6 Views of the main parties

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Introduction

6.1. This chapter summarizes the views of Trinity Mirror and Johnston. Where the parties' views were given jointly, we refer to the parties; otherwise, where appropriate, we refer to one or other company. These views were transmitted to us in various submissions and at hearings which we held individually with representatives of Trinity Mirror and Johnston.

Views of Trinity Mirror

Background to the transaction

6.2. Trinity Mirror understood that the eight titles which are the subject of our inquiry were among a number of free newspapers acquired by MIN in 1993 from TRN. TRN had acquired most of the titles from Mr Keith Barwell, an entrepreneur based in Northampton, who had founded them.

6.3. Trinity Mirror told us that the titles might have appeared attractive to MIN in 1993 because, at that time, the company's strategic aim was to expand its base from the West Midlands to include other parts of the Midlands and East Anglia. The acquisition doubled the geographical extent of MIN's publishing territory. This benefited MIN since, prior to the management buyout of the MIN business in November 1991, there had been a general perception that the business was stagnating. MIN was subsequently floated on the London Stock Exchange in 1994. MIN also had plenty of spare press capacity to print the newspapers acquired from TRN.

6.4. MIN's strategy for the titles had been to seek further expansion in the East Midlands and East Anglia in order to exploit synergies with other titles and reduce costs. In the event, however, MIN had been an unsuccessful bidder for the *Nottingham Evening Post* in 1994, as well as for the newspapers of EMAP that were subsequently purchased by Johnston in 1996, and it had been unable to implement its plans for further expansion.

6.5. Trinity Mirror told us that, as a result, MIN decided to sell the titles because it could no longer see any realistic prospect of improving their disappointing financial performance. To this end, MIN had discussions with Johnston, but these were suspended in 1997 in view of MIN's pending acquisition by Mirror Group.

6.6. MIN became a subsidiary of Mirror Group in November 1997. Mirror Group accepted the logic of MIN's decision to sell the titles and so reopened discussions with Johnston. Then Mirror Group itself became involved in merger talks with Trinity and RIM and the sale of the titles was again put on hold. The merger talks culminated in Mirror Group's acquisition by Trinity in September 1999 to form Trinity Mirror.

Trinity Mirror's rationale for the proposed merger

6.7. Following the creation of Trinity Mirror, a new management team was put in place to run the group's publishing operations in the Midlands, including the Midlands Weekly Media division based in Birmingham which was responsible for the titles in question. This new team comprised former members of Trinity Mirror's senior operational management.

6.8. The new management concluded that the Midlands business was severely stretched from an operational management perspective, and also discovered a number of serious issues regarding the reporting of circulation figures of the key daily newspaper titles in Birmingham and Coventry. In these circumstances, a decision was taken to focus management time and resources on the Birmingham and Coventry areas.

6.9. Trinity Mirror told us it had recognized that the eight titles had for quite some time been financially weak. Although they made a contribution to the wider operating costs of the group, if their full operational costs were allocated to them, the titles were loss making. By way of illustration, the outturn for the financial year ending on 31 December 2001 was revenue of £[✄] million, a contribution to group costs of £[✄] million and a loss of £[✄] million. Furthermore, the budget for the 2002 financial year showed revenue of £[✄] million, a contribution to group costs of £[✄] million and a loss of over £[✄] million on a fully costed basis. This forecast deterioration was chiefly because of the depressed advertising market. Trinity Mirror commented that, generally speaking, it was the number two product in the marketplace that suffered most when a downturn in expenditure on advertising occurred.

6.10. Trinity Mirror felt that an attempt to improve the performance of the titles would require a level of investment and management time and effort that would be disproportionate to the success likely to be achieved. In addition, the titles were distributed outside the geographic area on which the new management had decided to concentrate their time and resources.

6.11. Moreover the sale of the titles would not have a detrimental impact on Trinity Mirror's printing operations [

Details omitted. See note on page iv.

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On this basis Trinity Mirror could achieve a similar contribution to group operating costs from other sources if the titles were sold. Thus there would be no redundancies in Trinity Mirror's printing operations as a result of the transfer.

6.12. Trinity Mirror stated that it was against this background that it decided to sell the titles. Ideally they would be disposed of as a complete portfolio. Given their weak financial and competitive position it was felt unlikely that anyone other than an existing publisher in the area would be interested in acquiring the full portfolio. Trinity Mirror did not believe that local independent publishers and entrepreneurs would want to acquire all the titles, particularly when the full extent of their financial weakness was assessed. In any event, entrepreneurs would be more likely to launch their own titles if they decided to enter the relevant local markets as this would be a more cost-effective entry strategy than inheriting the cost structures of the titles.

6.13. Accordingly, Trinity Mirror approached both Johnston and Northcliffe. Although Northcliffe was interested in the titles based in Derby, where Northcliffe was the major publisher, it did not appear interested in acquiring the other titles. Johnston, on the other hand, expressed an interest in acquiring the full portfolio. Trinity Mirror decided, therefore, to sell all the titles to Johnston and to seek consent under the FTA.

Consolidation in the regional and local newspaper industry

6.14. We invited Trinity Mirror to comment on the consolidation that had occurred in the regional and local newspaper industry over recent years. Trinity Mirror believed that in the early 1990s there was not so much a consolidation but rather a change in the nature of ownership in that a number of publishers like Thomson and Pearson, which had become multinational players, had decided to leave the sector. They, in turn, were replaced as owners of regional and local titles by others, including Trinity Mirror and Newsquest. One result of these changes of ownership was a move from regional and local newspapers being at the edge of multinational companies into more specialized ownership.

6.15. Trinity Mirror believed that there had subsequently been a process of consolidation driven by a number of factors. First, a change in consumer habits had led to a decline in circulation of all types of newspapers. Regional and local newspapers had been particularly affected by changes in technology and the cost of investing in those technologies. Colour printing was one such development. The growth of the Internet was another.

6.16. Trinity Mirror postulated that developments in social habits had influenced the industry's consolidation. First advertisers' needs were changing. More national advertising campaigns were taking place in the regional and local advertising marketplace. Secondly, there was increasing competition. Trinity Mirror stated that, whereas in the 1980s the principal competition to local paid-for newspapers came from free distribution titles, the next decade had seen the development of local radio.

6.17. There was also the launching of focused advertising products, such as *Loot*, and the development of 'pick-up' products. The nature of competition to newspapers also changed in this period. One of the major supermarket chains, for example, was now a publisher in its own right. As a result it did not advertise in newspapers as much as it used to but used its club card as a basis for producing regular publications for customers who patronized its stores. There was also a plethora of magazines carrying advertisements, and the growth of leaflets as an advertising medium in the second half of the 1990s had been strong. Whilst the individual effect of these developments on local markets was limited, in total they all had a substantial impact upon the amount of advertising revenue available to local newspapers.

6.18. Trinity Mirror believed, therefore, that there had been a huge increase in the range of competition, now against a background of a slowing economy. Moreover, Trinity Mirror had detected increasing pressure on consumers' time so an additional edge to competition being faced by free newspapers was competition for time.

6.19. In Trinity Mirror's view all these factors had driven the need to consolidate in the industry. This consolidation into larger groups had allowed Trinity Mirror and other publishers to invest in their titles and improve their quality. This had enabled publishers to compete more effectively with the many other media which were now in competition with regional newspaper publishers for advertising revenue.

6.20. In particular, consolidation had enabled the industry to invest in colour presses and other new printing equipment; in people; and in new products and services. As the result Trinity Mirror now had a much wider range of publications and offered a much greater range of services to local communities than it did before. With enhanced standards of reproduction and of editorial design, the quality of Trinity Mirror newspapers generally was now substantially higher than it had been ten years ago.

