrong. When a supply chain is as expensive and performs as inefficiently as the current news supply chain, change becomes a necessity and the status-quo an all too expensive luxury.

The purpose of this guide is to review the various potential outcomes and explore the conclusions identifying opportunities that may present themselves for ACS members, and once you have read this paper we would be keen to meet with you to discuss how the changes to the news industry could impact on your business.

History of Regulation within the News Industry:

News retailers have operated in a regulated market for over 60 years. In 1944 the R.E.N.A Scheme (Re-entry and New Applications) was introduced. This prevented anyone from receiving a supply of newspapers without a permit granted by the Newspaper Proprietors Association. In 1961 this scheme was abandoned as it was an infringement of the Restrictive Trade Practices Act 1956. From 1961 the onus was placed on the wholesalers to grant newspaper supplies and they could elect to withhold supplies if they thought the area was 'already well served'.

In 1993 the OFT asked the then Monopolies and Mergers Commission (MMC) (now the Competition Commission) to investigate this monopoly situation. This led to the MMC's report ‘The Supply of National Newspapers’ from which the Industry Code of Practice was introduced.

The Code opened up competition within the retail sector – subject to new entrants achieving the Minimum Entry Level (MEL). MEL was introduced to counter the belief, of wholesalers and traditional newsagents, that if an area was adequately served then no other retailer should be supplied with newspapers. In 1993 it was decided that this restriction was against the public interest.

The MEL is a formula based on half the ‘average value of the newspapers invoiced weekly to all existing retailers in a wholesaler’s area’.

NEWSPAPERS AND MAGAZINES:

Wholesalers are contracted by publishers to distribute their Newspapers and Magazines within designated postcode areas and they deliver to 54,000 retailers.

Contracts are made within the industry for each area for a number of years. In theory each publisher can choose who delivers their titles and this explains why we have, in some areas, more than one supplier of news products.

Each wholesaler has a contract with each publisher for somewhere between 3 – 10 years. As a result of these exclusive contracts retailers cannot choose which wholesaler supplies them. Retailers also cannot ‘switch’ suppliers but, in theory, they can ensure that the service received from the wholesaler achieves a minimum standard which is outlined in the Industry Standard of Service Agreement (ISSA) – although this is regarded by many retailers as woefully inadequate.

Although delivered within the same supply chain, magazines and newspapers are different products and have differing sales and marketing requirements.

Currently the Retail Sales Value of the news industry is around £4 billion with newspapers and magazines accounting for around £2 billion each.

<u>Newspapers</u>:

The distribution of newspapers within the UK is through a complex monopoly with the big 3 wholesalers Smith News, Menzies Distribution and Dawson News covering the vast majority of the country.

News International – publishers of the *Sun, The Times, News of the World* and *The Sunday Times* – have their own wholesale business which delivers a large percentage of their titles.

National Daily newspaper marketplace broadly falls into 3 main groups:

- Red Tops / Tabloid – *The Sun, Daily Mirror, Daily Star*
- Middle Market / Tabloid – *Daily Express, Daily Mail*
- Quality Market / Broad Sheet & Compact – *The Times, Daily Telegraph, Independent, Financial Times*

Newspapers are the single biggest loyalty builder for retailers, generating repeat sales everyday. Increasingly, customers expect news to be available where they do the rest of their shopping – whether it is a traditional news retailer or not.

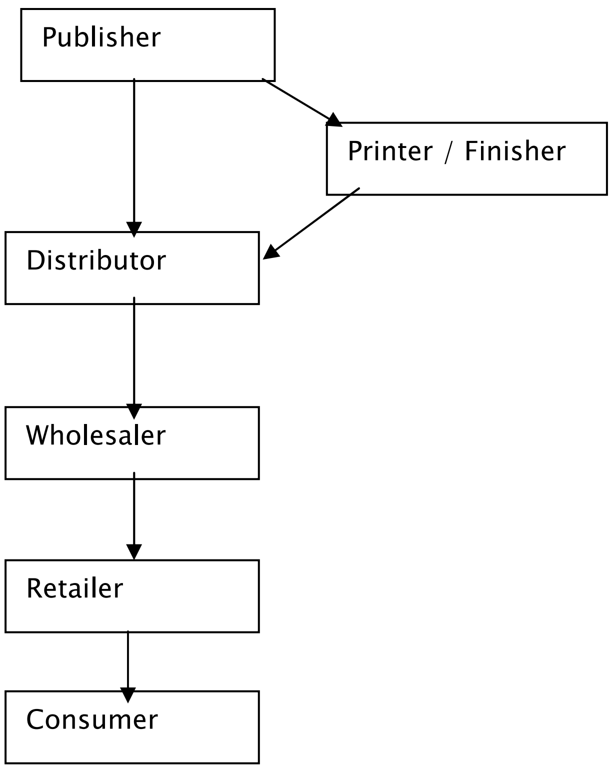
The supply allocation of national newspapers is largely controlled by the publishers and wholesalers and supplied on full sale or return (SOR). The waste level for newspapers as a result of SOR is around 20%.

