NON-CONFIDENTIAL VERSION

ARCHANT LIMITED

COMPLETED ACQUISITION OF INM REGIONALS BUSINESS

INITIAL SUBMISSION BY ARCHANT LIMITED TO THE COMPETITION COMMISSION

DATED 1ST JUNE 2004

CONTENTS

Archant Limited/Independent News and Media

Initial Submission to the Competition Commission[1]

1st June 2004

A. Summary

1. Archant is a small, family-owned community media business, dwarfed by both the four largest publishers of local newspapers and by many publishers of other competing publications. London is a rapidly evolving, unstable, and highly complex environment in which many media companies do business. From the perspective of local advertising, London can best be understood as a matrix of category and geography - a combination of what the advertiser is selling, and where it wishes to sell it. London is different from other parts of the UK. One area blends into the next, without borders, without distinction. Londoners travel great distances in any day, in many cases by public transport, and experience a plethora of different media influences along the way. When local newspapers and other publications, print or non-print, publish advertisements in the same category, they are not generally complementing each other: they are competing for a share of advertising revenue of the relevant category. The growth in competition which has been seen in London has reduced the penetration of weekly paid-for titles in London, and these are now in decline, in contrast to the rest of the UK. Publishers of such titles are now forced to adapt or suffer further erosion of their position. In a dynamic London advertising market, populated by many of the largest media players, including major newspaper and magazine publishers, together with many smaller established operators and new entrants, it is inconceivable that a merger between the relatively small local newspaper businesses of Archant and INM in London can lead to a substantial lessening of competition.

[1] For a glossary of terms used in this submission, see Appendix 1.

B. Introduction

2. This inquiry is about competition for advertising revenue in the London area. More specifically, it is about the acquisition of various newspaper titles but the relevant market for competition purposes is advertising. This is a two-sided market, whereby papers attract readers (or, more generally, media attract viewer/reader attention) which they can sell to advertisers. This attention is attracted in various ways, sometimes by offering editorial comment that people want to read, but sometimes simply by offering the adverts themselves. Local newspapers (whether paid-for or free), regional newspapers, national newspapers, other wholly or partly advertising-financed publications, local radio, and the Internet, all compete vigorously for a share of advertising revenue.

3. These media serve many complex, overlapping and fragmented markets. A local media business serves a range of distinct groups of advertisers (e.g. property agents, motor dealers, businesses recruiting staff, private individuals, national brand and retail advertisers, and local retail and service advertisers) each with different requirements and consequently a different set of alternative advertising and promotion options. As new media have grown, local and regional newspapers' share of advertising expenditure has fallen. Using just the categories measured by the Advertising Association (which excludes 'new' alternatives) the regional newspaper share has declined from 30 per cent in 1974 to 17.1 per cent in 2002 in the UK. There are more alternatives in London than anywhere else. The local newspaper used to be the first choice for local advertisers; increasingly the specialist publications and Internet have usurped it.

4. Local print and Internet media provide the consumer (reader or user) audience with local news, information, and advertisements. In many areas of the U.K., reader territories are reasonably well defined, in London, less so; people travel across borough or other boundaries for work, buying goods and services, or entertainment. Their interests stretch beyond the strict geographic boundaries of a JICREG area or borough.

5. Paid-for weekly newspaper sales in London have declined sharply (approximately minus 4 per cent CAGR over the five years 1997-2002, compared with plus 0.5 per cent CAGR in the U.K as a whole over the same period), whilst free newspaper delivery and other forms of free

title distribution have expanded.[2] More recently, free pick-up newspapers have been replacing free distributed newspapers. Competing with these print media, the Internet in particular is going from strength to strength. The Internet is providing alternative sources of general editorial and entertainment information - the BBC is becoming a significant competitor with its range of free local Internet services. The Internet is also a key source of local advertising information for cars, property, and jobs. Local search facilities are provided on internet sites with national coverage.

6. The local media landscape has changed. In the past, local media would consist of just one or two local paid-for newspapers, a regional commercial television station and a local commercial radio station. Nowadays, one may expect to find many free newspapers (both delivered and pick-ups), category specific paid-for and free publications, general advertising-only publications, multiple commercial radio stations, and the Internet; meanwhile paid-for newspapers have declined.

7. In the following sections of this Submission, the parties and the transaction under investigation are described, the approach to defining markets in this area is analysed, barriers to entry are discussed and the effects of the transaction on competition in relevant markets are analysed.

C. Information on the Parties

Archant

8. Archant (formerly called Eastern Counties Newspapers Group Limited) is a community media business, which serves the media requirements of specialist and geographic communities in the U.K. [CONFIDENTIAL] per cent of its business (by revenue for the year 2003) is associated with local communities. The publication of local newspapers accounts for most of this revenue, but increasingly revenues are also derived from additional products and services such as magazines, directories, classified print publications, and Internet activities.

---

[2] In the six years from 1996 to 2002, the number of paid-for weekly series (as reported by ABC) in Greater London has fallen from 21 to 19 and the total number of copies sold has fallen from 580,000 to 430,000

9. Archant is family-owned (mainly by the Colman, Lockett, Copeman and Wilson families), and has grown organically and by acquisition. It has print facilities in Norwich, Ipswich and Scotland, and in 2003 it had turnover of £158 million, of which £[CONFIDENTIAL] million was from its newspaper business.

10. Before 1998, Archant was not present in London. It entered London in 1998 when it bought Home Counties Newspapers. Before its acquisition of INM's regional business (the “Acquisition"), Archant was the sixth largest publisher (by total audited weekly circulation/distribution) of regional and local newspapers in the U.K.. Its newspaper portfolio included 4 daily titles, 23 paid-for weekly newspapers and 32 free weekly newspapers. Their main areas of circulation and distribution are East Anglia, London, the Home Counties, the south-west of England and Scotland. Archant also has a portfolio of around 60 consumer and regional magazine titles and is actively involved in electronic publishing. A complete list of Archant’s newspaper publications before the Acquisition is contained in Appendix 2.

11. Archant's local and regional newspaper operations comprise a series of locally-managed businesses seeking to derive a profit, primarily from the sale of advertising, in the areas in which they are established. The same is true of the INM regional businesses which Archant has acquired. The combined local newspaper businesses of Archant and INM in London derive [CONFIDENTIAL]% of their revenues from advertising and are dependant upon five major categories of advertising, namely property, recruitment, motors, retail and entertainment and private and small business classified.

12. In London, Archant is relatively small. Three much larger publishers, Trinity, Newsquest and Daily Mail Group, dominate local newspaper publishing.

Using the basis of share of circulation of newspapers listed on the JICREG database as an imperfect proxy[3], Archant's share of London weeklies and Sunday papers has increased from 4.1 per cent to 18 per cent, whilst Trinity has 44 per cent and Newsquest has 35 per cent. If Daily Mail Group's regional titles *(Evening Standard* and *Metro)* are included in the calculation, then it becomes by far the largest publisher in London, with over half of the total volume. These other players, with their greater size, are able to invest more in developing additional publications and services which cross boundaries and make it more difficult for Archant to launch a range of additional publications and services. These and other players are

[3] The flaws in this database are explained later in this Submission.

also major publishers in other categories of publication circulating in London. For example: Daily Mail Group owns *Loot* (as well as *Metro* and the *Evening Standard*); Trinity owns *IC Jobs;* Guardian Media Group owns *Auto Trader;* United Business Media owns *Exchange and Mart*, *Auto Exchange* and *Daltons Weekly* and News International owns *London Property News*.

INM

13. INM is an international media and communications group, operating in Australia, the Republic of Ireland, New Zealand, South Africa and the UK. In the UK, it owns *The Independent* and the *Independent on Sunday* and the largest newspaper group in Northern Ireland. It owns the leading national newspaper publisher in the Republic of Ireland, South Africa and New Zealand, and has a 45 per cent interest in the largest regional publisher in Australasia. INM also owns various UK classified-advertising papers which are distributed in London - *Girl About Town, Nine to Five* and *Ms London* (which were excluded from the Acquisition).The London Regionals Division was organised into Post Newspapers, (operating in East London and Essex), East London Newspapers, North London Newspapers, North West London Newspapers and Kentish Times Newspapers, (operating in South East London and North West Kent). Finance, production and extended media services were each provided from a single location.

D. Background to the Acquisition

14. INM initially sought to sell the London Regional titles as a single entity. In March 2003, INM entered into a conditional agreement with Newsquest to sell to Newsquest its entire London regional newspaper business. This transaction was referred to the CC on 20th May 2003. The CC concluded that the transfer of titles of the *Kentish Times* series as well as two titles in North London (*Hornsey Journal series* and *North London Weekly Herald* series) would be against the public interest. The CC recommended that the transfer of the eight titles of the *Kentish Times* division be prohibited. As regards the two North London titles, the CC concluded that there was a real risk that if the sale of the *Hornsey Journal* series and *North London Weekly Herald* series were blocked, they would decline and eventually cease to be viable. If they were left with INM, they would be unable to benefit from economies of scale and operational synergies, and might represent too small a unit to be attractive to another large buyer. Either of these scenarios was worse than allowing Newsquest to buy them. On 21st October, 2003, the Competition Minister (Gerry Sutcliffe) announced that he had refused

to consent to the transfer of the eight titles of the Kent Division and was reviewing the transfer of the other two titles. On 21st November, 2003, the Minister's consent was given for the transfer of these two titles.

15. Negotiations resulted in two separate transactions. In the first, the Post, East London and North London division titles were transferred to Archant on 11th December 2003; in the second, the Kent and North West London division titles were transferred on 30th December, 2003.