'Clustering' and the effects of concentration

6.21. We had noted that one of the features of the consolidation process seemed to be a growing tendency for publishers to develop clusters of titles in geographically-focused areas, separate from other publishers' clusters.

6.22. Trinity Mirror was not convinced by the clustering argument. The company had made acquisitions, such as that of Southnews in the London area, which had placed Trinity Mirror in further head-to-head competition with, among others, Newsquest. Trinity Mirror was also in direct competition with other major publishers in several areas: with Northcliffe in South Wales; with Johnston in Crawley and parts of Scotland and the North-East of England; and with Newsquest on Merseyside and in South Wales. These local battles were mostly the result of acquisitions taking one publisher into an area where another was already present. The battles sometimes continued for years, bringing potential benefits to readers (for example, if a paid-for newspaper was converted to a free) and advertisers.

6.23. Trinity Mirror told us that about 40 per cent of local markets in the UK had only one publisher whose titles achieved a penetration rate of 10 per cent or more. There was no information as to whether this proportion had grown as a result of the wave of consolidation in the sector but Trinity Mirror doubted that it had increased much since most of the transfers which the CC had examined had not involved extensive overlaps.

6.24. Trinity Mirror agreed, however, that in launching new titles to develop its business it was likely to do so in places where it already had a presence. It was not commercially sensible to launch free newspaper titles into new areas unless there was the possibility of developing a substantial business, which would require an opportunity in the market offering the prospect of sustainable competitive advantage—for instance, if the incumbent publisher was very inefficient or there was an opportunity to offer a new product. Otherwise, simply offering advertisers a similar product to one that existed already would be unlikely to attract sufficient advertising revenue to sustain the product.

6.25. Trinity Mirror told us that the transfer of its titles to Johnston would have no effect on the concentration of ownership of local newspapers at either a national or regional level. Moreover, at a local level, it would have a significant effect only in Northampton, Peterborough and surrounding areas. Trinity Mirror argued that in these local markets competitive constraints were such that advertisers would not be adversely affected.

6.26. The titles to be transferred were currently distributed in Derby, Northampton and Peterborough and their surrounding areas. Trinity Mirror did not believe that local overlaps between the titles in and around Derby would give rise to potential concerns because of direct competition from the newspapers of Northcliffe (the major publisher in Derby). Trinity Mirror recognized, however, that if the transfers went ahead Johnston would not face direct competition from other newspapers listed on the Newspaper

Society database in a number of local markets in Northampton, Peterborough and surrounding areas and towns and that, as a result, it was appropriate to examine the position more closely in these local markets.

6.27. In practice, however, in none of these local markets would Johnston be able to sustain an increase in advertising rates above the competitive level as a result of acquiring the titles. This was because the titles relied mostly on motors, property and local display advertising and local newspapers faced particularly strong competition for such advertising. Johnston would also be constrained by the threat of new entry—whether by means of a free weekly newspaper or an advertising-only publication.

Editorial issues

6.28. Trinity Mirror told us that the eight free titles in question contained very limited editorial and therefore that there was no material issue about diversity of opinion or freedom of expression. However, we asked Trinity Mirror about the importance of editorial content in distinguishing free weekly titles from shoppers with little or no editorial.

6.29. Trinity Mirror believed that the degree of editorial content in a free publication depended in part upon the history of the individual publications. In many cases the editorial content in free newspapers was related directly to the advertising that had been sold. There could be, for example, articles related to motors, property, and entertainments around which a publisher could sell advertising directly. A 'What's on' guide would almost certainly have some editorial written round it with some readily available press release material or something like a cinema review. The purpose of the editorial content was to encourage people to pick up the newspaper and therefore read the advertisements within it. This was what, in part, distinguished a free newspaper as an advertising vehicle from a shopper and also from a leaflet coming through the door.

6.30. The editorial content of free newspapers should not, however, be compared directly with that in local paid-for titles. In the latter case it was the amount of quality editorial, including breaking news coverage, which sold the newspaper. With free newspapers, it was the relationship between the editorial content, which could well include local interest items, and the advertising that counted. Trinity Mirror pointed out that there were wide variations in the content and quality of editorial in free newspapers throughout the country. In the examples of its titles in Northampton and Peterborough, Trinity Mirror stated that the editorial input was being provided 'on a budget'; that was to say, the most news was being provided for the least cost.

6.31. Consequently, in Northampton, for example, the title had seven editions with input from 11 editorial staff and seven reporters. The seven journalists covered seven towns so the depth of editorial reporting was quite shallow as generally only stories that were easy to pick up were used to fill pages. Trinity Mirror pointed out that if editorial content were to be raised it would require a disproportionate amount of additional resources.

6.32. We asked if invigorating the editorial quality of Trinity Mirror's titles in Northampton and Peterborough might make them profitable. This was disputed by Trinity Mirror. No matter how much effort was put into the editorial content, it would not result in any direct revenue increase as the titles were free. In Trinity Mirror's view it did not follow that investment in a free newspaper's editorial automatically resulted in a corresponding increase in advertising revenue.

6.33. We asked about the editorial set-up in the titles in question. Trinity Mirror told us that, in Northampton and Peterborough, there was one series editor who was responsible for the titles in both locations: although based in Northampton he was responsible also for overseeing the Peterborough operation.

6.34. Trinity Mirror stated that having only one editor covering both locations was in line with company strategy. Other departments of the businesses in Northampton and Peterborough, such as advertising and distribution, were also managed through one combined structure. This had proved to be successful and there was no reason to assume that editorial control would not be as well, especially as there was a sufficient complement of sub-editors and reporters at both locations. The two titles in Derby had their own editor and he, like his colleague in Northampton, ensured that diversity of opinion and freedom of expression were maintained.

6.35. We put it to Trinity Mirror that as it wanted to divest the titles from its portfolio, and because these titles had been on the market for some time, they had been allowed to decline in terms of editorial content and in the numbers of staff devoted to editorial input. Trinity Mirror stated that the titles had not been ‘run down’. The same people were currently in charge who had been in charge six months previously. It was true that there had been some staffing difficulties at Northampton in the past but these had arisen chiefly in the advertising department. However, there had been neither policy nor intention to allow the decline of the titles.

6.36. Trinity Mirror was not clear why there should have been so many representations to us from third parties against the transaction (see Chapter 7). The gist of the representations concerned a perceived loss of political balance and editorial diversity if the merger went ahead. Trinity Mirror maintained that its newspapers, including its free local titles, represented the community. They would not in any sense be successful if they had a political bias. As for diversity of view, the titles were not ‘campaigning’ newspapers but contained largely factual reporting: the effect of the transfers on diversity could not, therefore, be material.

The market for advertising

6.37. Trinity Mirror told us that its free titles distributed in Northampton, Peterborough and surrounding areas derived just under 80 per cent of their advertising revenue from motors, property and local display advertising. Of the combined advertising revenue of these titles and the corresponding Johnston newspapers that were circulated or distributed in the same areas, the Trinity Mirror titles accounted for less than [✂] per cent, and just [✂] per cent if recruitment advertising alone was considered.

6.38. Trinity Mirror stated that the titles in question were all local newspapers that focused on advertising related to the particular communities that they served. Consequently, Trinity Mirror believed that, even if it were possible to identify a separate market for regional advertising, Johnston’s acquisition of the titles would not materially affect this market.