Newspapers carry a fixed price and retailers receive a fixed margin. Retailers also have to pay a carriage charge to have the products delivered.

On 1 October 1994 the Newspaper Code of Practice came into effect. It was introduced to regulate the supply of national newspapers in England and Wales (it was voluntarily adopted in Scotland and Northern Ireland).

<u>Magazines</u>:

Unlike newspaper distribution, magazine publishers tend not to have direct relationships with wholesalers; they use distributors such as Marketforce, Frontline and Comag.



Publishes/produces magazine

Prints and/or finishes magazine

Collects magazines, delivers a number of publishers' titles to wholesalers and in some cases instructs wholesalers what to send to individual retailers

Receives and delivers to retailers and in most cases allocates copy to retailers

Receives products and displays for the consumer, in some cases, delivers to the consumer

The consumer

The allocation of magazines is largely controlled by distributors and wholesalers and they are supplied on a sale or return basis. One of the consequences of this top down, or push distribution system, is that many retailers do not receive the allocation that they need or conversely receive too many of the magazines they cannot sell. These inefficient supply arrangements lead to large levels of waste; with 50% of regular frequency monthly magazines and a quarter of weekly magazines being returned increasing costs.

Office of Fair Trading:

The Office of Fair Trading (OFT) is currently running two inquiries into the news industry:

The first review is into the contracts - vertical agreements - between publishers and wholesalers that create geographically exclusive territories.

The second is a review of the industry Code which was agreed by the industry in 1994 during the then Monopolies and Mergers Commission's review of the news industry. The Code was signed by all the wholesalers in England and Wales with wholesalers in Scotland and Northern Ireland voluntarily adopting the code.

Both reviews are running simultaneously with two separate review teams, but the teams are working in co-operation with each other and the outcome of both reviews is likely to be before the autumn.

Once the OFT has produced their opinions they will then consider whether to refer the industry to the Competition Commission for a full market review. It is likely that before they make this decision there will be a period of consultation with the industry.

OFT Review of Vertical Agreements

On 17 June 2004 the Department of Trade and Industry (DTI) proposed that the UK Vertical Agreements Exclusion Order (VAEO), which protects the current agreements from challenge under competition law, should be repealed with a view to bringing the UK competition regime in line with that of the European Union. The decision to repeal the VAEO was confirmed on 1 March 2004, and was to come into effect 1 May 2005.

This change could potentially have a major effect on the distribution of newspapers and magazines which share a common route to market through the same wholesalers who operate within inclusive territories. The vertical agreements between publishers and wholesalers that create these territories give wholesalers Absolute Territorial Protection (ATP), which is defined by European competition law as a 'hard core restriction' and could potentially fall foul of Chapter 1 Prohibition of the Competition Act 1998.

There is a real prospect that the existing distribution contracts might not be enforceable and could be at risk of being legally challenged by a third party, which could lead to the existing arrangements unravelling, causing a period of instability for the whole supply chain.

As a result of the possibility of the current monopoly being broken up, publishers, both magazine and newspaper, together with the wholesalers, have asked the OFT for a block exemption, which will in effect put the existing contracts into, what is termed, a ‘safe harbour’ which leaves them exempt from legal challenge.

To meet the criteria for an exemption there are certain conditions that must be achieved. The Competition Act 1998 sets out these criteria in section 9(1) of the Act. There are four cumulative criteria that need to be met in order to gain an exemption from the Chapter 1 Prohibition of the Competition Act. The OFT examines whether the agreements;

a) contribute to improving production or distribution or promote technical or economic progress;
b) allow consumers a fair share of these benefits;
c) do not impose restrictions that are indispensable for attainment of the benefits; and
d) do not afford the possibility of eliminating competition in respect of a substantial part of the products in question.