16. Before the Acquisition, Archant was a small player in a crowded and dynamic London advertising market characterised by three very large publishers of local and regional newspapers (Trinity, Newsquest and Daily Mail Group) other major media players and numerous smaller operators, offering a growing range of advertising channels. The Archant London titles were sub-scale, particularly in North London, and this limited Archant's available commercial strategies. Archant's relatively small size has made it harder to get business from national advertising agencies.

17. The purchase of the INM titles was Archant's only opportunity to grow significantly by acquisition in London in the short to medium term. The Acquisition has injected greater rivalry into, and promoted competition in, the London market by creating a larger and more efficient fourth player. The CC report expressed a concern about a "live and let live' attitude among major publishers, and only muted competition between them[4]". This transaction should be perceived as pro-competitive as it allows a mid-tier publisher to compete more effectively with the major publishers of local and regional newspapers over other major competitors for advertising in the London area.

18. The Acquisition has allowed Archant to compete more effectively with Daily Mail Group's regional newspapers for London-wide advertising through packaging (via Clacksons, a national advertising sales company) Archant's local newspapers with those of Trinity and/or Newsquest. However, Archant remains considerably smaller in London than Trinity, Newsquest and Daily Mail Group, and so it will have to continue to compete or risk erosion of its improved position.

[4] para. 2.119

E. Jurisdiction and Nature of Substantive Test

Jurisdiction

19. The Acquisition does not result in the creation of a relevant merger situation under the EA 2002.

The Turnover Test

20. The turnover test is not met as the turnover of the INM businesses acquired by Archant (approximately £[CONFIDENTIAL] for the year ended 31st December 2002) is below the threshold of £70 million.[5]

The Share of Supply Test

21. The share of supply test is not met in relation to paid for and free local weekly newspapers in Greater London since Archant's acquisition of the North London, East London and Post Division titles gives rise to a share of supply of less than 25 per cent. (approximately 17.9 per cent.) in Greater London.[6]

22. Using the circulation areas used by JICREG, a 25 per cent. share of supply would be created or increased in [CONFIDENTIAL] of the areas within which the titles of the North London, East London and Post Divisions circulate (see Appendix 3). These areas together amount to a maximum area since, as set out in more detail in section F (**under Current Market definition - methodology issues)**, JICREG data are severely limited. Not all local newspapers have their circulation data included in the JICREG data, so that inclusion of all local papers in the calculations would undoubtedly reduce the number of areas in which the share of supply test is satisfied.

[5] See the INM management accounts supplied in relation to question 16b of the Financial Information Request. As the Acquisition took place before the end of 2003, it is the turnover of the acquired businesses for 2002 which is relevant for the purposes of section 23(1)(b). However, the point is academic as the turnover for the acquired businesses in 2003 was approximately £[CONFIDENTIAL].

[6] Source: Table 5.1 of the CC Report, adjusted to reflect Archant's acquisition of the North London, East London and Post series titles.

23. In any event, these areas are not "worth consideration for the purposes of merger control", in terms of both geographic coverage and size of population, and hence do not amount to "a substantial part of the United Kingdom" as required by the Act.[7] In particular, the [CONFIDENTIAL] areas constitute a *de minimis* land area of the UK and include only 1.1 million people aged 15 years and over[8], amounting to just 2.3 per cent. of the UK population aged 15 years and over.[9] These JICREG areas are , spread across north and north-east London and have no particular connection between them. The areas do not in any sense amount to a coherent region or area in themselves, either individually or collectively.

24. The OFT Decision gives two alternative areas in relation to which it argues that the share of supply test is met. These are:

(a) the contiguous London boroughs of Havering, Barking and Dagenham, and Redbridge (the "Three-Borough Area"), where it was stated that the parties' overlapping local newspaper activities exceed 25 per cent of supply; and

(b) the contiguous London boroughs of City, Islington, Haringey, Hackney, Tower Hamlets, Newham, and Waltham Forest in addition to Havering, Barking and Dagenham, and Redbridge (the "Ten-Borough Area"), where it was stated the parties' <u>combined</u> share of supply exceeds 25 per cent of the total circulation of free and paid-for local newspapers (combined market shares for these ten boroughs are shown at Appendix 5).

25. The use of the borough data is misleading, as the areas in which overlap occurs between the parties' titles (and therefore in which an increment in share of supply occurs) are much smaller than this. As set out above, data by JICREG area permits identification (within the limits of the JICREG database) of the areas where overlap actually occurs. The OFT's approach in ignoring the data at this level in favour of borough-level data is not in accordance with the EA 2002.

---

[7] See *Mergers: Substantive assessment guidance*, paragraph 2.25 and *Regina v Monopolies and Mergers Commission and another ex parte South Yorkshire Transport Limited* [1993] 1 WLR 23.

[8] Source: JICREG website as at December 2003.

[9] Source: National statistics website – www.statistics.gov.uk/census2001.

(a) Three-Borough Area

26. The boroughs of which this area consists, taken together, do not in fact amount to “a substantial part of the United Kingdom” as required by the Act. In particular, given the *de minimis* geographic coverage and size of population compared to the UK and the character of the area, the area is not of such size, character and importance to make it worth consideration for the purposes of merger control.

27. On the basis of JICREG local government area data, the boroughs have a total population over 15 of just under 500,000 and that, on the basis of 2001 census data, the population over 15 in the UK is just under 47 million. The area therefore has only 1.1 per cent. of the over-15 population of the UK.

28. Although (as the OFT Decision noted) the Mergers and Monopolies Commission / the CC has in the past considered population to be a relevant factor in determining what constitutes a “substantial part of the UK”, and has found an area that represented 1.1 per cent of the UK population to be a substantial part,[10] the practice has never been that population data should be used as the sole basis and ground on which to make a finding that an area is substantial. The South Yorkshire Transport case[11] clearly shows that a number of general and specific factors should be considered; in this case, the influencing factors included the fact that the relevant area amounted to roughly 1.65 per cent. of the total area and 3.2 per cent. of the total population of the UK, included the city of Sheffield (the third largest metropolitan district in England on the basis of population) and the towns of Barnsley, Doncaster, Rotherham and Chesterfield and had traditional industries based on mining and steel.

29. In comparison, in the present case, other relevant factors, and a lack of particular characteristics making the area special or significant, point towards the three London boroughs not being a substantial part of the UK. The OFT Decision did not provide any reason other than population for considering this area to be substantial. In addition, the area amounts to just 0.08 per cent. of the land area of the UK[12] and constitutes only a small part of Greater London.

---

[10] Stagecoach Holdings plc and Chesterfield Transport Limited (1989)

[11] Regina v MMC and another *ex parte* South Yorkshire Transport Limited [1993] 1 WLR 23

[12] Source: Havering Borough, Redbridge Borough and Boundary Committee websites and Table 4.1 of the Stagecoach report

(b) Ten-Borough area

30. The OFT did not claim that the parties' overlapping local newspaper circulation exceeded 25 per cent in this area, but rather that the parties' combined share of supply exceeded 25 per cent of the total circulation of local newspapers. This seems a somewhat irrelevant statistic, as the focus should properly be directed to those areas where there is overlap. In addition, the parties' combined share in the borough of Waltham Forest is in fact just under 4 per cent.[13]

31. In conclusion, whether taken from a JICREG area or borough perspective, the share of supply test is not met in relation to the Acquisition, in the UK or in a substantial part of the UK. For these reasons, the Acquisition does not create a relevant merger situation.

Time at which the Enterprises Ceased to be Distinct

The SLC Test

32. Even if the Acquisition does create a relevant merger situation, it should be allowed to proceed because such relevant merger situation has not resulted, nor may be expected to result, in SLC.

33. Since the CC Inquiry, the Communications Act 2002 has changed fundamentally the substantive test for assessing newspaper mergers by applying to newspaper mergers the same test as for mergers generally under EA 2002.[14] As a result, the level of detriment for SLC to be found is significantly higher than required by the previous public interest test for newspaper mergers. Although competition analysis was fundamental to a public interest assessment in the CC Report, there was never a requirement to find SLC. As a result of this tighter legal test, the CC may turn to this case afresh, in terms of both economic and legal analysis.

34. The CC's guideline, "Merger References: Competition Commission Guidelines (June 2003) states that "the Commission will consider each reference with due regard to the particular

---

[13] Source: JICREG data as at the date of this submission.

[14] Communications Act 2003, Part 5 chapter 2.

circumstances of each case, including the information that is available and the time constraints applicable to the case."[15]

35. The guideline also states that in assessing SLC, "it will not be sufficient for the Commission to believe that an SLC is possible: for the Commission to reach an adverse decision either the merger must have resulted in an SLC or the Commission must expect such a result. The Commission will usually have such an expectation if it considers that it is more likely than not that the SLC will result."[16] The test places the onus on the CC to satisfy itself that the evidence before it creates such an expectation.

36. By contrast, whilst the CC's application of the public interest test for newspaper mergers under section 59 of the Fair Trading Act 1973 came to include a competition-based analysis, there was never a requirement that the threshold for recommending prohibition was that the lessening of competition be "substantial". Since the CC inquiry, the threshold for intervention is now higher.

F. Substantial Lessening of Competition (SLC)

INTRODUCTION

37. The Acquisition has not resulted, and may not be expected to result, in SLC. This can be shown by defining the relevant market and by assessing whether the Acquisition would increase the market power of firms in the market as defined. In practice, these two assessments overlap. Consequently, we analyse the effect of the Acquisition on competition under two alternative approaches. First, we use the market definition adopted in the CC Report and interpreted by the OFT Decision, and assess the implications for the Acquisition under that definition. Secondly, we look at each local area and each category of advertising, assess the actual conditions of competition faced by Archant after the Acquisition and consider whether these conditions require a re-examination of the original market definition.