6.39. Trinity Mirror confirmed that, in the case of the eight titles in the proposed transaction, the advertising yields were well below the levels set out in the titles’ rate cards. Trinity Mirror stated that a rate card set out the basic rates against which a publisher would negotiate a contractual deal with advertisers. There were different rates for particular sections of the newspaper: property advertising, motors advertising, retail advertising and job advertising would all carry different rates. Contracts with individual customers would be dependent on a variety of factors in addition to the rate, such as an advertiser’s loyalty and the frequency and continuity of placing advertisements.

6.40. The parties told us that there was no correlation between levels of concentration of newspaper ownership and advertising rates. Trinity Mirror believed that, in the wider market in which it operated, the constraints on a free newspaper from the various newspaper and other media competitors were sufficient to keep it under a proper competitive restraint. Trinity Mirror was affected by all categories of competitors which diverted revenue away from its newspapers since their costs were relatively fixed, and hence any fall in advertising revenue had a direct impact on profits.

6.41. Television was an obvious example of a potential threat to local advertising revenues. Whilst it had not been a direct major competitor for Trinity Mirror up to now, there had been growing evidence (because of what had been happening to the ITV advertising marketplace over the previous few months) that television was seeking to include much more local advertising. Trinity Mirror stated that it had lost business directly to ITV from a number of its regional businesses. This form of competition to regional and local newspapers from commercial television had not been seen for some years.

6.42. Trinity Mirror’s other competitors in the advertising market ranged from local radio, especially for motors advertising, through direct mail and leaflets to directories and advertising-only publications such as *Loot*, and more specialist publications such as those for motors and recruitment advertising. All these competitors ate away at free newspapers’ services and classified advertising revenues.

6.43. Finally there was the Internet, which was a growing competitor. It was ideally suited for advertising jobs, cars and property and was growing in significance as a medium to which the public would turn to first. In the medium to long term Trinity Mirror saw the Internet as a major threat.

6.44. Looking at the alternatives for particular categories of advertiser, Trinity Mirror said that, for motors, substitutes included advertising-only publications such as *Auto Trader* and the free pick-up publications like *Auto Freeway* and *Auto Exchange*, which were available at many garages and supermarkets and which carried significant volumes of local trade advertising. The position was similar with property advertisers. Estate agents were aggressive in their dealings with newspapers over advertising rates. Moreover, local display advertising was prey to advertising-only publications, direct mail leaflets and local radio.

Entry into the free newspaper market

6.45. We asked whether, given that one of the trends over the recent years was the decline in the number of free weekly titles and the overall volume of their distribution, it was now less likely that there would be many new free weeklies being developed. Trinity Mirror considered that the possibility of entry by small private companies and local entrepreneurs posed a considerable constraint on an incumbent publisher. They were just as likely, if not more so, to enter a market as major publishers. Entrepreneurs were able to move more quickly than larger organizations, which made them well placed to exploit any market opportunity that might arise. They had low-cost operations and they were answerable for their investment decisions only to themselves or to a small number of private shareholders. However, entrepreneurs were now more likely to enter with advertising-only publications since they no longer saw a need to spend money on providing the editorial and house-to-house distribution which launching a free newspaper entailed.

6.46. Furthermore, it was not uncommon for advertisers, and especially property advertisers, actively to encourage and support such new entrants if they felt they had reason to be concerned about advertising rates or quality of service from established titles. Hence entry by entrepreneurs posed a very real threat to incumbent local publishers.

6.47. We noted that, whilst barriers to entry were stated to be low, there was little evidence of new entry into the Peterborough and Northampton areas in recent years. Trinity Mirror stated that, although there had been minimal entry of newspapers into the market, there had been numerous launches of other publications. Trinity Mirror believed that the way into markets such as Peterborough and Northampton with two newspaper publishers in situ was for an entrepreneur, or other competitor, to launch more specialized publications, such as a pick-up, rather than attack head to head an established publisher with a new newspaper.

6.48. Trinity Mirror suggested that, in some ways, it was more likely for a new entrant to enter a marketplace with only one publisher rather than two. This was because local advertisers, particularly estate agents, would often cooperate with an entrant in order to prevent one publisher having a monopoly of the local advertising markets.

Benefits of the transfers

6.49. Turning to the benefits of the transaction which might be lost if the merger were blocked, Trinity Mirror believed that Johnston was a committed publisher that produced good local newspapers with high-quality editorial content and that could offer readers and advertisers a range of quality products in the relevant areas. Its titles were produced economically and profitably. If the titles went to an entrepreneur, Johnston’s professionalism would be lost. There would also be a danger of another purchaser not being capable of sustaining the development of the businesses.

Remedies

6.50. We asked what Trinity Mirror would do with its titles if we were to recommend that some or all of them should not be transferred to Johnston.

6.51. Trinity Mirror submitted that any assessment of remedies to address perceived detrimental effects should be made, not against the current situation, but in light of what might happen to the titles if they were not sold to Johnston.

6.52. Trinity Mirror recalled that the titles were loss-making and had effectively been for sale for at least the last four years, in which time they had had a number of owners. These owners had wished to sell the titles because they were not sufficiently successful, either as stand-alone titles, or as a basis for making sustained investment with a view to building a portfolio of titles in the areas concerned.

6.53. Trinity Mirror also informed us that it had a large portfolio of weekly titles in the Midlands as part of its merger with Mirror Group, many of which were not in good operational condition. Ultimately, Trinity Mirror decided that it was not feasible to seek to improve the performance of all these weekly titles and that management resources would have to be focused more selectively. Against this background the titles at issue were identified as an appropriate portfolio of titles to divest. Consequently Trinity Mirror had not made any significant investments in these titles in order to develop them and had put little effort into seeking additional advertising revenues for them.

6.54. Selling them to Johnston was a good option for both Trinity Mirror and Johnston because of the synergies that Johnston should be able to achieve owing to its unique position as the incumbent evening publisher in many of the areas. These synergies were not expected materially to improve the performance of Johnston's existing portfolio in the relevant areas but rather to improve the operation of the Trinity Mirror titles. This was because Johnston should be able to use its existing infrastructure to reduce the operating costs of the Trinity Mirror titles and thereby put them on a more secure financial footing.

6.55. If Trinity Mirror were not able to sell the titles to Johnston, therefore, Trinity Mirror considered that [

Details omitted. See note on page iv.

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6.56. Trinity Mirror considered that a more likely scenario if the transfer were blocked would be that it would retain these titles. [

Details omitted. See note on page iv.

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6.57. Therefore, any adverse effects on readers which might result from the acquisition going ahead had to be weighed, in Trinity Mirror's view, against the likelihood that [*Details omitted. See note on page iv.*]. Similarly, any adverse effects on advertisers needed to be weighed against the likelihood that [*Details omitted. See note on page iv.*].

The views of Johnston

Johnston's strategy

6.58. Johnston said that it was totally focused on publishing local newspapers. Johnston was committed to the need for its newspapers to be locally managed, to carry excellent editorial content and for this to be under the independent control of the local editor. Its newspapers were aimed at local readers who were the target community of local advertisers.

6.59. Johnston's business had grown substantially, both organically and through numerous acquisitions. It had a first class track record for investing in acquired titles, improving their quality and delivering a better service to readers and advertisers alike. It acquired titles to build its business. This policy had benefited its staff, readers, advertisers and shareholders.

Johnston's view of consolidation in the regional and local newspaper industry

6.60. We asked Johnston for its views on what was driving the consolidation wave in the regional and local newspaper sector and what the prospects were for further consolidation.

6.61. Johnston suggested that the reasons for the drive towards consolidation were to be found in the structure of the industry. In the recent past the industry had been highly fragmented; even now, there were still around 100 local and regional newspaper publishers of whom a large number owned just one or two local newspapers.