The assessment of these criteria will need to be done on an individual territorial basis, because the answer relies on market factors that may vary substantially between territories.

Further assessment requires the establishment of the relevant counterfactual argument, i.e. the situation that would have arisen in the absence of ATP, or if there were no exclusive wholesale territories. The alleged benefits of the agreements and potential competitive harm, identified from the above criteria then need to be assessed against this counterfactual argument.

There are counterfactual arguments that can be put for each of the above criteria but in order to achieve an exemption <u>all</u> four criteria need to be met, but it is likely that without ATP there would be competition in the market – or within each territory – which is lost due to the existing agreements. Therefore it is likely that criteria D) condition will be difficult to meet.

Although, publishers and wholesalers argue that there is strong competition <u>for</u> the market which negates the need for competition <u>in</u> the market and therefore satisfies criteria D) above. It is unlikely that there could be significant competition for the market as the existing vertical agreements themselves generate advantages for the incumbents over potential challengers. Exclusivity over large territories, and staggered contracts, mean that it is difficult for new entrants to build critical mass in a commercially viable fashion.

OFT Review of the Newspaper Code

In 1993 its complex monopoly investigation into *The Supply of National Newspapers* the Monopolies and Mergers Commission (MMC) concluded that newspaper wholesalers engaged in the following business practices which operated against the public interest:

- Refusal to supply:
  Wholesalers refused to supply newspapers to a new applicant if they considered that the area in question was already adequately served.
- No re-sale
  Retailers were obliged to sell only directly to readers and only from specified outlets.

After the MMC's recommendations, and following the advice of the Director General of Fair Trading, the Secretary of State requested that the industry propose remedies to address the MMC's concerns. As a result, the Newspaper Code was developed. The Code only applies to the distribution of newspapers not magazines.

The OFT has also previously conducted reviews of the Code in 1997 and 2002. On 31 May 2006 (at the same time as issuing a public consultation on its second draft opinion regarding newspapers and magazine distribution) the OFT announced a further review of the Code to determine whether the undertakings are still relevant in the current market circumstances and whether they need to be modified, superseded or removed.

In order to ensure that new retailer accounts are provided with a wholesale service that meets the minimum commercial and economic requirements of the wholesaler, the Code established a minimum entry level for retailers wishing to sell newspapers: "*the minimum entry level shall be half of the average value of the newspapers invoiced weekly to all existing retailers in the wholesaler's area*".

The Code also introduced sub-wholesaling[1] which enabled retailers to sell on, or provide supplies, to other retailers. The MMC put a number of limitations on this process including:

- Retailers with less than 18 months newspaper trading will not be allowed to sub-wholesale.
- Sub-wholesaling will only be allowed within existing wholesale territories
- Retailers can only sub-wholesale to other retailers within a 500 metre radius in central urban areas and, within a one kilometre radius in other areas
- A sub-wholesaling will not sell or transfer newspapers to another retailer
- When a sub-wholesaling supply hits the minimum entry level (MEL) the retailer will have to receive supplies direct from the wholesaler.

[1] Sub-Wholesaling – retailers selling on to other retailers i.e. performing a wholesale function

OFT Considering Competition Commission Referral Opinion Publication

In October 2006 the OFT received a request to refer the news industry to the Competition Commission for a full market investigation.

The OFT will consider this request after it has published its decisions on the above two reviews. The OFT:

- will make recommendations to the Secretary of State regarding the Code, if the Secretary of State accepts these recommendations then the OFT
    - will produce its Opinion on the existing publishers / wholesaler contracts, and;
    - will then put the request for Competition Commission out for consultation.

COMMERCIAL OPPORTUNITIES POST OFT

The OFT rulings, due summer 2007, are not mutually exclusive, one will inevitably impact on the other creating a number of potential benefits and threats.

There have been a couple of events that indicate which direction the OFT might take this summer.

In May 2005 the OFT issued a public consultation on its draft opinion regarding the impact of vertical agreements on newspaper and magazine distribution. It sets out the OFT's original preliminary conclusions of a review of the sector prompted by a request for a block exemption by publishers and wholesalers. These conclusions were subsequently withdrawn by the OFT who decided to review the original decision. This may have been prompted by the appointment of a new Chairman and Chief Executive at the OFT. None-the-less, the conclusion can give a pointer to the direction the OFT might take.