---

[15] Paragraph 1.4

[16] Paragraph 1.19

MARKET DEFINITION

The CC Report or Newsquest/INM: Market definition

38. The CC Report concluded that the relevant market was for free and paid-for local newspapers, noting that there was only limited substitution between such local newspapers and other printed (and non-printed) media. To reach its conclusion, the CC mostly relied on two sources of evidence: a postal survey of advertisers, and a qualitative survey of advertisers. After defining the market as being paid-for and free local newspapers in a given local area, it used data issued by JICREG concerning the circulation of newspapers in local areas of London as a proxy for market shares and market power. JICREG was used to show that in specific areas, the combination of Newsquest and the INM titles would have given Newsquest market power, and therefore the ability profitably to raise prices beyond competitive levels.

39. For printed media (national newspapers, London newspapers such as *The Evening Standard* and *Metro*,[17] regional newspapers, magazines, classified directories, advertising-only publications such as *Loot* and home-delivered leaflets), the CC noted that most survey respondents did not consider that other printed media were good substitutes or alternatives to advertising in the local newspapers.

40. For non-print media generally (including radio, Internet and outdoor advertising), the CC noted the comments of survey respondents that no other medium would be able to substitute for a visual medium like the press, that another medium should not be considered as a substitute but as a complement, and that for certain categories of advertising, newspapers were the only recognised way to advertise.

41. The CC summarised the factors that in its view distinguish local newspapers from other printed and non-printed media and which, in the CC's view, limit the extent to which they can be regarded as effective substitutes. These were: different characteristics of different media, frequency of publication, effectiveness of direct marketing, complementary uses, limited penetration by Internet sites, complementarity of Internet sites (rather than substitutability), limited evidence of switching from local newspapers to other media, different prices for different media and importance to readers. (para 2.37).

[17] Note that this is the CC's classification. In this submission, *Metro* and the *Evening Standard* are referred to as Regional Papers, with no separate division into "London Newspapers."

42. The CC also stated that advertising-only and other printed media compete to varying degrees for particular segments of the advertising market, but that the other media may not always be close substitutes for local newspapers from the advertisers' point of view. The CC noted the generally higher cost of advertising in local newspapers compared with other printed media, and the robustness in real terms of their advertising revenues (but accepting that their share of total advertising had fallen).

43. Finally, the CC discussed other media, such as local radio, regional television, the Internet and niche publications such as "What's on" guides as being complementary to local newspapers, but not, in the readers' view, realistic substitutes.[18]

44. On the CC's analysis, the Acquisition is, at worst, less damaging than Newsquest's proposed acquisition of the same business. An acquisition by Newsquest of the INM business, excluding the Kent division, and the sale of that division to Kent Messenger would have strengthened Newsquest's position in London and resulted in Newsquest and Trinity having a combined 90 per cent share of weekly/Sunday newspapers in London. By contrast, the Acquisition promotes Archant from a weak and sub-scale player to a credible fourth competitor in London, with 18 per cent of weekly/Sunday newspapers in London.[19]

<u>The OFT market definition</u>

45. The OFT Decision defined the market based on the assumptions of the CC Report. It also accepted that at least some non-JICREG titles should be included in the relevant market. In fact, whilst it expressed concern that "[t]he history of entry and exit in local London newspapers suggests that such a title may or may not remain in circulation for long and that relying on such a constraint may be unjustified",[20] it seemed to accept that "some of these are likely to have a competitive impact and thus have been taken in to account".[21]

46. The OFT Decision otherwise declined to depart from the CC Report. It commented that advertising-only publications tended to have a larger footprint than local newspapers (for

---

[18] *Ibid.*, paragraphs 5.9-5.12

[19] See further in section I below.

[20] OFT Decision, paragraph 16

[21] *Ibid.*, paragraph 7

example, East or North London) and for several notable publications such as *Auto Trader*, affected only one group of advertisers. OFT considered that property titles containing some editorial content should fall within the advertising-only category of publications, as the content was limited almost entirely to the property market and related businesses, in comparison with the broader scope of a local newspaper. The OFT cited *Avenues* and *London Property News* in this regard.

47. The OFT also noted the answers they received from advertisers and councils and concluded that local authority newspapers were not an effective alternative to local newspapers; although the former were circulated to all households in a borough, actual readership "may actually be considerably lower." The OFT also questioned whether they could be included in the market: where circulation data was used as a "proxy" for market power, a local authority paper with universal circulation would overstate the competitive constraint it posed.

48. The OFT dismissed the competitive constraint posed by regional newspapers such as the *Metro* and *Evening Standard* because they carried little local advertising and attracted advertisers seeking to reach a London-wide population. The OFT argued that such titles were complementary, citing as an example simultaneous advertisements for an NHS Trust.

49. Similarly, the OFT found that the advertising to be found in national ethnic newspapers such as *The Voice* and *Eastern Eye* was in line with that found in regional newspapers and therefore complementary.

50. The OFT noted that leafleting was not a significant issue, given the level of turnover it generated (£[CONFIDENTIAL] for Archant and INM combined). It did not mention other media in its Decision.

Current Market definition - methodology issues

SSNIP Test

51. The first methodological issue to address is the use of the SSNIP test for products market definition. Formally, to establish whether the market definition adopted by the CC in Newsquest/INM is correct, we would need to assess whether a hypothetical monopolist publisher of local free (and paid-for) newspapers in a given area in London would be able to raise prices to advertiser by 5 to 10 per cent from the current level without losing significant

volumes to other printed media (and other media more generally), to make this price increase unprofitable.

52. It is important to bear in mind that the SSNIP test for product (and geographic) market definition in a market including highly differentiated products becomes significantly more difficult when there are many different products competing with the products in the candidate market (free and paid-for local newspapers) rather than simply one or two products that are clearly the leading competitive constraints. The two complications for a formal analysis are as follows: (i) the hypothetical monopoly supplier can price discriminate across advertising categories and titles, so that a higher price increase could be attempted for some categories than others, (ii) on the other hand, each title and each advertising category faces a different set of competitive constraints as printed (and non printed) media offer different alternatives to specific advertisers.

53. This analytical difficulty means that Archant's case below relies on the strong evidence of competition between local newspapers and other media, and in particular the different strength that competing media have for different advertising categories to show why it would be *incorrect* to reach the conclusion that a hypothetical monopoly supplier of local newspapers could be sufficiently insulated from competition from other printed (and non printed) media, so as to define local newspapers as a *separate market*.

Survey Evidence

54. The CC Inquiry's quantitative survey was based on flawed methodology. The product market definition used in the CC Report should not constitute a precedent for this inquiry. New evidence is needed to define the relevant markets correctly during the current investigation.

55. The CC commissioned two surveys during the CC Inquiry: a quantitative survey, "Self completion questionnaire to advertisers" and a qualitative one based on in-depth interviews with advertisers. The CC has extensively relied on the results of the survey to support its conclusions on product market definition.[22]

[22] The methodology used in the two surveys and the full results are published in Appendix 5.3 and Appendix 5.4 of the CC Report

56. The CC designed a sample of 732 advertisers based on a selection of the high- and medium-spend advertisers in the local London newspapers of Newsquest and INM. This represents a very large share of the high-spenders (approximately 400 out of 500), and a significantly smaller share of the medium-spenders. The overall response rate (including the pilot mailing discussed in the Appendix to the report) was 14- per cent (39 per cent of the respondents were advertising agencies and 57 per cent other businesses). That is, of the top advertisers who received a questionnaire from the CC, only 14 per cent took the time to respond. Such a low response rate makes the results from the survey unrepresentative of the results in the overall advertisers' population, because advertisers who think they would be disadvantaged by the merger are much more likely to respond to the questionnaire than firms who do not feel disadvantaged. This therefore creates a sample selection bias, whereby the respondents to the survey are much more likely to react negatively to the merger than the advertisers in the overall population. This means that any inference about the response in the general population arising from the responses to the questionnaires would be flawed.

57. The sample selection bias becomes quite apparent, for example, when analysing the answers received to the question of whether "advertisers believe that their terms and conditions will be worse after the merger"[23]. Only 5 per cent of the respondents disagree (or strongly disagree), whilst 30 per cent are neutral and 65 per cent agree. This shows that very few advertisers among the respondents do not seem to take a negative view of the merger. For the CC this was strong evidence that the merger was very problematic for all advertisers, whereas our view is that the finding might simply indicate sample selection bias in the responses. Our view is that because of the high likelihood of sample selection bias the survey *does not indicate* whether the overall population of advertisers would agree or disagree with the statement that "their terms and conditions will be worse after the merger."

58. In considering sample selection bias,[24] the CC states that it does not find any evidence of sample selection bias according to two dimensions: proportion of medium and high ad spenders and the postal code in the advertiser's address. That is, the CC states that because it cannot see any bias in response rates when advertisers are grouped according to these two parameters, it does not find any evidence of sample selection bias. This is incorrect since the market complexities are such that advertisers in the same area and advertisers who spend similar amounts pre-merger would still be likely to have a very different perception of

[23] Table 19.

[24] Paragraphs 43-46 of Appendix 5.3.

whether they would be adversely affected by the merger. For example, two large estate agents in the same area currently spending a significant amount on local newspapers could react very differently to the merger. One of them could be in a position easily to shift a significant proportion of its advertising expenditure to the Internet (or to the publication/web-site of a group of agents of which it is a member, such as *Prime Location or Fabric*), and thereby decide not to take the time to respond to the questionnaire, whilst the other, who wants to continue spending the same amount on ads in local newspapers, might be more concerned about the merger and decide to respond to the questionnaire.