6.62. Johnston explained that there were now four or five leading publishers who had a significant share of the market and whose core business was local newspaper publishing. All these leading players were keen to continue to grow in the market because there was the potential to do so and because some of the smaller owners, and indeed some of the larger groups, might seek an exit.

6.63. Johnston therefore believed that consolidation and changes of ownership were likely to continue. In the longer term there would probably be fewer publishers and possibly more of the industry in the hands of a small number of publishers, but opportunities would remain for medium-sized publishers, small businesses, entrepreneurs and new entrants.

6.64. Johnston thought that regional and local newspaper publishing was an industry that lent itself to diverse regimes of ownership. There were major publishers who were able to invest heavily (Johnston gave as an example its own recent £40 million investment in printing capacity) but there were also small independent publishers in the industry, with just one or two titles, who could make a good return and would continue to do so. Furthermore, medium-sized publishers such as Yattendon and LSN also owned a significant number of local newspapers. Also there was Observer Standard Newspapers which, although its titles had originally been in the West Midlands, in 1997 had launched into parts of Bedfordshire and Hertfordshire with a shopper-type product that initially concentrated on property but was understood now to carry a full range of advertising. Moreover it had continued to launch new publications at the rate of about one a year. Johnston believed, therefore, that many such publishers would continue to thrive.

6.65. We asked what benefits consolidation of ownership had brought to readers on the one hand and advertisers on the other hand. Johnston said that, as far as its own record was concerned, where it had acquired titles, it had improved and invested in them. Johnston submitted that the *Peterborough Evening Telegraph*, for example, was now a very much better newspaper than it had been in 1996 before Johnston acquired it.

6.66. Johnston was fully aware that, if it did not publish good newspapers with good editorial that appealed to readers, sales would diminish and its products would be a less attractive medium to advertisers. If it did not invest heavily in its products, it would not have a business.

The proposed transfers and Johnston's intentions for the acquired titles

6.67. Johnston told us that its potential acquisition of the Trinity Mirror titles was first mooted in 1997 when the then Chief Executive of MIN (the proprietor of the titles at that time) initiated the possibility of a deal. He did not regard the titles as being likely to produce the level of financial return required by MIN.

6.68. The subsequent acquisition of MIN by Mirror Group frustrated progress but in 1999 Mirror Group approached Johnston with the same proposition. Eventually Trinity Mirror, following the merger between Trinity and Mirror Group, revived the proposal. Thus, Johnston noted, the proposal had been brought to it by three successive owners of the titles.

6.69. Johnston said that the proposed acquisition of the Trinity Mirror titles was a textbook example of its deals. The titles themselves were a good geographic fit and, at the price proposed, the deal should produce satisfactory financial returns. By printing the titles in-house Johnston would obtain additional benefits. Also the local publishing mix would be improved throughout the relevant areas to the benefit of readers and advertisers alike. This would be achieved through a combination of ongoing investments in the enhanced portfolio and, where appropriate, some modest repositioning of selected titles. Johnston told us, however, that in none of the cases where repositioning was being contemplated did it intend to remove all editorial from the titles.

6.70. The proposed acquisition of the Trinity Mirror titles was consistent with Johnston's overall strategy. The rationale for the acquisition was that Johnston believed it could operate the titles with lower overheads than Trinity Mirror. Johnston was in effect purchasing the goodwill associated with the titles together with their advertising revenues.

6.71. But this did not mean the advertisers were a captive market: if Johnston sought to take advantage of them by putting up its rates, it would lose them. For example, Johnston referred to the results of the survey carried out by ORC on behalf of the CC, discussed further in paragraph 6.102 and in Appendices 5.4 and 6.1, which indicated that if Johnston were to seek to raise the price of advertising in all the local weekly newspapers in Northampton and Peterborough following the proposed transaction, approximately half, and more than half in Peterborough, of its advertisers would either switch to other media, reduce spend or otherwise negotiate or review their advertising spend with Johnston titles. Such actions would clearly outweigh the benefits of increasing prices by 10 per cent, particularly as any reduction in advertising would not result in any material cost savings.

6.72. Addressing the possible effects of the transfer on the public interest, Johnston emphasized that all of its own and Trinity Mirror's titles in the Derby, Northampton and Peterborough areas were local newspapers published for local people and providing a platform for local advertisers. Johnston believed therefore that there was no relevant regional market. Nor, given the small size of the transaction, was there any issue involving consolidation of ownership at the national level.

6.73. Indeed, Johnston believed the proposed acquisition would not change the broader competitive landscape in the relevant area. If Johnston were permitted to acquire the Trinity Mirror titles, it would remain heavily constrained. Furthermore, Johnston felt that the proposed transaction was in many respects much less significant than a number of other transactions which had been approved by the Commission in recent years, such as Gannett's and Johnston's proposed acquisitions of RIM, Newsquest's and Trinity Mirror's proposed acquisitions of Newscom, and Johnston's and Newsquest's proposed acquisitions of PSN.

6.74. For example, the turnover of RIM was £156 million, whereas the turnover of the Trinity Mirror titles to be acquired in the present case was merely £8 million; the total number of titles to be acquired in the RIM transaction was 72, including 47 paid-for titles, whereas the proposed transfer involved only eight free weekly titles. The area covered by the titles' distribution was also much less than that identified in the RIM inquiry. Also the number of households in overlapping areas where there would have been no significant newspaper competition if Gannett had acquired RIM was 556,000, whereas the analogous figure in the current transaction was at most 242,000. Johnston stressed that the Gannett/RIM case was not atypical in this regard, in that the number and the turnover of the titles at issue in the present inquiry were both much lower than the positions considered in relation to Newscom and PSN (both of which involved the acquisition of paid-for titles), while the number of households materially affected by the proposed transfer was similar to the approved positions in Johnston's proposed acquisition of RIM, and the proposed acquisitions of Newscom.

6.75. If the current transaction went ahead, staff currently working on the Trinity Mirror titles would be transferred to Johnston. Johnston stated that, although there was likely to be a small reduction in the number of posts required in administration and production, editorial and sales staff should be unaffected. Almost all surplus staff were likely to be offered redeployment opportunities within Johnston.

6.76. Johnston told us that the Trinity Mirror titles would be transferred to separate divisions of the company. The Derby titles (the *Trader* and the *Derby Trader*) would be transferred to Wilfred Edmunds Limited, part of Johnston's North Midlands Division, centred on Chesterfield; the *Peterborough Herald & Post* and the *Stamford Herald & Post* would be transferred to East Midlands Newspapers Limited, part of Johnston's East Midlands Division; and the other titles (the *Harborough Herald & Post*, the *Northampton Herald & Post*, the *East Northants Herald & Post Series*, and the *Brackley & Towcester Post Series*) would be incorporated into Northamptonshire Newspapers, which was part of Johnston's South Midlands Division. Johnston believed that these divisions would be sympathetic to the needs of existing readers and advertisers as each was already focused on local newspaper publishing in and around the distribution areas of the titles to be acquired.

6.77. Johnston had no plans to close any of the titles following the transaction. [

Details omitted. See note on page iv.

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6.78. [

Details omitted. See note on page iv.

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6.79. [

Details omitted. See note on page iv.

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6.80. Johnston told us that it did not consider that the repositioning of titles would represent a barrier for new entrants. It said there was no evidence that entry was more difficult where a single publisher had a paid-for title, a free weekly title and a shopper-type publication.

6.81. With respect to any perceived cross-selling advantages, Johnston emphasized that the ability to package advertising was limited and that, excluding recruitment advertising, only around [✂] per cent of its advertising in the areas covered by the Trinity Mirror titles was packaged, as advertisers were only prepared to accept packages in a minority of cases. If Johnston were to seek to force advertisers to take packages, it would be effectively forcing a price increase, and new entry and consequent loss of advertising would necessarily follow. The markets were, in Johnston's view, very competitive. Its intention was simply to provide a complementary mix of products that would enable advertisers to reach as many potential customers as possible.