In the original draft Opinion the OFT stated that:

- The restrictions in the agreements between publishers and wholesalers granting exclusive distribution territories to individual wholesalers, reinforced by a ban on passive sales across territories, are likely to bring the agreements within the scope of the Chapter 1 Prohibition.
- Newspaper agreements are likely to satisfy the section 9(1) exemption criteria in the Act. The OFT reached this conclusion on the basis that the newspaper Code continues to operate effectively to address the concerns identified in the MMC report.
- Magazine agreements are unlikely to satisfy the section 9(1) exemption criteria in the Act in their current form. However, if the agreements between magazine publishers and wholesalers were amended to remove the ban on passive sales, then it is likely that they would meet the conditions of the EC Vertical Block Exemptions and thus be exempt from Chapter 1 Prohibition.

And, on 31 October 2003 John Vickers, the then Chairman of the OFT, recommended to the Secretary of State that some of the restrictions within the newspaper Code be removed. He recommended that "*the liberalising of selling on within the wholesaler's exclusive territories would better remedy the adverse interest finding made by the MMC…*". The recommendations would:

- remove distance restrictions;
- remove time restrictions on how long a retailer has to have sold newspapers before it is permitted to sell on;
- remove restrictions on the maximum value or volume of newspapers that can be sold on;
- remove restrictions on resale by sub-wholesaler (i.e. a sub-wholesaler could also sell on to another sub-wholesaler).

On 9 August 2004 the Secretary of State approved these recommendations. The implementation of these changes was then suspended while the vertical agreement review got underway.

The last time a major review of the news industry was requested the industry was referred to the Monopolies and Mergers Commission (MMC) – subsequently replaced by the CC – and the MMC asked the industry to come up with a process that addressed their concerns. This led to the industry accepting undertakings in place of a referral; these undertakings become the newspaper Code.

The news industry has always presented regulators with a challenge. Newspapers have historically been seen as if not the only, then the primary, means to inform and educate the public. This coupled with the time sensitivity of the product has always led to regulators largely leaving newspaper distribution alone.

If the OFT is reluctant to incur the wrath of newspaper proprietors they may well see a referral as a 'safe' option, particularly if the CC was to then put the ball firmly back with the industry to come up with an industry solution, possibly further undertakings or even a self regulatory process.

These events could give an insight into the OFT's eventual findings.

Possible OFT Findings

There are several possible outcomes from the OFT inquiries, some more likely than others. The OFT could:

- maintain the status quo – agree some form of exemption;
- support their original conclusions;
- give separate, and different, findings for newspapers and magazines;
- find both newspaper and magazines contracts illegal; or,

- they could give written guidance or advice that is not prescriptive but advisory which may leave the contracts open to third party challenges,
- refer the industry to Competition Commission for a full market investigation, or
- in lieu of referral ask the industry to come up with acceptable undertakings.

After spending three years investigating the supply of newspapers and magazines, not doing anything, or supporting the status quo, is probably not a feasible option for the OFT.

Because of the nature of newspapers and the time sensitivity of the product, coupled with the political sensitivity that surrounds newspaper availability it is unlikely that the OFT's decision will be too radical, but at the same time it is hard to see how, even with a complex product, complete ATP could be justified.

Unlike newspapers it is harder to see how a justification for the distribution of magazines to be exempt from competition can be sustained. The time sensitivity of magazine distribution does not stand scrutiny, the very high levels of waste and allocation mismanagement are reasons enough for the injection of some form of competition.

The OFT's previous pronouncements give an indication of possible direction they may take. It is unlikely that the OFT's Opinion on the issue of vertical agreements will advise less change than their original draft Opinion which stated, in essence, that the existing process for newspaper distribution was likely to be within the scope of the Act because of the existence of the newspaper Code. However, existing magazine arrangements were likely to fall foul of the Act unless contracts were amended to allow for passive selling[2].

If the OFT decide that the newspaper Code is to be removed that would make it harder for any compromise regarding the vertical agreement decision on newspaper distribution to be reached. This is because the Code could not be used, as it was in the OFT's first draft Opinion, to support a decision that would maintain the legality of the current ATP situation regarding newspaper distribution.

The OFT is unlikely to prescribe a solution to the vertical agreements issue. They are more likely to offer guidance.