59. As the CC does not believe the sample selection bias to be a serious concern, it relies heavily on the responses received in the quantitative survey to reach its conclusions on product market definition. On the issue of whether other printed media are good substitutes for local newspapers, the CC relies on the survey answers reported in Table 16.

60. Sample selection bias is such a critical methodological problem that the results of the quantitative survey in the CC Inquiry should not be regarded as robust and should therefore have no bearing on the fresh evidence being considered by the CC during the current inquiry. The qualitative study undertaken during the CC Inquiry presents some useful market insights, but nevertheless, because of its very nature, it does not constitute any strong evidence on market definition in a market as complex as this. In short, the survey does not reflect the reality in the market.

Substitutes or complements?

61. The CC and the OFT at times say that different advertising media are complements, implying that they do not compete. This is not correct. In many industries purchasers use a combination of differentiated products to fulfill their requirements. This fact alone does not necessarily imply that they are complements; what matters is how purchasers respond to price changes. If the price of good A goes up, does demand for good B rise or fall? Differentiated products used by a single consumer can nonetheless be substitutes, if the consumer responds to price changes by switching towards the one whose relative price has fallen.

62. The fact that a publisher may offer advertising over a variety of media does not necessarily imply that these are complements. Of course, the fact that the same players may be operating across various media will affect the degree of competition in the (widely-defined) market, but it does not mean that these media could not in principle compete.

JICREG Data

63. The common thread of the CC Report and the OFT Decision is reliance on JICREG and survey evidence. Even accepting a market definition limited to free and paid-for local newspapers, which is considered incorrect, an additional issue is whether JICREG provides an accurate measure of market power within that definition. The CC acknowledged that JICREG areas could not necessarily be regarded as relevant markets in themselves, local catchment areas being blurred and most titles circulating in more than one area. However, it did state that the data were useful in analysing the competition for advertisers wishing to reach readers in particular local areas.[25] The CC noted that JICREG provided "at least a practical and convenient means of assessing local geographic areas."[26] The CC then used data based on JICREG for its assessment of market shares and market power.

64. Before analysing the value of JICREG data, it is worth considering how and for what purposes they are created. Newspapers seek to become members of JICREG almost entirely for the purpose of seeking national advertising, rather than local advertising (typically 10 per cent of a local/regional newspaper's advertising revenue). Membership is voluntary (a fee is payable), and limited to members of Newspaper Society Marketing (for which a fee is payable), who are also in either VFD or ABC (for which a fee is also payable). JICREG, therefore, omits many newspapers. The data are derived from publishers, who allocate circulation to the defined JICREG areas for marketing purposes, i.e. they seek to attract advertising by demonstrating which readers they can reach through the circulation of their papers. Advertising agencies and media buyers will know the socio-demographic profile of the defined JICREG areas and thus be able to assess a title's suitability for their clients' (typically national) media campaigns on the basis of the collection of JICREG areas which it claims to serve. The data are not audited so allocation of a title's circulation/distribution to individual JICREG areas may be imprecise. JICREG data are not created to provide a balanced analysis of the environment in which local newspapers operate. A JICREG report is not a market study. The JICREG areas are not economically-defined geographic areas, so much as convenient, narrow geographic units to be aggregated for marketing purposes (and JICREG has indeed been changing the boundaries of a number of regional areas, although not so far London). As a source of data, it is imprecise.

---

[25] Paragraph 2.60

[26] Paragraph 5.23.

65. It is certainly true that JICREG provides a convenient screening device for beginning to understand competition among local free and paid-for weekly newspapers. But its data are not sufficiently robust for analysing market power. This is because it is not compiled for the purpose of understanding a market (in comparison with market surveys compiled by analysts for various sectors), but for providing a convenient or useful aid to advertisers seeking to reach specific audiences.

66. What is the consequence of this? JICREG omits key local newspapers and publications, simply because the relevant publishers have not subscribed, or because of the time it takes from becoming VFD/ABC approved to be put on the register. As a result of these omissions, the "market shares" that derive from JICREG data generally overstate the shares of the publishers that are represented. Key local newspapers circulating in the parts of London relevant to this inquiry, all of which have editorial content but none of which is in JICREG, include: *The Islington Tribune*, *Docklands News*[27], *Avenues*, *City & Islington News*, *Essex Enquirer/East London Enquirer*, *Newham Magazine*, *East End Life* and *Hackney Today*. As we shall see later, the inclusion of such newspapers has a dramatic effect on the JICREG-based market shares that result.

67. The second consequence of over-reliance on JICREG data is that the resulting market shares, whether or not we include key other local newspapers that JICREG omits, do not accurately measure the market power of participants in any market for free and paid-for local newspapers. This is because each title is subject to strong competitive constraints from alternative advertising channels, and consequently, it does not matter greatly whether a particular publication or web-site is included within the market definition, since its presence in particular local areas prevents newspaper publishers in that area from raising their prices above competitive levels. Therefore a situation in which JICREG data generates high market shares for a publisher in a particular area does not accurately reflect the prevailing local conditions of competition.

68. The third consequence of over-reliance on JICREG data is that it leads to a misunderstanding of the relevant geographical market. The available evidence (including the survey undertaken for the Newspaper Society and the BBC, some results of which were included in the Presentations) indicates that the relevant geographical markets in which local newspapers and

[27] Archant has heard rumours about the current status of Docklands News.

alternative channels compete for advertising revenue are far wider than a JICREG area. For example, a circle drawn in London with a radius of 10.9km (the distance London consumers are prepared to travel to buy a car) could easily cover more than 100 JICREG areas.

Archant Market Definition

69. There are three levels at which the market should be understood. First, to use the CC's definition of free and paid-for local weekly newspapers, the correct data set derives not merely from JICREG, but also from data on the circulation of local newspapers that are *not* in JICREG. This follows from the methodological analysis above - JICREG does not include data from all local newspapers, because of the way JICREG data are compiled. Secondly, the market is more complex than an all-encompassing "free and paid-for local weekly newspapers" definition allows. It is impossible to understand the environment in which local newspapers operate without looking closely at the conditions of competition faced by *each title*. London advertising cannot be understood except as a combination of *category*- the type of advertising - and *geography* - the location of the audience that an advertiser is trying to reach. The analysis below shows that for each of the titles under consideration, the conditions of competition are substantially richer, yet more complex, than a single market definition allows. Finally, there are many print publications and other media that in individual cases may not form part of the market, but are to varying degrees competitive constraints on Archant. Indeed, with a market as dynamic and as rapidly changing as London, it can be anticipated that over time many of these media will become part of the market.

70. Using this market definition, we can draw two conclusions. First, if for the moment we accept the power of calculated market shares in this case to demonstrate market power, the market shares for local paid-for and weekly newspapers (including titles not within JICREG) fall to levels consistent with a finding that the Acquisition does not result in Archant achieving market power. Secondly, the conditions of competition faced by each Archant and ex-INM title can be more precisely calibrated, by clearly distinguishing those titles that compete *within* the market from those that exercise a competitive constraint *outside* the market. It is the local picture of competition, a combination of category and geography, that makes it clear that the Acquisition does not result in SLC in any local area.

71. We explain how this market definition is reached with reference to the operation of advertising markets in local areas of London.

Archant methodology

72. The clearest starting point for defining the market is the position of consumers for the products in question. The products in question are the Archant and INM titles, the geographic coverage of which overlap. The consumers are of two types: advertisers who use Archant and INM titles as outlets for their advertisements, and readers of those publications.

73. Looking first at the advertisers, we set out below the general position of advertisers in London, then analyse more closely the requirements of specific types of advertiser, and how these requirements are met. For each advertiser, the target audience will be defined by geography (location of actual or potential customer) and media preference (which media they mostly purchase/consume), as well as other factors.

London advertising

74. London is unlike any other town or city in the United Kingdom: it is larger, more diverse and more complex. At one level, it cannot be understood *except* as a series of contiguous local areas, each with its own character. At another level, it is not at all clear where a local area starts and where it stops. At a further level, many identifiable areas are themselves richly diverse and complex.

75. This complexity is reflected in the London regional and local media. For both print and non-print media, Londoners enjoy a vast array of different publications, serving non-specifically defined areas, communities, interests and needs. Such diversity is not found on a comparable scale outside London.

76. The combination of London's size and its housing market means that travel, often over significant areas, is part of most Londoners' daily life: people live, work and shop in different areas. Their use of public transport increases their opportunities to consume print media. They are thus exposed on any day to a variety of different local and regional media.

77. When an individual or a business wishes to place an advert in the local media, it will select the medium or media that will most successfully reach and attract its desired audience. Traditionally, the preferred medium has been the weekly newspaper, which is still an important outlet for local advertisements. The choice is however much broader than that: market-specific publications (such as those targeting property, recruitment or motor

advertising); lifestyle publications; council-run publications; leafleting and the Internet increasingly satisfy local advertising demand. For some London advertisers, regional and national newspapers may be realistic alternatives (e.g. the *Evening Standard/Metro* for outer London jobs, *The Times/Sunday Times* for property and *The Guardian* for certain jobs).

78. In the course of a day, an individual might need to consult the local media for many reasons - local news and information, entertainment, and advertising. But what is 'local' in this context? Local can be defined by where that individual can purchase the goods or services he requires, which may be at a location remote from where he is when he consumes local advertising media, for which different opportunities may arise in the course of the day. In the morning, it could be local radio, or a local or regional newspaper on the way to work or to a leisure activity. During the day, it could be the Internet, or newspapers local to his area of work, the place where he shops (including pick-ups) or the part of London being visited. In the evening, it could be *The Evening Standard* on the train or Tube, or local radio in the car. The range of different "local" areas in London with which an individual is connected (and perhaps a less clear sense of local affiliation as a result), combined with the range of local media available to him, explain the relatively low penetration of paid-for weekly newspaper titles in London (approximately 12 per cent against approximately 24 per cent for the UK as a whole). Importantly, one does not need to be "local" to benefit from local information on the Internet, which is one reason why its use is growing so fast. It is the changing meaning of 'local' that makes London a very different market to analyse when compared to the rest of the UK.