Advertising issues

6.82. Johnston believed that the central issues in our inquiry revolved around advertising and the extent to which the proposed transaction could allow the exercise of market power or result in a substantial lessening of competition. In this connection, Johnston emphasized that all categories of local advertisers, including private advertisers and small businesses, had alternative advertising channels available to them. There were many examples of alternative media which competed for Johnston's advertising.

6.83. These included advertising-only publications. Johnston provided to us copies of 35 examples of advertising-only publications and niche local publications which were competing for advertising in the areas affected by the proposed transaction, including *Friday Ad*, *Ad Trader*, *Loot*, *Auto Exchange*, *Auto Freeway*, *Auto Trader, Job Opportunities* and *New Homes*. Johnston also referred to a number of examples where it had lost advertising revenue to such publications. Indeed, free advertising was generally offered by local newspapers for private articles for sale under a certain value, typically £500. This service had had to be introduced in an effort to stave off switching by private advertisers to advertising-only publications and, in order to maintain reader value, to preserve the viability of newspapers' classified sections.

6.84. These publications covered all the main advertising categories, including motors, property, recruitment and display. The Andersen report (see Appendix 6.1) indicated that 33 per cent of used car buyers used advertising-only and specialist magazines as a source of information in the car-buying process. Indeed, *Auto Trader* alone, across its 13 regional editions, had an estimated 35 per cent dealer penetration and claimed to have over 2 million readers a week combining its print and online products.

6.85. There were also direct mail and leaflets. Johnston provided evidence as to the increased use and improved targeting capabilities of leaflets and provided several examples of retailers and other advertisers who had switched spend from local newspaper advertising to leaflets in recent years. It also provided us with an indication of the significant extent of leafleting in Northampton and Peterborough. The Andersen report indicated that the assessed compound annual growth rate of direct mail would be 6.7 per cent between 1983 and 2003 (with regional and local press having a compound annual growth rate of only 2.8 per cent) and that direct mail advertising now comprised 16 per cent of total retail advertising.

6.86. Johnston commented that the Commission had accepted in previous reports the competitive constraint exercised by directories. Johnston added that directories were now used significantly by a large number of local businesses that had in the past placed a larger volume of advertising with local newspapers.

6.87. Johnston provided details of 12 commercial local radio stations transmitting in the areas affected by the proposed transfers and provided illustrative examples of advertisers who had switched their advertising spend to local radio in recent years. In addition, the Andersen report indicated that 15 applications had been received by the Radio Authority for the new regional independent local radio licence for the East Midlands. Johnston suggested that this illustrated the attractiveness of radio advertising in an area which embraced the Trinity Mirror titles.

6.88. Further competition for advertising revenue, particularly for large advertisers, came from regional television. Johnston told us that the ITV franchises covering the Northampton and Peterborough areas had recently begun to offer customers the ability to advertise in particular parts of the franchise area, referred to as ‘micro-regions’, at lower prices than those applying to the franchise area as a whole.

6.89. This reduced the price of television advertising to a level which was highly competitive with that of local newspapers. Johnston instanced Anglia Television which had offered a package of 25 slots for advertising in its West micro-region, which covered both Northampton and Peterborough as well as a much wider area, at a price of some £21,000, which equated to £835 per 10-second slot, including the production cost. This compared with, for example, £802 for a half-page display advertisement in Johnston’s Northampton *Chronicle & Echo* and £966 in its *Peterborough Evening Telegraph*.

6.90. Johnston provided details of a number of general interest and specific business Internet web sites targeted on the areas of relevance to this inquiry and highlighted the large number of sites set up by local businesses through which they sought to attract custom. It also referred us to the large number of UK recruitment and motors web sites (such as monster, totaljobs, go-jobsite, autotrader and jamjar). The Andersen report indicated that Auto Trader alone had over 1 million people running 8 million vehicle searches per month. In addition, Johnston emphasized the rapid growth in Internet penetration in the UK, to a level of 45 per cent of UK households as at November 2001, on the basis of OFTEL information. Johnston told us that a recent OFTEL survey had indicated that 37 per cent of those homes connected to the Internet used it to search for jobs. The Andersen report indicated, inter alia, that the compound annual growth rate of the Internet between 1985 and 2001 had been 66 per cent, that Internet usage for recruitment services had risen by nearly 50 per cent between early 2000 and early 2001, and that the proportion of recruitment advertising budgets devoted to the Internet had grown from 1.6 per cent to 4 per cent during 2000. The Andersen report had also indicated that £4 billion worth of cars would be bought online by 2003, with cars valued at some £13 billion being browsed online. This represented 20 per cent of the total UK market. Similarly, the Andersen report indicated that online retail advertising accounted for 8 per cent of total retail advertising in 2000 and was expected to rise by 250 per cent to £14 billion by 2006. Johnston added that the fact that the market research report put to it by the CC indicated that 1 to 2 per cent of consumers turned to the Internet, before turning to any other source, to search for certain items in 2000 revealed that the importance of the Internet was clearly growing even in 2000.

6.91. Johnston rejected the suggestion put to it that, in the context of titles affected by the merger inquiry, there were categories of advertiser who did not have alternative sources of advertising media. The possible exception was BMD announcements although Johnston pointed out that the titles to be acquired carried little or no such advertising and therefore the proposed transaction would have no impact on it.

6.92. Noting that Johnston’s actual yields from advertisers in the titles which it published in the areas of overlap were a great deal below the published rates on its rate card, we asked what was the significance of the rate card. Johnston said the yields demonstrated that, for the great majority of advertisers, it had to discount from the rate card. Johnston provided information indicating that, on average, less than [✂] per cent of its advertisers would pay the full rate-card charge. Johnston felt that this was a clear indication of the highly competitive nature of the markets in which it operated. If it did not discount from the rate card Johnston would lose advertisers. This would not only reduce profits but also the appeal of the titles for readers, resulting in a downward spiral.

6.93. Johnston told us that in property and motors there were relatively few major advertisers but they were buying substantial amounts of space in newspapers week in and week out. This volume placed in Johnston titles attracted large discounts. In employment advertising there were many more advertisers who only infrequently took space. These sorts of advertisers, who were also more expensive to service, tended to pay a higher price. In some cases they could pay at rate-card levels but equally a significant majority of job advertisers (Johnston stated around [✂] per cent for the *Peterborough Evening Telegraph* and [✂] per cent for the *Peterborough Citizen)* would obtain a discount.

6.94. Johnston believed that discounts were an essential tool in the struggle against the many competitive media for advertising revenue. It pointed out that between 1980 and 2000 the regional press had seen its share of advertising in all media fall from 26 to 18 per cent.

6.95. Competition was fierce. Johnston cited regional editions of the national daily and Sunday newspapers, digital television and teletext, cinema and outdoor poster sites as further competitors for advertising revenue.

6.96. Whilst some of these other media were partly complementary to newspapers, Johnston believed they were also used by advertisers as substitutes for them. If Johnston lost a share of advertising to a competitor it could not cut its costs, which were largely fixed. Thus loss of marginal revenue had a direct impact in reducing profitability. Johnston still had to support the editorial it was putting into its newspapers, whereas many of its competitors for advertising revenue, such as advertising-only publications, were not contributing any editorial content at all.