Because of the Code remit set down by the MMC the OFT is unable to include magazines in the Codes' current form. The OFT would have to either, abolish the current Code and ask for the industry to agree a new 'Code', or, have the Competition Commission accept amendments to the OFT's amended Code in place of a full Competition Commission inquiry. This is not a straight forward option as there is little likelihood of industry agreement.

[2] Passive selling allows for a retailer to ask for supply from a wholesaler outside their existing territory (i.e. not their current wholesaler). This does not allow a wholesaler to actively seek business in another territory. Passive selling can negate the Competition Acts hardcore restriction of Absolute Territorial Protect (ATP).

Possible Outcome 1

The least radical solution for the OFT would be to follow the lead from their original opinions.

Newspapers:

- they could support the current contractual situation together with upholding the new liberalised Code that has been accepted by the Secretary of State but is currently on hold.

Magazines:

- they could accept the current contracts but insist on passive selling to answer the ATP issue.

Possible Outcome 2

This is similar to number one, but with the addition of:

Newspaper:

- take the liberalised newspaper Code a step further by allowing the cross territory sub-wholesaling of newspapers. This will directly address the ATP issue without being too radical.

Magazine:

- outcome, the same as above.

Possible Outcome 3

The OFT could decide to treat both newspapers and magazines as the same.

Newspapers and Magazines:

- both found to be in breach of Chapter 1, unless passive selling allowed.

This option would be likely if the OFT decided that the newspaper Code has outlived its usefulness, which may satisfy the OFTs lack of enthusiasm for regulation and means newspapers and magazines are treated the same.

Possible Outcome 4

OFT identifies existing newspaper and magazine publisher wholesaler contracts in breach of Chapter 1 regardless of whether passive selling is taking place. This is the most radical outcome. In this case scenario there would be no need for a Newspaper Code.

Possible Outcome 5

OFT asks the Competition Commission (CC) to review the industry and the CC asks the industry to provide agreement that would be acceptable to the regulators which would remove the need for a full market review.

Possible Outcome 6

OFT asks the Competition Commission to review the industry and the CC undertakes a full market investigation.

This could take up to two years and, potentially, fundamentally change the industry.

OPPORTUNITIES ARISING

OPTION 1

There will be two changes as a result of this outcome. It will be possible to:

I. receive magazines, through passive selling, from outside the existing wholesale territories
II. receive newspaper supplies, no matter the quantity, from a sub-wholesaler, but only within the main wholesaler's territory.

Sub-wholesaling could potentially create a profitable extension to many retailers businesses: The OFT claimed that sub-wholesaling would create meaningful competition within the existing wholesale network – hence the belief that ATP would not be an issue in the OFTs first draft opinion. For sub-wholesaling to achieve this [OFT defined] goal it has to be profitable, and for it to be profitable some recognition needs to be made for the work carried out by the sub-wholesaler, (i.e. the wholesaling function) in the form of margin enhancement. In the absence of increased margin a sub-wholesaler would have to operate on the CSC saving.

It will of course be possible to also sub-wholesale magazines and this opens further opportunities as, in theory, a sub-wholesaler could respond to a request to sub-wholesale magazines outside the existing wholesale territory.[3]

Opening up the supply of magazines to passive selling offers the opportunity for a retailer or group of retailers to be supplied from a wholesaler in a different area. Wholesalers may be reluctant to do this, but will have little choice if the delivery can be proven to be economically viable.