79. These two aspects of the use of local media use by the advertiser and the reader/consumer - help to explain the particular richness of the London advertising market. But advertising in London is not a static market: it is subject to change, often at bewildering speed. From the reader/consumer perspective, this is shown by demographic change, as communities change and grow in different parts of London, as house prices rise in one locality more than another, and as culture, fashion and lifestyle evolve. From the advertiser's perspective, this is shown by an increasing flexibility to use limited budgets to best effect, and this means that choosing the right medium to advertise a product is almost as important to success as the content of the advertisement itself. In contrast to the growth of the many other advertising channels (both print and non-print), paid-for weekly titles are falling in number and in circulation. For a local newspaper publisher to flourish in this environment, it must invest, innovate and diversify into other media.

Category advertising

80. Advertisers in London are not homogenous purchasers. They have different requirements, depending on what is being advertised. They have different priorities in how they reach readers - the ultimate consumers of the products being advertised. Such priorities include when to advertise (seasonality), where to advertise and in which medium to advertise.

Dynamism of the market

81. Local advertising markets are dynamic; they change quickly and constantly, and will continue to do so. This reflects the growth and change in London - its demographics, ethnic/cultural mix, economic development and the mobility of its population. It is shown partly by publications such as Avenues attracting advertising revenue away from traditional weekly titles such as the *Hampstead and Highgate Express* (*Ham & High*) series (as discussed in greater detail later). It is also shown by a simple comparison of the choices available to an advertiser even 10 years ago, and those available to the same advertiser now. This point is central to an understanding of local advertising markets, yet was not recognised in the CC Report and OFT Decision. Advertisers can reach their target audiences through many media that can now be launched cheaply and quickly. To survive in this dynamic environment, a print publisher must charge a competitive price and innovate (for example, through new launches in print or new print media) or face the erosion of its position. A few examples serve to illustrate these points.

82. A local motors dealer would, ten years ago, have had to advertise in one or more local paid-for newspapers. Now the same advertiser can also advertise in Auto Trader (print and web), *Auto Express* (print and web), *Auto Exchange* (print and web), *Auto Mart*, the *Evening Standard*, free pick-up motors publications (distributed through supermarkets and petrol stations), and internet sites (which as they are searchable by location have no territorial definition).[28] The cars being advertised in these publications and sites are the same for each 'media' with exactly the same consumer proposition.

---

[28] The significance of such publications is illustrated by the fact that *Auto Trader* alone is understood to have revenues of some £250 million, which suggests that some £30-40 million is attributable to the M25 area. In comparison, the Archant/INM combined motor advertising revenue in London in 2003 was only £[CONFIDENTIAL].

83. Similarly, a property advertiser in the *Ham & High*, who advertises in the glossy property publication carried by the newspaper, has alternative outlets in newsprint advertising from competing newspapers, property newspapers, and glossy property advertising in lifestyle and property magazines, as well as publications and websites owned by the estate agent consortia, such as *Fabric, London Insights and Prime Location.*

84. A property advertiser using a newspaper will regard a property-only advertising publication as an effective substitute but will not regard as an effective substitute a newspaper that carries very little property advertising. Property advertisers clearly prefer to be 'where the market is' although they are prepared to negotiate lower rates with other publishers as a trial and may then migrate the market.

85. Some estate agents have themselves become media owners. *Fabric* magazine is owned by 49 estate agents (Reap), which are all shareholders and is delivered once a month free to 80,000 homes in the Archant circulation area. Goldschmidts and Howland, another property agent, publish their own quarterly magazine called *London Insights,* a paid for title which is distributed free in some areas. This lifestyle magazine is widely available to buy in the *Ham & High* circulation area. *Prime Location* is another example of an alternative advertising channel (in this case a web-site and magazine) owned by a group of estate agents.

86. Many of the free newspapers now published by the major publishers were created by low cost base entrepreneurs to compete with main publisher paid-for weeklies. Having dented the revenues and profitability of the relatively high cost base main publishers, these free titles were then sold by the entrepreneur to either the incumbent main publisher or a competing publisher where the titles were given further investment and generated enhanced competition.

87. The start of a similar trend being developed can be seen in the area of free pick-up publications which now compete with paid for and weekly newspapers. Ian Fletcher, who set up the *Yellow Advertiser* titles (which are now owned by Trinity and are strong in the east of London) is the driving force behind *Job Opportunities*, a free pick-up recruitment publication distributed in the areas in which Archant/INM publishes.

<u>The role of non-JICREG publications</u>

88. In this section we describe the alternatives for advertisers to local newspapers included in JICREG.

Non-JICREG Newspapers

89. The evidence presented here and in response to the market questionnaire shows that the extent of competition for advertising revenue provided by printed media not included in JICREG is far greater than the CC previously allowed for. This can be shown principally in two respects. First, as we discuss above,[29] it is unsafe to draw conclusions about the degree of competitive constraint from a survey report that was based upon a flawed methodology. Furthermore, it is similarly unsafe to dismiss competition from advertising-only publications as a whole when only a few of these are owned by the local newspapers with which they compete, but the vast majority of those which provide the strongest competitive constraint are owned by other publishers, or are independently owned. Secondly, and more importantly, JICREG is at best only a starting point for the analysis of local markets that must be supplemented by other titles that are not within JICREG only because they are new launches, because they have not subscribed to JICREG, or because they are not regarded by JICREG as newspapers, despite including editorial.

90. Key local newspapers (all with editorial content) but which are not included in the JICREG database include:

Newspaper	**Publisher**	**Estimated Circulation**
Islington Tribune	Camden New Journal	20,000
Docklands News	Docklands Media	80,000
Avenues	Avenues Publishing Company	82,000
City and Islington News	Terry Humphries	25,000
Essex Enquirer, East London Enquirer	Essex Enquirer Limited	120,000[30]
Newham Magazine[31]	Newham Council	110,000
East End Life	Tower Hamlets Council	68,700

[29] See Paragraph 59-65

[30] Readership

[31] Fortnightly

Hackney Today[32]	Hackney council	108,000

These are competing titles, which, together with the JICREG titles, allow for more accurate measurement of a market based on local weekly paid-for and free newspapers (although as noted above, the reality of competition in local areas means that the market should be more broadly defined). Their inclusion requires the exercise of judgement as to what is a newspaper. It seems reasonable to regard a local authority publication which combines local news and editorial with local advertising as to all intents and purposes a newspaper and somewhat arbitrary to exclude the *Newham Magazine* solely because it is published in magazine format. A publication like *Avenues*, which is in newspaper (or newspaper supplement) format and combines editorial of local interest with advertising (mainly, but not exclusively relating to property) can also reasonably be regarded as a newspaper.

91. Local authority newspapers have a similar effect on consumer time to free newspapers and therefore provide competition to both free and paid-for newspapers in the territories in which local authorities publish such newspapers. The objective of the local authorities who publish such titles is to create publications which have the same editorial values as a local newspaper rather than to act purely as a local authority information sheet. In this way, they develop readership.

92. The main effect on advertising of local authority newspapers, to date, is in public job advertising and public notices: local authorities seek to reduce their external expenditure on media by using their own communication channels for recruitment (they are increasingly using their own web portals for the same purpose). Archant estimates its local authority recruitment revenue in the London businesses to be approximately £[CONFIDENTIAL] (excluding INM titles).

Other local publications

93. Specialist advertising titles and local lifestyle and specialist magazines provide the greatest level of competition for paid-for and free local weekly newspapers. Magazines and specialist category newspapers satisfy much of the functional content requirements for consumers/readers and create a competitive pressure on sale and readership of paid-for and

[32] Fortnightly

free local newspapers. The growth of these publications is one of the reasons for the decline in circulation of all paid-for local newspapers.

94. Magazines and specialist category newspapers have built a significant market share of category-based advertising in the main category markets of recruitment, motors, property and private general advertising in local areas. This can be shown by one example. A consumer seeking to buy a used Ford Focus will be able to find many matching cars in different publications. On one recent day, these matching cars numbered, in different publications: 21 in Archant's *Ilford Recorder*; 23 in *Auto Express*[33] within a 3-mile radius of E12 (an equivalent area to the *Recorder* circulation area) and 163 within an 11-mile radius (the average distance people travel in London to purchase a car[34]), 53 in *Auto Exchange* within 5 miles of the centre of Ilford and 8364 within a 10-mile radius and at least 230 in the *Auto Trader* web site within a 3-mile radius.[35]

95. A significant recent development is that of free pick-up titles covering specific categories of advertising. It is estimated that there are 43,000 copies distributed through supermarkets and garages in the three areas of London under consideration. These compete directly for local job, property and motors advertising.

Regional newspapers

96. Daily Mail Group's regional newspapers, the *Evening Standard* and *Metro*, provide competition for all local newspapers in certain categories of advertising such as recruitment, property and new cars. The effectiveness of this competition has improved with the introduction of related web activity, which allows the advertising to be presented to readers/users at a much more locally defined level. In certain categories and certain local areas, The *Evening Standard* already provides effective competition for local paid-for or free newspapers. It reduced its rate for recruitment advertisements for businesses outside the central London area, a move specifically targeted at businesses using local newspapers, particularly for recruitment advertising. Moreover, advertisements for new cars, which used to feature prominently in Archant titles, have disappeared and many are found instead in the *Evening Standard* and in specialist publications such as *Auto Trader*.