6.97. We referred Johnston to an IPA paper which argued that there was a correlation between the yields paid by national advertisers and the presence or absence of competition in relation to local free newspapers (see paragraph 7.84). Johnston considered that this was of little or no relevance to the present case given that national advertising was such a small part of the advertising carried by the titles in the relevant areas. National display advertising accounted for only around 6.9 per cent of Johnston's revenues.

6.98. Furthermore, the IPA paper was prepared on the basis of the views of two agencies, which meant that the paper was very unlikely to be representative. Moreover, only a very small proportion of national advertising was carried in free newspapers, the type of publication that was the focus of the present inquiry, further reducing the representative nature of the sample. In addition, Johnston believed around 70 per cent of such advertising was part of a package covering both paid-for and free newspapers, thus, it suggested, making allocation of revenues between the two categories a difficult task and a further source of bias.

6.99. Johnston believed that national generalizations were unlikely to have any direct relevance to the exact local effects of the acquisition of the titles in question, given the titles' de minimis presence; the fact that they were not active in all advertising categories; local differences in competition across the UK; and the fact that the titles to be acquired had an uncertain future.

6.100. Furthermore, Johnston believed there was massive variation in rates due to other factors such as colour, frequency and packaging. The figures did not average out, particularly if sample sizes for the claimed competitive and monopoly areas were small or agencies' price quotes were not representative. Johnston stated that, ultimately, the IPA paper resorted to subjective feelings as opposed to facts and evidence and this could not adjust for other factors on a scientific basis. There was no evidence in the paper that any research was done at all by other agencies. Johnston noted that a significant number had not committed themselves to its conclusions.

6.101. Johnston stated that its own research, including a 'mystery shopping' exercise, showed no indication that two national advertiser clients, who were seeking the same type of advertising in different local areas, paid different rates in competitive and monopoly areas in 2002. Neither did Johnston's assessment show that, across Johnston's free and paid-for titles as a whole, average national yields in 2001 were higher in monopoly areas.

6.102. With regard to the ORC survey (see Appendix 5.4), Johnston rejected the interpretation that other media did not appear to be close substitutes for local press advertising, stating that any such conclusions based on the survey were flawed. Johnston believed that the responses to the relevant question in the survey were fundamentally distorted by the fact that advertising-only publications had not been defined and that no guidance had been provided as to how they differed from newspapers. Moreover, Johnston contended that the question was fundamentally ambiguous as 'equally effective' excluded more effective as well as less effective alternatives, with the consequence that no reliance could be placed on the responses to this question.

6.103. Johnston believed that a survey of the top 30 advertisers in a selection of Johnston and Trinity Mirror titles would only have captured advertisers who predominantly used the parties' newspapers. As a consequence Johnston identified a number of other points which, in its view, tended to invalidate the results of the ORC survey as far as the acquisition of the titles was concerned. Johnston noted, however, that the ORC survey did indicate that a 10 per cent price increase for local weekly papers would lead to a considerable reduction in advertising expenditure. This would be due to a combination of advertisers switching to other media and reducing or reviewing expenditure. Around 50 per cent of advertisers surveyed (more in Peterborough) said that they would reduce or review local press expenditure in this way. Reduced advertising lessened the appeal of local newspapers to readers and thus to advertisers. Apart from this, however, Johnston believed that the technical phrasing of some of the survey's questions gave rise to generally unreliable responses.

Barriers to entry

6.104. We put it to Johnston that entry into an area where the main incumbent published a paid-for daily would be less attractive than areas where there was no daily. This was because the incumbent could use the editorial resources of the daily to support a free weekly, and could offer package deals to advertisers covering both titles at favourable rates.

6.105. Johnston did not think that it would be more difficult to launch a title against an incumbent publisher of a paid-for daily title. Factually speaking, the probability would be that a publisher of a paid-for daily, or indeed a paid-for weekly, would also publish a free newspaper alongside it in any event, as Johnston did in Northampton and Peterborough. There was no evidence to support the suggestion that launches were more difficult in such areas. Furthermore, Johnston stressed that the scope for packaging was limited (see paragraph 6.81). It did not believe that its ability to package would materially increase as a result of acquiring the Trinity Mirror titles.

6.106. Johnston believed that the prospects for someone entering on a serious editorial basis could be difficult although there had been a number of examples of entry into local markets through launches of paid-for titles, and especially paid-for weekly newspapers. Notwithstanding these examples, Johnston considered that the most likely entry would be by free newspapers or advertising-only publications launched by competitors. The alleged difficulty in doing so was not borne out by the facts: Johnson had provided numerous examples of successful launches against an established publisher.

6.107. A free newspaper publisher coming into the marketplace would probably be interested only in Johnston's advertising revenue. It would not necessarily be interested in producing an award-winning editorial product and could obtain its editorial from press releases and other easily obtainable copy, for example via freelance journalists and local correspondents.

6.108. Such a publisher would keep its costs to a minimum but would allocate enough resources to make the new entry a sufficiently credible product to win advertising revenue. Over time, if the entry publication was successful, the publisher could invest further in the product to produce a better newspaper with the aim of becoming the market leader. An example of where this had occurred was in Bedford with *Bedfordshire on Sunday*.

6.109. We asked for Johnston's views on the risk for a new entrant that an incumbent publisher would respond to the challenge of a new title by, for example, offering low rates to advertisers. Johnston stated that it would naturally seek to maintain its position in the face of a new entry: it would not lie back and allow the new entrant to take advertising revenue.

6.110. However, Johnston insisted that it would not use, and was not in a position to use, anti-competitive tactics in countering the threat to its position. For example, Johnston observed that it would be a highly costly and risky strategy for it to seek to use its titles as a means of engaging in predatory tactics to discourage or expel entrants. Johnston denied that it had launched *Northampton on Sunday*, for example, in order to forestall LSN's own proposed launch of a new free Sunday title in Northamptonshire.

6.111. Moreover, if Johnston were to introduce below-cost advertising rates, this could not be limited to certain titles only and would depress the price of advertising across all Johnston's titles in the locality. Consequently, Johnston would lose a significant amount of advertising revenue.

6.112. Furthermore, there would be very little prospect of recouping forgone profits in the event that competing titles would be driven from the market. This was because possession of a high share of the distribution and circulation of local newspapers in a particular town or area did not confer market power given the extensive competition from other media, in particular advertising-only publications.

6.113. Consequently, even if Johnston were to seek to drive a new entrant from the market through the use of below-cost rates, it would be unable to profit from doing so. As soon as it attempted to increase its advertising rates above the competitive level in order to recoup the forgone profits, advertisers would be encouraged to switch to other media, and new entry and expansion by competing publishers would take place. The net result would be that advertising rates would be driven back down to their competitive levels. Given these consequences, Johnston stated that it would not contemplate engaging in such tactics. Instead it would compete on quality and service.

6.114. In the context of the proposed acquisition, Johnston believed that the likelihood was that new entry of a newspaper publisher would be increased as a result of the deal occurring, rather than decreased, particularly in Northampton and Peterborough. With both Johnston and Trinity Mirror currently publishing free newspapers in these areas, entry was probably less attractive for an entrepreneur than a marketplace with only one publisher. Johnston believed that it would be easier to compete against a single publisher than two. In addition, advertisers could threaten a single local newspaper publisher by supporting a new entrant as well as threatening to switch advertising outlay to alternative competing media.

6.115. In Johnston's opinion there were plenty of would-be entrants in and around the relevant areas waiting in the wings for an entry opportunity to arise. Potential entrants ranged from major publishers active in the vicinity such as Northcliffe, Newsquest and Eastern Counties, to mid-ranking publishers such as Yattendon, LSN and Observer Standard Newspapers, to smaller-scale, entrepreneurial entrants. As a consequence, the threat of new entry would ensure that advertising rates remained competitive.