Independent Retailer	Symbol Group	Multiple Retailers	Delivered Wholesalers	Cash & Carry
Independent retailers are particularly well placed to take advantage of sub-wholesaling, whether by grouping together as a not-for-profit co-operative paying a single carriage charge, or by becoming a sub-wholesaler to provide supplies to others. Independents with more than one store within a wholesale area could have all their supplies, newspapers and magazines, delivered to one location saving the CSC. Many independents will be able to take advantage of passive selling of magazines, particularly if they are on the fringes of wholesale areas, by inviting another wholesaler to supply magazines. This may be more viable if retailers in an area get together and approach a neighbouring wholesaler. Magazines could also be included in the sub-wholesaling of newspapers within existing territories and by themselves across territory.	**Retailers**: Symbol group members will be able to operate the sub-wholesaling of newspapers in the same way as independents. They could also use the symbol group RDC to supply them if the RDC is in the same territory as the news wholesaler. Magazines offer greater opportunity as there is no limit to distance that passive selling can operate. Symbol group retailers could group together and request magazine supplies be delivered by one wholesaler. **Wholesalers:** Could sub-wholesale newspapers to retailers in original wholesale area. Magazines present the biggest opportunity as they could be supplied to all members anywhere in the country. Opportunity to focus on monthly and one-shots/specials first as less time sensitive, retailers could still get weeklies from newspaper wholesaler. The downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	Multiple retailers will be able to sub-wholesale newspapers to their branches within the same territory saving CSC. Multiple retailers will also be able to sub-wholesale to other outlets while supplying their own increasing volume and potentially increasing margin. Magazines could be included in sub-wholesaling and could be supplied across territory. The downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	Limited opportunity for sub-wholesaling newspapers as wholesalers would have to operate within the existing news wholesale boundaries. Could be contracted as the supplier for a multiple group or groups of retailers, creating volume generating additional income. Combining magazines with other product categories increasing viability of more frequent delivery. For instance, chilled and fresh. Potential to operate either a full magazine offering; or a monthly, one shot, specials and sticker collections. Or develop niche magazines, for example supplying garden centres. The downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	Opportunity to sub-whole newspapers, a sub-wholesaler need not be a retailer, to non-newspaper retailers creating an additional reason for frequent visits. Opportunity to provide an additional product range. Ability to provide full range of magazines. Opportunity to provide high value long life products, for instance, football collection cards, special event magazines – Olympic, World Cup etc The downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.

[3] Sub-wholesalers would have to operate with the passive selling rules i.e. they could supply retailers outside the existing wholesale area if they were asked to do so – they could not actively canvas for business outside an existing area.

Option 2

As well as the opportunities presented above it would be possible to:

I. receive both newspapers and magazines on a passive selling basis form outside existing wholesaler area, and
II. supply both newspapers and magazines in answer to requests from outside the territory.

Independent Retailer	Symbol Group	Multiple Retailers	Delivered Wholesalers	Cash & Carry
In addition to the above independents will be able to form larger across territory co-operative arrangements, particularly useful if one of the wholesalers offers additional, or better, service. This will also allow independent retailers who wish to become sub-wholesalers to expand their areas to include neighbouring territories for both magazines and newspapers. As in the above the downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	**Retailers**: Expands the opportunity to have newspapers included with magazines when being sub-wholesaled to from RDC – maybe limited opportunity due to time pressures. **Wholesalers**: Could sub-wholesale newspapers with magazines to any member anywhere in the country within obvious time constraints. Could operate newspaper and magazine delivery to member retailers close to delivery centre and magazines only to those further out. As in the above the downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	Multiple retailers will be able to sub-wholesale magazines and newspapers to any store regardless of which wholesale territory they are in. Could have newspapers delivered with magazines as above. Could nominate third party deliverer for both newspaper and magazines. As in the above the downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	In addition to the above could deliver newspapers with magazines to any retailer regardless of location. As in the above the downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.	Limited additional benefit to that of the above, but could source newspapers from any wholesaler, across territory, increasing opportunity of volume discounts. As in the above the downside is in using the sub-wholesale model product would have to be sourced from an existing news wholesaler.

Option 3

This outcome is very much like number 2, but instead of sub-wholesalers selling across territory exiting wholesalers will have to answer passive selling requests from retailers, or groups of retailers, across territory if the requested supply is profitable. Existing news wholesalers will be able to form account management relationships with retailers that are outside their existing areas. They will be able to offer a full management solution to multiple groups. However, they may not have the delivery resources to deliver to every retailer. Could also open up opportunity for direct relationships with publishers and distributors.				
Independent Retailer	**Symbol Group**	**Multiple Retailers**	**Delivered Wholesalers**	**Cash & Carry**
Groups of independent retailers, on or near a wholesale boundary, could group together to make it a profitable option for a neighbouring wholesalers to cross territory for both magazines and newspapers. Being able to request both newspapers and magazines direct form an existing wholesaler in another territory means no margin sharing with sub-wholesaler Sub-wholesaling arrangements remain the same as above.	**Retailers**: As independent retailers. Could potentially also have newspapers included in any group deal. **Wholesalers**: Could operate the opportunities outlined above. Could agree one supplier deal with one of the existing wholesalers for them to supply all magazines and newspapers anywhere.	Could agree one supplier deal with one of the existing wholesalers for them to supply all magazines and newspapers anywhere.	Could operate as a delivery agent for one of the existing news wholesalers who could then offer multiples a national account management option, even in areas where they do not deliver.	As above Offer one stop shop for all categories for retailers.