---

[33] Dennis Publishing

[34] Analysis by Future Foundation

[35] The different radii chosen for this research reflect the alternative search options on the respective web-sites.

National newspapers

97. National newspapers, in print and web, compete for national revenues with local paid-for and free newspapers (national advertising represents approximately [CONFIDENTIAL] of Archant's London revenues). National newspapers (or national newspaper publishers) are increasingly turning to the Internet to compete in the local category advertising markets with local newspapers, for example through *London Property News* (www.londonpropertynews.co.uk), owned by News International. *The Times* and *Sunday Times* compete with local newspapers for London property advertising and *The Guardian* competes for London recruitment advertising.

Leaflets

98. In retail and entertainment advertising, leaflets (that are not associated with newspaper publishers but instead are distributed by direct mail or delivery) compete with local newspaper advertising. It is not possible to assess the extent of this competition because Archant does not track it: it is worth less than £[CONFIDENTIAL] per annum (in 2003) for Archant London titles and £[CONFIDENTIAL] for the INM titles. Leaflets are, however, significant for retail and entertainment advertising in London. National retailers are increasingly focussing their marketing efforts on building up customer databases, which can be used for direct mailings (e.g. Tesco's Clubcard).

The Internet

99. The Internet increasingly constrains the ability of local and regional newspaper publishers to attract advertisers and readers. It is a rapidly changing environment. There is little clear data, but the degree of competitive constraint should not be underestimated. From both an advertiser and reader perspective, it is already a serious competitor to local newspapers in all categories of advertising. Someone wishing to buy property will often access estate agents' websites on the Internet: a survey in the UK shows that 20 per cent of househunters claim that the Internet is their primary source of information when looking for a property.[36] Government (both central and local) is switching much of its recruitment to the Internet, many major recruitment agencies operate on-line, while the existence of on-line versions of

[36] Forrester European Classified Ads Cross Channel Struggle December 2003.

Auto Trader as well as *Fish 4 cars* provide on-line alternatives for the motors market. *Fish 4* is a partnership of Newsquest, Trinity Mirror, Guardian Media Group and Daily Mail Group, which also carries online recruitment advertising. There is now a local version of the eBay website for London. Further information on these Internet advertising options is contained in the Presentations.

100. The threat can only increase in time. Once advertisers start switching to Internet-based advertising, a near-complete transition of advertising to web-based services can occur with staggering speed - for example, recruitment for IT jobs has moved almost entirely to the Internet and few advertisements for such positions can still be found in print. Movement of teachers' and nurses' job advertising to the Internet is anticipated. Outside the UK, *Aftonbladet*, a regional newspaper company in Norway, saw 60 per cent of motors revenue move to the Internet in a period of just five months. The likely escalation of the threat can be explained by a key feature of the Internet: the ability for national providers to reach local markets, where most property, motors and job transaction decisions are made. A consumer can just as easily find a car on-line on "*Fish 4 cars*" (http://fish4.co.uk/cars/index.html) and *Auto Trader*, as in the print version, due to the local search facility. The BBC is investing heavily in developing local web sites. It currently provides much of the competition for consumers' attention, as it covers areas of content which have traditionally been the domain of local newspapers.

101. For these reasons, the Internet is a credible present threat to local newspaper publishers such as Archant, and an even greater near-future threat.

Geographical Market Definition

102. The geographic markets of relevance are somewhat broader than the circulation/distribution areas of the weekly titles acquired and they are different for each category of advertiser. To assess the relevant market influence of each category of advertising and each title would be a substantial task, disproportionate to carry out in the context of this inquiry. The geographic market can most effectively be defined by reference to the Newspaper Society's research.

103. The CC recognised the difficulty of defining local markets. In particular, the CC Report states "local markets are far from clear or unambiguous in economic terms."[37] The OFT did

[37] Paragraph 5.25.

not make a clear finding on this. It is wrong to analyse the conditions of competition in each of the local areas of overlap, as defined by JICREG for other purposes as if these were self-contained geographic markets, insulated from the conditions of competition pertaining in neighbouring areas. The evidence presented below for each of these areas clearly supports this contention. Greater London consists of a series of overlapping areas, not distinct local areas.

Catchment areas in London by advertising category

104. The footprint of an individual title cannot constitute a relevant geographic market. Advertisers will place advertisements across a range of titles to reach the desired consumer "catchment area". The footprint of a particular local newspaper might only partly cover the advertiser's requirements, and the challenge for the newspaper publisher is to have a footprint that is attractive for particular advertisers. Larger players with scale and a range of titles across several areas have an advantage over Archant for two reasons: they can cross-sell advertising over their range of titles, and therefore individually give better coverage, and secondly, they can offer a better price to an advertiser than if the advertiser had used several titles. Several category-specific publications have done this, for example, *Auto Trader*.

105. These catchment areas differ according to both category and the individual businesses within that category. The catchment area for an estate agent might be quite different from the catchment area for a motor dealer or an employer posting a recruitment advertisement. It is illogical to treat a local newspaper footprint as a self-contained geographic market. Titles compete with other titles and publications both inside and outside their immediate circulation area for business from advertisers whose catchment area does not match any footprint. Therefore the footprint of an individual title cannot constitute a relevant geographic market.

106. The Future Foundation carried out a study for the Newspapers Society ("NS Study") where consumers nationally were asked how far they would be prepared to travel on average for various purposes. The study found that consumers will travel considerable distances for some activities (5.8m for going to a cinema, 7.9m for a restaurant, 12.5m to move house and 13.6m when they travel to work). Consumers will travel shorter distances for others (2.3 miles on average for groceries, 3 miles for a gym/health club, 3.5m for DIY/garden items and 3.9m for small electrical items). Such shorter distances are nevertheless highly significant in London as they can span the territory of a local newspaper and cover many JICREG areas. The

evidence from this study is valuable because it underlines the fact that advertising markets can be understood only by category and catchment area and not as a whole.

107. Therefore, whilst publishers of individual titles in London may try to “fit” the footprint of their publications to the catchment area of the individual advertisers in their local area, there will always be a number of advertisers looking for a wider (or narrower) footprint. This means that using the footprint of an individual title as the relevant geographic market would include a number of advertisers whose catchment areas also include other neighbouring titles, or whose catchment area more closely corresponds with that of a title with a wider footprint and who would be quite likely to switch to competing titles if advertising rates increased post-merger. The local search facility on web-sites provides another option for tailoring footprint to an individual advertiser's requirements. The footprint of an individual title cannot therefore constitute a relevant geographic market and can at most be used as an initial screening device to assess horizontal overlaps in a local area (see discussion below).

JICREG data

108. Taken in isolation, the JICREG-based circulation data, do not accurately reflect, then or now, the true conditions of competition faced by Archant. JICREG considerably underestimates the level of competition faced by Archant in each local area (see discussion above) and can therefore be used only as an initial "screening device." Its circulation and penetration data are not precise, and sometimes artificial. JICREG relies on each publisher to provide information on where its titles are circulated. It does not check the accuracy of these postcode sector breakdowns, except to ensure that they add up to the latest audited circulation/distribution figures, so publishers use their own methodology to attribute circulation volumes within each postcode sector of their titles. The earlier discussion about the origin and purpose of JICREG and its data should be noted.[38]

Individual neighbourhoods

109. The NS study clearly indicates that individual JICREG areas (e.g. Islington) are not meaningful geographic areas in which to assess horizontal overlaps since almost all advertisers based in a given JICREG area (e.g. Islington) have “catchment areas” that are wider than the specific JICREG areas. Furthermore, an analysis of market shares by

[38] Paragraph 64

circulation for an individual JICREG area does not convey any sense of the competitive constraints individual titles face. Even analysis of overlap at the level of the footprint of individual titles is unlikely to be meaningful, as relevant geographical markets are wider than this.

Competition between local newspapers and subject-specific publications

110. Whilst local newspapers focus on different advertising categories within a well-defined (and localised) territory, many category-specific advertising publications (such as *Auto Trader* for motors or *London Property News* for property) cover a wider (but still localised) territory. It is therefore impossible to define a unique geographic market that *includes* all the relevant competitive constraints a local newspaper faces, and *excludes* all the titles that are not sufficiently close competitors to be included in the relevant market.

Matching circulation area to catchment area

111. As discussed above, what really matters from an advertiser's point of view is the “fit” between the footprint offered by a particular title (e.g., the footprint of the *Ham & High* versus the footprint of the North London edition of the *Avenues*) and the “catchment area” for the advertiser (e.g., a specific estate agent). In reality, an advertiser will advertise in several titles to ensure full coverage of its catchment area. This demonstrates that local publications will therefore have to compete with publications outside its area to ensure the best "fit" with an advertiser's catchment area.

Local constraints

112. The only appropriate approach would be to identify for each local area covered by an INM division, where there is some degree of overlap with Archant’s titles (North, East and Post), the footprint of all individual titles, which, jointly with a description of the characteristics of the titles should help assess the competitive constraints faced by the individual title. This is the approach taken below in the detailed discussion of the competitive conditions in each local area where there are overlaps.

<u>Conclusions on market definition</u>

113. It is clear that for the key advertising categories - property, recruitment, motor, retail and entertainment and private and small business classified - local newspapers face a strong competitive constraint not merely from other local newspapers (including those not included in JICREG), but also from other local media and from some regional and national media.