Clustering of titles

6.116. We put it to Johnston that, alongside the process of consolidation of ownership, the major publishing groups appeared to be focusing on particular regions. For example, there were several regions down the eastern side of the country where Johnston had extensive clusters of titles and a number of other regions in the UK where it was not present at all. We put it to Johnston that this was not what could be expected if it had been purely opportunistic in the acquisition of titles that only sporadically came up for sale.

6.117. Johnston stated that there was bound to be some regional concentration in newspaper ownership. Many of the publishing groups that came up for sale were focused on particular geographic areas of the UK. Johnston referred to its purchase of PSN, which had given Johnston a regional focus in the North-East of England. RIM was another example of a potential acquisition which itself had a presence centred on particular parts of the UK. Once a publisher was established in a particular area, opportunities arose for the utilization of its infrastructure in those areas to publish more titles more efficiently.

6.118. Resources were limited and it made sense for Johnston to develop its business where it could obtain the best return: this tended to be in and around the areas where it was already present. Johnston did not believe, however, that there was any sort of exclusive, formalized regional grouping whereby one publisher was in one area and did not overlap with its competitors. It cited several examples where it was in direct competition with other leading publishers, including with Northcliffe in large parts of

Derbyshire and Lincolnshire, with Newsquest in large parts of southern England, including Lewes, Burgess Hill and Haywards Heath, in the Banbury and Buckingham area and parts of Yorkshire; with Trinity Mirror in parts of Scotland, the north Tyne and Crawley; and with RIM in parts of Leeds and South Yorkshire, including Doncaster.

6.119. Johnston also provided several examples of launches by major publishers into areas dominated by their competitors. These included a number of launches by Newsquest, the launch of *Metro* by DMGT/Associated Newspapers, and the launch of a number of advertising-only publications by DMGT/Northcliffe. Johnston suggested this demonstrated that not all major publishers necessarily took the same view as Johnston that their best returns would come from developing their businesses within and around existing areas.

6.120. Johnston also provided numerous examples of launches by entrepreneurial entrants. The majority of these had been into areas where a single publisher had a very high share of local newspaper circulation and distribution. Johnston believed this highlighted the organic growth of medium-sized publishers such as LSN and Observer Standard Newspapers, both of which were active in areas contiguous to those affected by the current inquiry, and whose growth had occurred almost entirely as a result of new launches.

6.121. Johnston submitted that, as had been noted in previous newspaper merger reports by the Commission, barriers to the entry of free newspapers and advertising-only publications were low.

6.122. Johnston referred us to Newspaper Society information on new launches of local newspapers between November 1997 and September 2001, of which there had been 85. No fewer than 75 of these launches were still in existence. Johnston believed that the Newspaper Society data materially understated the position and therefore submitted details of further launches which it believed had taken place over the last few years, including a list of 30 entrepreneurial launches. Johnston assessed that, including advertising-only publications, there had been a significant number of recent launches of publications throughout the areas of overlap, including six local newspapers (one of which had since closed), and at least 14 advertising-only publications.

6.123. Johnston stated that other publishers, whether large or medium-sized, which were active in adjacent areas would always be on the look-out for opportunities for profitable expansion. Johnston provided us with maps demonstrating that a large number of publishers, including LSN, Northcliffe, Observer Standard Newspapers, Gannett, Yattendon and Eastern Counties, had an existing presence in areas close to Northampton and Peterborough; and in nearly all instances within a radius of 28 miles. In addition, there was the threat of local publishing entrepreneurs, some of whom continued to be active and successful in and around the area affected by the proposed transaction.

6.124. Johnston provided us with details in relation to the growth of LSN and Observer Standard Newspapers, which were now significant publishers in areas adjacent to those affected by the proposed transfers. The most recently published accounts of Observer Standard Newspapers included a statement to the effect that further launches were planned.

6.125. Johnston submitted evidence that the cost savings publishers were able to obtain by publishing a number of titles in close proximity to one another were not particularly significant. For example, the ability to cross-sell advertising packages was inherently limited because local advertisers only derived value from local advertising. The total benefits which Johnston anticipated deriving from the proposed transaction were only about £[✄] million a year. This sum represented only around [✄] per cent of the total revenue of Johnston's relevant publishing divisions. Moreover, a significant proportion of these savings derived from local cost savings rather than as a result of Johnston having a significant regional presence. Only the benefits deriving from [*Details omitted. See note on page iv.*] could be said to be non-local and these amounted to only £[✄] million a year. [*Details omitted. See note on page iv.*]

Editorial diversity

6.126. Johnston stated that, in its view, freedom of expression and accurate presentation of news should not be regarded as significant issues in our inquiry given that the Trinity Mirror titles were free weekly publications that contained limited editorial. Therefore the eight titles in question did not compete for readers to any material extent with Johnston's paid-for titles.

6.127. The Johnston portfolio of titles in the relevant areas provided in-depth and extensive editorial coverage. The Trinity Mirror titles, by contrast, carried little editorial and that which was carried was not of a high standard. The commercial imperatives behind the transaction, in particular the need to retain advertisers, would ensure that the acquisition of the Trinity Mirror titles carried no risks for editorial independence, quality or quantity.

6.128. Furthermore, Johnson believed it was renowned for giving its editors full independence and provided us with seven separate examples of instances when local issues had been seen from a different perspective by contiguous or overlapping Johnston titles. Johnston also provided us with details of its editorial policy under which its newspaper editors had freedom to edit without interference from general management. Johnston categorically rejected the suggestions made in the *New Statesman* article of 11 February 2002 that it in any way sought to suppress or thwart investigations into the wrongful conviction of Mr Stephen Downing and there was no substance whatsoever in any allegation that the Johnston management sought to remove Mr Donald Hale from his position as editor of the *Matlock Mercury* (see Appendix 5.7).

6.129. Editors were required to avoid overt and sustained political bias and had to strive at all times to make the content of their newspapers fair and accurate. Errors were to be promptly corrected with appropriate apologies. Johnston reminded us that, in all its previous regulatory inquiries involving Johnston, the Commission had concluded that there was no evidence to cast doubt on the commitment of Johnston to editorial freedom or accurate reporting.

6.130. Johnston added that long-term declining readership for paid-for titles had depressed both cover price and advertising income. This, and the fact that paid-for titles had readership appeal only according to the local news reporting they contained, ensured that both editorial independence and reflecting the needs of local communities were commercial necessities for local and regional newspaper publishers. Johnston believed, therefore, it was implausible to argue that there was appreciable competition for readers between Johnston's paid-for titles and the Trinity Mirror free titles and that this would be lost as a result of the proposed transfers. Similarly, it was the local content of free newspapers that differentiated them from the myriad advertising-only publications which existed in the Northampton and Peterborough areas. The incentives for Johnston to maintain and enhance this editorial content were strong.

6.131. Johnston's Chief Executive had never had a dispute with an editor about editorial policy. In practice he only contacted individual editors to discuss matters that related to the management and reputation of the company and its titles generally. These embraced matters such as significant libel claims and complaints to the Press Complaints Commission.

6.132. Johnston's editors were selected for their professional competence, judgement and management qualities. Once appointed they were expected to follow guidelines which reflected the principles of Johnston's editorial policy. Subject to that, and to budgeted editorial-advertising ratios, they had virtually complete control of the editorial content of their newspapers.