The three options above in effect support the idea of geographically exclusive territories providing some form of passive selling is allowed. The effect would be the continuation of the existing contracts between publishers and wholesalers, provided that they are amended to allow passive selling, restricting opportunities for new entrants.

Although, in option 1 and 2, the sub-wholesaler does not need to be a news retailer; FMCG wholesalers, symbol group wholesalers and multiple central delivery centres could operate as a sub-wholesaler. It is, however, unclear how, if at all, there would be any split of the existing wholesale margin. This would mean the delivery operation sharing the existing retail margin and the carriage service charge.

Whilst the above is true, it is inconceivable that if a sub-wholesaler achieves significant volume that they will not be able to demand a share of the wholesale margin, or receive supply direct from publishers. Indeed, this was the scenario conceived by the MMC in their original report when they first recommended sub-retailing [sub-wholesaling].

With passive selling of magazines it is likely that larger retailers, or a group of retailers, with enough volume would contract with one of the existing wholesale companies in order to create a national deal. This could lead to the resurrection of National Distribution.

The probable consequence of these events is the likely 'tearing' up of existing magazine contracts by the incumbent news wholesalers which could lead to a possible scenario 4 outcome.

Option 4

Could create opportunity for anyone to operate as a newspaper wholesaler, receiving supplies direct from publishers/distributors.

This option would in effect treat newspapers and magazines like any other category within the store. The removal of ATP or any protective mechanism, for instance the Code, would prevent publishers only supply the existing news wholesalers.

This option would be the quickest route to breaking up the existing wholesale monopoly and open up opportunities for direct relationships with publishers.

Below are some examples for each group, but the real benefit of this option is the freedom that it creates for retailer, wholesalers and cash & carries to be imaginative with the supply of news products, which in the case of wholesalers and cash & Carries is brand new product range.

Independent Retailer	Symbol Group	Multiple Retailers	Delivered Wholesalers	Cash & Carry
Independent retailers might not be able to compete for greater margin on volume but could compete through specialisation: Independents could take magazines on firm sale for additional margin, guaranteeing the quantities that they need for their consumers and increasing profitability. Many of the options outlined above will also apply, independents could: join together to form buying groups; could create local wholesaling co-operatives for increased margin and reduced carriage charges Independents could receive their magazines and/or newspapers from either: ➢ Existing news suppler ➢ FMCG supplier ➢ Cash & carry ➢ Symbol group ➢ Other retailers ➢ Sub-wholesaler The greatest benefit is the ability to source supplies from the best, most effective and cost beneficial supply source.	**Retailer**: Symbol group could supply complete delivery solution, including newspapers and magazines. Could improve the viability of more frequent deliveries of chilled and fresh foods if delivered with magazines by symbol wholesaler. **Wholesaler**: Could form direct relationships with publishes and distributors. With only 3 distributors managing the distribution of around 90% of magazines direct relationships should be easy to manage. Distributors manage their own magazine allocation systems, so supply allocation to both owned and independent members need not be a cost issue. In effect symbol group wholesalers could operate a form of factory gate pricing i.e. distributors could manage the allocation process, where the retailer did not want to, but the wholesaler could still deliver the products.	Could potentially, depending on volume, receive supplies of newspapers and magazines centrally for supplying own business adding wholesale margin to existing retail margin. Or could mix, for instance only self supply monthly magazines, one-shots etc, leaving newspapers and weeklies supplied by the same wholesaler to satisfy time demands. Could nominate a third party wholesaler as preferred wholesaler for magazines. Could form direct relationships with publishers and distributors. Could also manage similar deal for newspapers, although time would be an issue. Like symbol group wholesalers, multiples will be able to deliver magazines via their own operation or have their FMCG wholesaler supply magazines – factory gate pricing – at a reduced cost.	Would not have to rely on sub-wholesaling arrangements with existing news wholesalers. Would be easier to insist on direct accounts with both newspaper and magazine distributors /publishers. Could offer a full newspaper and magazine wholesale service taking total wholesale margin. Could improve the viability of a more frequent chilled and fresh delivery offering if supported by magazine delivery. Ability to offer complete product delivery solution to retailers. Could start by delivering less time sensitive products such as; monthlies, one shots, specials, sticker collections etc. In effect wholesalers could operate a form of factory gate pricing i.e. distributors could manage the allocation process, where the retailer did not want to, but the wholesaler could still deliver the products.	Could open direct delivery accounts with newspaper and magazine publishers/distributors receiving full newspaper and magazine margin. Alternatively could receive supplies from an existing news wholesaler. Or could combine these options source faster moving products, newspapers and weekly magazines from an existing news supplier and monthlies, one shots, specials, collection cards, for example Premier League football cards direct. Offer one stop shop for all categories for retailers.