G. Barriers to Entry

<u>METHODOLOGY OF ANALYSING BARRIERS TO ENTRY</u>

114. There are low barriers to entering the market for local printed media in specific territories in the London area. If expected profit margins increased after the Acquisition in any local area and/or for any specific advertising category, new entry would take place. As discussed above, the easiest option is for an established publisher to launch a new edition. This could be either to cover a territory neighbouring that of one of its existing titles, or to launch an entirely new title to cover a market segment (e.g. a specific territory or subject) where a profitable business opportunity has arisen. The easiest type of title to launch is the free weekly title, so extending an existing free weekly title to a neighbouring area through the launch of a new edition is possibly the least costly entry opportunity. This is supported by the recent history of entry and/or expansion of different printed media in London.[39] For a wholly new entrant a free pick-up is the easiest type of title to launch.

115. The CC considered that potential new entry would not significantly constrain the behaviour of Newsquest post-acquisition because (i) in recent years, few new local papers had entered the market in the London area, and (ii) it might be unprofitable to enter against strong and established incumbents, who might be willing to enter into a "price war" to defend their position.[40]

116. This analysis is flawed. Publishers active in the London market (and potential entrants in the London market) prefer to focus on high-growth areas (e.g. free local newspapers, subject-specific publications and web-based solutions) than trying to replicate a concept (paid-for local newspapers) with slower growth prospects. In London, paid-for local newspapers are

[39] Paragraph 5.77 of the CC Report.

[40] *Ibid*., paragraphs 5.79-5.98.

losing out to free weekly newspapers, free (and paid-for) subject-specific publications and web-based advertising.[41] It is also easier for a new entrant to approach an advertiser in London with a new proposition (e.g. a new glossy property magazine or a new web and print-based motor publication) rather than a "copycat" version of an existing local newspaper. It is a differentiated product market and, as such, an entrant is not likely to take the incumbent(s) head-on, but is much more likely to focus on particular market niches that are profitable. For instance, an entrant focussing only on the property market might focus on a local area that includes the footprint of two, three or more successful local newspapers. Here, the reaction of the incumbents is likely to be muted since only one of their major advertising categories would suffer from more intense competition. Scale can clearly be an advantage and it is notable that many category-specific publications, such as *Auto Trader*, have the scale and resources to expand dramatically and take advertising revenue away from local newspapers.

Entry through the extension of existing titles

117. The prospects for market entry by extension of existing titles depend on the policy of the individual publisher. For Archant, as a small publisher, it will depend on whether there are gaps in the product or the territory that can be filled profitably; territories that are heavily served by titles (e.g. three or more, especially if owned by different publishers) offer fewer prospects. By contrast, major publishers might have a very different approach.

118. Owing to London's geographical complexity (discussed above), the easiest way to enter the market is by extending to neighbouring areas the circulation footprint of an existing title. Archant extended the *Ham & High* from Hampstead to the Islington area first (the *Highbury & Islington Express* was launched in 1996, and to St John's Wood and Maida Vale by launching the *Wood & Vale* in January 2003). It also launched the *Tower Hamlets Recorder* in April 2003 as a new edition of the *Newham Recorder* series. This replaced the *Docklands and City Recorder* edition, which was closed and subsumed within the new Tower Hamlets edition. Archant also launched *The News* in October 2003, a free weekly that was launched as a commuter title handed out in Hertfordshire and North London (despite being denied access to stations due to Daily Mail Group's exclusive contractual rights for *Metro*). Trinity launched *The Wharf* in 1998 and its circulation area has extended; Newsquest launched *The Chiswick*, a free weekly title in March 2003.

[41] Note earlier discussion about trends away from paid-for weekly newspapers, paragraph 5.

Entry with a new title

119. Some titles are easier to launch than others. Local newspapers come in many forms; high editorial quality paid-for titles; modest or high editorial level free titles; low editorial quality free titles; category-specific newspapers such as property, recruitment or motors; or free pick-up publications of a general or category-specific nature. The cost of launching a new title varies considerably according to the type of title. Generally, most investment is required at the outset, when advertising revenues are being built up. It is possible to reduce this risk by agreeing arrangements with advertiser groups to fund initial investment. This is a model that is well tried with estate agents, who are typically given an equity interest in a publication for supporting the publication with advertising revenues during the establishment stage (for example, *Fabric*). The CC Report suggested that there was a barrier to building readership, which is true for the declining number of paid-for titles, but not for free publications. For the latter, verified readership can be valuable in the advertising sales proposition, but not essential.

120. It is easiest to launch a free pick-up title. The fixed costs (mainly staff) are low, printing arrangements are quick and simple to set up and it can generally be launched quickly because London is well-supplied with freelance editorial commission-based advertising sales people. Finding suitable pick-up points, and therefore establishing distribution arrangements, can take longer: some channels are expensive (supermarkets and petrol stations) although well established. The final time-related issue is persuading advertisers to use a publication that has not yet appeared and has no track record - heavy discounting of advertising in early issues is common.[42] However, launching a free pick-up title also requires the least ongoing investment because the title can easily achieve high visibility without the cost of home delivery. High visibility (number of copies distributed and locations of pick-up points) influences an advertiser's choice of media outlet. Exiting the market is also cheap as the fixed asset base is low. The main costs are accumulated losses, redundancy, lease and distribution costs.

121. Launching a free home delivery title is little different. The main difference is negotiating door-to-door distribution arrangements with independent distribution companies, who seek a firm contract period. Print and distribution costs are less variable than for free pick-up titles since the number of copies delivered is likely to be fixed, whereas the number of copies delivered to pick-up points can be varied, as can the number of pick-up points used.

[42] Such discounting itself can put downward pressure on the advertising rates charged by other publications.

122. Launching a paid-for weekly newspaper is harder and more expensive because of the need to *sell* the product. The product must therefore be of high quality and extensively marketed, at greater expense. This makes the introduction of new paid-for weekly titles relatively difficult and expensive and a sensible option only for a well-funded and planned launch, unless the incumbents, free and paid for are weak. Consumer trial, acceptance, and continued purchase is critical if advertising revenue is to be generated and given that typically advertising revenue represents around [CONFIDENTIAL] of the revenues of a local paid-for weekly title in the London market, sales are vital if the title is to survive. In other respects however the fixed and variable cost base is similar to the free titles. Exit costs are also low because editorial and advertising sales can be achieved at a low fixed cost and production, print, and distribution are all bought-in services.

123. Newspapers that are issued more often than weekly traditionally have a higher cost base. They need to operate a more frequent cycle, and there is less opportunity to buy in the resources required. This has changed in recent years: *Metro* has succeeded in reducing the cost of production and promotion by sharing some content across regions and developing a common brand. There are no daily local (print) newspapers in sub regions of London other than the partial regionalisation of the Standard, which is a high cost model.

124. The type of title launched will be determined by an assessment of the likely reader or advertiser demand. Where there are existing successful paid-for titles, publishers are likely to prefer free titles over paid-for ones because it could achieve a higher household penetration (although this might not mean higher readership). Where there are strong paid-for titles and strong free delivery titles, publishers would generally prefer a free pick-up publication. Mixed models are also available: titles could be delivered by a principal and a secondary distribution mechanism, e.g. paid-for, but in some areas freely delivered.

125. These points are shown by the trends in title launches. The main trend in the last ten years, particularly in London, has been the move from paid-for weekly titles to free weekly titles, and more recently, towards free pick-up publications. There is now only a limited market for paid-for weekly titles: information is provided from other sources and other media also satisfy advertiser requirements. It is to be expected that the development of the free pick-up model will erode the strength of the free delivery model, particularly in London where the market is more crowded. Consequently, with the right proposition to advertisers, it is becoming easier to enter the market.

126. It is important to note that the other major publishers of local newspapers in London are also extremely active in these newer types of print publication. This provides a substantial advantage in terms of both market entry and geographic reach. Daily Mail Group, which owns *The Evening Standard* and *Metro*, the regional newspapers, also publishes *Loot*, which contains advertising which was previously to be found only in local newspapers. Publishers of national newspapers also play a significant role in competing titles. For example, News International publishes The *London Property News*, which has its own website (www.londonpropertynews.co.uk), as well as *The Times* and *Sunday Times*, both of which have substantial property sections (including many properties in London). Guardian Media Group owns *Auto Trader* and *Ad Trader* (as well as competing with local newspapers in London for recruitment advertising in *The Guardian*).

127. The Acquisition will not increase entry barriers into any of the geographic markets under consideration. As explained earlier, entry barriers for many of the types of publication that are likely to enter the market are very low, and given the trends in the London market, such market entry is more likely to come from specialist category-specific publications. The history of recent launches of such titles shows how their entry may affect the category advertising revenues of weekly paid-for and free local newspapers, such as Archant's titles.

H. Effect of Acquisition on Competition

128. In view of the OFT's finding (paragraph 12 of their decision) that "there is no overlap between Archant and INM's Kent Division, and very limited overlap with less than a 1% increment in respect of the North West London Division" these divisions are not considered in the discussion below of local competition.

129. In their consideration of local competition the CC are also invited to refer to the analyses of local competition which are contained in the Presentations. In addition to the specific local competitors identified in the analysis which follows, it is important to bear in mind, as mentioned above, that web-sites are important competitors of local newspapers for all categories of advertising and direct mail is also important, especially in the retail sector. These factors affect all three areas discussed below.