6.133. We noted that Johnston had argued that there was no issue of free expression and diversity of opinion because there was so little editorial content in the Trinity Mirror titles that it was hoping to acquire. On the other hand we understood that the editorial content of free weeklies needed to be of sufficient quality to appeal to potential readers, thereby maximizing their exposure to the advertisements carried. Commenting on this apparent contradiction, Johnston remarked that a free newspaper was delivered through people's doors. It had to have sufficient editorial content for the reader to want to look through the newspaper and thus to be exposed to the advertising it carried.

6.134. We asked Johnston about its ideal editorial content for a free weekly paper. Johnston stated that the editorial content of a publication was governed by its target audience. Readers of an evening newspaper, spending perhaps 30p or 32p on it six nights a week, were going to be interested in what was going on in a community. It followed, therefore, that the editorial content of such a newspaper would have to be of a high quality. However, readers who did not actively seek out local news by purchasing an evening newspaper, but received a free weekly paper through their door, were more likely to require a round-up or digest of news without much depth. Furthermore, broadly speaking, shoppers had a different focus, often being aimed at either younger readers or commuters or both; namely those who had little or no interest in local news as such but were interested in reading about leisure activities such as films, cinema, restaurants and shopping. Johnston stated, however, that these were not mutually exclusive categories and it would not be unusual for readers to look at more than one style of publication.

6.135. Johnston gave us, as an example, the position in Peterborough. It stated that the two free weeklies, Trinity Mirror's *Herald & Post* and its own *Citizen*, were currently similar products. The editorial content of both amounted to a digest of the week. The editor of the *Citizen*, who doubled as the assistant editor of the paid-for *Evening Telegraph* title, selected stories that he believed were appropriate for the *Citizen*. These tended to be general news and human-interest stories selected from the Johnston titles' news-gathering pool. However, the emphasis placed on certain stories might be different. On occasion the free weekly might cover a story not covered in the evening title and different photographs would often be used, with a tendency to favour group photographs in free weekly titles. Johnston added, however, that these were just generalizations, and that different free newspapers contained a diverse range of content, ranging from free weeklies which were the paper of record in their area, such as the *Milton Keynes Citizen*, to secondary free titles such as the *Chesterfield Express*.

6.136. We put it to Johnston that, given the editorial structure which it had described, readers might be better served if there were a free newspaper owned by another publisher as this would ensure that there was a completely independent editorial team working against the editorial team of the paid-for newspaper. We added that if there was only one publisher in the area, and the content editor of the free weekly was not fully autonomous, there would be less chance of the free weekly performing as a rival to the daily. Thus there might be a diminution in editorial independence and diversity of opinion in Northampton and Peterborough as the result of the proposed acquisition.

6.137. Johnston stated that editorial comment and a campaigning style were to be found in its paid-for dailies and weeklies. What readers looked for and expected in a free weekly was a fair and accurate digest of the local news. As such, it would be very rare for a free weekly title to be performing a similar role to a rival daily newspaper or indeed a paid-for weekly newspaper: the probability of an independent free title acting as a rival to a daily newspaper owned by another publisher in the sense suggested was therefore very low in any event.

6.138. Furthermore, the content editors of Johnston's free weeklies were solely responsible for what went into their newspapers, subject only to the requirement to refer to the editorial director (who was also editor of the daily) any issues with potential legal implications.

6.139. More generally, Johnston denied that the quality of editorial would be better in areas where there was editorial competition from another publisher. Johnston provided us with 20 of its free local newspapers, without indicating whether they were published in areas where Johnston was the only publisher or in areas where there was more than one publisher. Johnston maintained that, whilst free newspapers differed, they did not do so on any discernible monopoly or competitive market basis.

6.140. Johnston emphasized that it was very good at training journalists in their full responsibilities. If something happened in Northampton and Peterborough or other local areas where Johnston titles were published, its well-trained, professional journalists reported the event fairly for its readers. Johnston emphasized that this was the core of its business. It was ultimately accountable to the readers who purchased its newspapers. If Johnston was not doing a good job in reflecting what was happening in the community it would not sell newspapers and nor would it attract advertisers.

6.141. We raised with Johnston the allegations we had received of political bias in favour of the Labour Party in some of its titles, particularly in Peterborough (see Chapter 7). Johnston rejected the allegations, which it said were prompted by the vigour with which its daily titles had been ready to criticize politicians. It provided numerous examples to show that its newspapers had criticized policies and personnel of the Labour Party and other political parties.

Remedies

6.142. We put it to Johnston that the proposed transaction could result in a significant diminution in editorial diversity and a group of advertisers who could not migrate to competitors and of whom Johnston could take advantage. Moreover, it could be that, while entry barriers in general might not be high, the fact of Johnston's particular position in these markets after the merger would make entry barriers into these specific markets much higher than they would otherwise be.

6.143. Therefore we could recommend that none of the Trinity Mirror titles be transferred to Johnston or, perhaps more likely, that some of the titles, such as four or five of the titles in the Northampton and Peterborough groups, should not be transferred. We therefore asked Johnston what its strategy would be if the acquisition were to be blocked.

6.144. Johnston stated that being prevented from acquiring the titles would be a bitter disappointment. A decision to block the deal would be difficult to comprehend, as Johnston did not accept that the hypotheses which might be put forward as a basis for such a remedy could be borne out by the facts.

6.145. Nevertheless, Johnston stated that if the proposed transfers were to be blocked, in whole or in part, it would remain the market's leading publisher in Northampton and Peterborough and in small parts of Derbyshire. It would therefore continue to invest in its businesses and endeavour to offer those marketplaces value for readers and advertisers, as well as making profits.

6.146. A decision to block the acquisitions would also forgo the benefits of the merger. Johnston firmly intended to invest in the titles and to improve what was available to readers and also to advertisers in terms of the options they would have for reaching the marketplace. In Johnston's hands there would be a better mix and quality of products to enhance the market. The alternative would be a poorer and diminished market. Johnston said it could not be assumed that Trinity Mirror would find another buyer who would pay an acceptable price. [*Details omitted. See note on page iv.*] Therefore the possibility that some of the titles would close, if they were not transferred to Johnston, could not be ruled out.

6.147. We invited Johnston's comments on remedies, short of blocking some or all of the transfers, which could address the public interest concerns leading to an adverse finding.

6.148. Johnston stated that it would find behavioural remedies difficult to apply meaningfully in the advertising sphere, as this was an area where substantial discounting occurred and where changes to distribution numbers and advertising packages were not infrequent. It was not clear how behavioural remedies would apply, for example, if Johnston desired to extend the distribution of a title or launch new titles.

6.149. Behavioural remedies would also limit Johnston's ability to respond to rivals' competitive initiatives, to carry out market and product developments (for example, investments in titles which enhanced their appeal to readers and thus advertisers), and to respond to advertisers' requirements. An imposed rate cap could be unwieldy with, for example, artificial injunctions preventing increases in the rate card by more than inflation over, say, a five-year period.

6.150. With regard to any remedy in relation to editorial issues, Johnston did not consider this to be necessary given its longstanding commitment to editorial independence and the fact that the proposed acquisition related to eight free titles with limited editorial content. In view of Johnston's plans to appoint a content editor with separate responsibility for the free titles which it proposed to acquire in Northampton and Peterborough, Johnston did not regard as proportionate a remedy which, for example, insisted that the editor of a free weekly title did not report to the editor of a paid daily in order to ensure the editorial independence of the free complementary title.

6.151. Johnston believed that such a remedy would reduce its operational flexibility as well as setting an unfortunate and unnecessary precedent for the whole newspaper industry, particularly since editorial issues had not been a source of concern in any previous Commission inquiry relating to local, as distinct from regional, newspapers. Nevertheless, Johnston indicated that it would be willing to give an assurance as to its plans to appoint a content editor with separate responsibility for the free titles which it would acquire in Northampton and Peterborough.