It is often stated, by those with vested interests in the status quo, that newspapers would only be supplied, under this eventuality, to the larger retailers as smaller retailers will be too expensive to supply. This is wholly incorrect. For it predisposes that there will be no alternative supply arrangements and it also conveniently disregards the fact that newspapers are a dual income stream product, with advertising being a very important income source.

Advertising revenue is directly linked to circulation, which in turn is linked to availability.

Retailers want to sell newspapers, publishers want to sell newspapers, consumers want to buy newspapers – are we really being asked to believe that publishers will not ensure that there will be an economic wholesale network to satisfy that demand?

Option 5

If the industry is referred to the Competition Commission for a full Market Investigation and the CC ask the industry to come up with industry undertakings in lieu of a full referral.

By the time the OFT decided to refer to the CC they would have recommended the newspaper Code to the Secretary of State which would have been accepted. This then could form the basis of the 'undertakings' that the industry could put forward. The Code, at this stage, would only include newspapers but would be designed to support the existing newspaper / wholesaler contracts while addressing the hard core issue of ATP. It would be the publishers and wholesalers desire to include magazines in the 'undertakings' or the new 'Code' in order to preserve ATP for magazines as well.

In order to appear to address retailers concerns it is likely that these undertaking would result in the introduction of an industry ombudsman who would ensure that the conditions of the new Code are met.

As the existing contracts would be deemed legal, living alongside the conditions set out in the Code, then publishers would be able to go on specifying exclusive territories and appoint an individual wholesaler, thus reducing any real opportunity for new entrants or direct competition between existing wholesalers.

This option would need ANR to strongly represent members' views. It is likely that magazine and newspaper publishers together with wholesalers and the NFRN would support this route.

Independent Retailer	Symbol Group	Multiple Retailers	Delivered Wholesalers	Cash & Carry
Independents could see this as an opportunity to have magazines included in the current Code, and this option could also see the appointment of an industry Ombudsman, to help regulate the industry. Despite claims to the contrary independent retailers would also be disadvantaged by this option as they will continue to have no choice on how they manage their supply allocation and will continue to have to give up good copy for the supermarkets while being a dumping ground for the copies that are outside supermarkets hard ranges.	**Retailers**: Would limit choice of supply to existing network. **Wholesalers**: Would be likely to restrict opportunities for any non-traditional route to market.	Would be likely to restrict opportunities for any non-traditional route to market.	Would be likely to restrict opportunities to sell magazines or newspapers.	Would be likely prevent the development of any new product offering.

Option 6

If the industry is referred to the Competition Commission for a full Market Investigation it would be a time consuming and costly exercise. ANR would continue to represent the interest of its members to the Competition Commission.

At this stage the outcome would be hard to predict and would lead to uncertainty for all for the next couple of years.

A number of possible outcomes could be recommended by the Competition Commission:

- It is very unlikely, but, they could support the status quo, or
- they could support one of the options outlined above, or
- they could completely free the supply chain form any form of regulation, or
- they could create another new set of regulatory processes that the industry would have to adopt.

SUMMARY

All the above options are not mutually excusive, many opportunities overlap and as the options progress and the more liberal the supply chain becomes the greater the opportunities that arise. But, as with any form of radical change, the further down the options you go the greater the supply challenges become for the smaller or unaffiliated independent retailer.

This does not, however, necessarily mean smaller retailers will not be able to receive supplies, what is does do is open up opportunities for other non-traditional news wholesalers to provide that service.

As the research carried out by ACS shows there is a desire for change in the industry, to give greater choice over the sourcing of newspapers and magazines. While it may be natural to resist or fear the change it is clear that most retailers still want that greater flexibility, and in the current inefficient supply chain change is now a necessity.