Effect on Competition - North London

130. Before the Acquisition, Archant owned the *Hampstead & Highgate Express* series (*Ham & High*) in North London. After the Acquisition, it now owns another seven ex-INM titles in North London - the *Islington Gazette*, *Islington Gazette EC1*, *Camden Chronicle*, *Tottenham & Wood Green Journal*, *Hornsey & Crouch End Journal*, *Muswell Hill Journal* and *North London Weekly Herald*. All of these are paid-for titles except the *North London Weekly Herald*, which is free. The OFT identified three of these as overlapping with the *Ham & High* footprint - the *Islington Gazette*, *North London Weekly Herald* and the *Hornsey & Crouch End Journal*, in five JICREG areas - City, Islington, Highgate, Tufnell Park and Holloway. The OFT also cited the CC Report[43] where it identified the *Ham & High* as a strong competitor. In the City, the combined market share was found by the OFT to be 97 per cent (an increment of 2 per cent). The OFT considered that there were substantial increments in market share (over 30 per cent by circulation; over 25 per cent by readership) in Islington, Highgate, Tufnell Park; in Holloway the increment was found to be significant, at over 10 per cent. The OFT inferred that before the Acquisition, the parties represented a competitive constraint upon each other, and cited customer (presumably advertiser) concerns related specifically to the creation of a monopoly in Islington. The OFT thus concluded that the effect of the merger on competition for advertisers trying to reach readers in one or more of those areas could be substantial.

131. The OFT dismissed the likely constraint from non-JICREG newspapers, arguing that the history of entry and exit in local newspapers suggests that relying on the potential constraint may be unjustified. The OFT also found that post-Acquisition market shares would remain high in Islington (the OFT calculated a figure of [CONFIDENTIAL] per cent); they did not extend this analysis to other JICREG areas in North London.

132. The OFT also considered it significant that the number of independent publishers of local newspapers would be reduced from three to two in North London. The OFT noted that in areas accounting for 70 per cent of the *Ham & High* circulation, Archant's only competitor based on JICREG data was the *Camden New Journal*. OFT considered that pre-Acquisition, Archant, INM and *Camden New Journal* were competing profitably and that the newspapers already "enjoyed substantial price discrimination" [*sic*], which OFT argued might increase in the absence of INM as a strong second or third player. The OFT concluded that the loss of

[43] CC Report, paragraph 2.94

INM as an independent company might result in the elimination of an important competitive constraint.

133. This analysis is, flawed, for the reasons set out below. It is essential in the first place, in keeping with the market definition of the CC Report, is to include in the data set also those newspapers which, owing to the quirks of the JICREG system, are not included on the JICREG database. This leads to a somewhat more realistic appraisal of the competitive constraints to which Archant is now subject in North London. Such recalculation however, is incomplete as it does not include data for the alternative advertising channels that compete for the same categories of advertising.

Flaws in OFT analysis

134. There are four flaws in the OFT analysis. First, for reasons explained earlier, the uncritical use of JICREG data paints a distorted picture of the local advertising market. Secondly, the failure to take into account relevant competing publications in the local area understates the competitive constraints to which Archant is subject, post-Acquisition. Local newspapers have low penetration in North London, shown particularly by the *Islington Gazette* and the *Ham & High*.[44] Thirdly, the history of entry and exit into local newspapers is an unfounded argument for not including non-JICREG titles and imposes an artificial discrimination between newspapers that are registered on JICREG (not itself a prize for longevity in the market) and those that are not. Finally, North London is not a distinct region of London where conditions of competition are homogenous. The Decision uses North London only as a convenient yet artificial way of delineating Archant and INM's activities from other parts of London, rather than as part of a real geographic market.

Who are Archant's competitors in North London?

135. Archant's titles face competition particularly in the property category from newspapers and specialist publications that are putting severe pressure on Archant's property revenues in North London. This fierce competition is set to continue: in February 2004, *Prime Location*, another specialist property publication with 52 pages, was launched with a distributed

---

[44] It is interesting to note that these titles attract advertisers from opposite ends of the property market - the *Ham & High* attracting advertisements from the upper end of the local property market. This reinforces the impression that the key to understanding local advertising is to appreciate how category and location overlap.

circulation of 90,000 copies. Meanwhile, Loot has for some time provided steady pressure for property advertisements. *London Property News, Hot Property Local, Evening Standard, Metro* and *The Sunday Times* are all also regarded as major competitors of Archant for property advertising in North London.

136. Property advertising is of overwhelming importance in North London, whereas there are fewer motor and retail advertisers.

Conclusions on Competition in North London

137. The inclusion in the share of supply tables of non-JICREG newspapers alone reduces very significantly the combined shares shown by JICREG data. The combined share in the *Islington Gazette* area falls to [CONFIDENTIAL]% and in the *North London Herald* area to [CONFIDENTIAL]%, with increments of [CONFIDENTIAL]% or less. In the Islington JICREG area, the share falls from 100% to [CONFIDENTIAL]%. These data alone should be sufficient to eliminate the possibility of SLC in North London and when account is taken of the many non-newspaper competitors in North London for all categories of local advertising, it seems clear that any SLC would be highly unlikely. The very low household penetration of the *Ham & High* and the *Islington Gazette* and their falling circulation are also evidence of their competitive weakness in their areas of circulation. The limited overlap between the Archant and INM titles and the likely size of the relevant geographical markets also makes SLC unlikely in this case.

Effect on Competition - East London

138. The Archant titles in East London are the *Ilford Recorder* Series, the *Newham Recorder* Group .[45] The INM titles which Archant acquired are the *East London Advertiser*, the *Hackney Gazette* and *North London Advertiser*, the *Hoxton & Shoreditch Express*, *Stoke Newington & Stamford Hill Express* and the *Stratford & Newham Express* (which comes in two editions - the *Stratford & Newham Express* and the *Docklands Express*). The *Hoxton & Shoreditch Express,* the *Stoke Newington & Stamford Hill Express* and the *Stratford & Newham Express* are free; the rest are paid-for.

139. The OFT Decision found that the transfer of both the *Stratford Express* and *Hackney Gazette* raised competition concerns, as the post-Acquisition shares exceeded the levels at which

[45] *Ham & High* circulation spills over from North London to a very limited extent.

concerns were identified in the CC Report. The OFT noted that the *Stratford Express* competed with Trinity's *The Wharf*, which had less than 10 per cent of circulation. The OFT also accepted that *Docklands News*[46] and *East London Enquirer*, two of the non-JICREG papers that Archant cited, could form a constraint - in its view limited in geographic overlap (*Docklands News*), and circulation (*East London Enquirer*). The OFT calculated that, based on an assumption of the proportion of *The Wharf* distributed within the footprint of the parties' titles, Archant's post-Acquisition share of circulation in the *Stratford Express* footprint was [CONFIDENTIAL] per cent. The OFT noted that no data was available for the non-JICREG titles and seems therefore not to have adjusted its analysis.

140. The OFT also found that the transfer of the *Stratford Express* and *Hackney Gazette* would lead to a monopoly in six JICREG areas - three where the increment was low (Bethnal Green, Hackney and Shoreditch) and three where it was significant (East Ham 20 per cent, Forest Gate 15 per cent and Plaistow 33 per cent). The OFT concluded that the transfer of the *Stratford Express* would have a substantial effect on competition for advertisers trying to reach readers in the latter three areas. The OFT noted that *Docklands News* did constrain the *East London Advertiser*, but also noted the reduction from three to two of the apparently profitable competitors in the JICREG areas of Bow, Poplar, Stepney and Whitechapel. The OFT suggested that the loss of INM as an independent company might result in the elimination of an important competitive constraint.

Critique of OFT analysis

141. This analysis is also flawed. First, it is not realistic to delineate East London as a relevant geographic market, for the reasons discussed earlier. Secondly, the OFT analysis is based on the fallacy that the JICREG data accurately portray the competitive landscape in London. In particular, there is a contradiction between accepting the competitive constraint that may be imposed by a non-JICREG title and ignoring such constraint for the purpose of market share analysis, when such market share analysis is then used as evidence of market power. By contrast, the competitive landscape is much richer in East London, which leads to the conclusion that the Acquisition does not give Archant a position of market power.

[46] An independently published free newspaper created to serve the inhabitants of the former Docklands Development Corporation area.

142. In considering East London, it is important to bear in mind the rapidly changing character of the area. The transformation of Docklands, the extensive residential development of several parts of the area and the investment in regeneration in the Stratford area (in connection with the Channel Tunnel Rail Link station and the Olympic Bid) all create new markets for advertisers in the area and provide clear opportunities for new market entry by local advertising media. The Stratford area in particular is open to attack from publishers who have titles in surrounding areas.

Who are Archant's competitors in East London?

143. Archant faces numerous competitors in East London for all major categories of advertising.

In addition, as in other areas, Archant faces competition from other media (e.g. leaflets, direct mail, local radio and cinema for retail advertising).

Conclusions on Competition in East London

144. The only appreciable overlap between Archant's existing titles and INM's East London Division is in the circulation area of the *Stratford & Docklands Express*. The combined share of supply in this area falls to [CONFIDENTIAL]%, when non-JICREG newspapers are included, due to the presence of *Docklands News* and *Newham Magazine*. Furthermore, the number of major competitors for all major categories of advertising in East London demonstrates that there will be no SLC in this area as a result of the Acquisition. Moreover, as has been conclusively demonstrated above, the circulation area of a single title, such as the *Stratford & Docklands Express*, cannot represent a distinct geographical market, in view of the distances Londoners are prepared to travel for their purchases, work and entertainment. Other publishers in surrounding areas would have every incentive to enter the area if Archant sought to raise prices.

<u>Effect on Competition - the Post Series</u>

145. The Archant titles that circulate in the Post Series' footprint are the *Romford and Havering Post* (free, circulation 53,586), the *Romford Recorder* (paid-for, circulation 30,402), the *Havering Herald* (free, circulation 54,395), the *Ilford & Redbridge Weekly Post* (free, circulation 64,488) and the *Ilford Recorder* (paid-for, circulation 17,760). The ex-INM Post

Division titles are the *Barking & Dagenham Post Series*, the *Barking & Dagenham Post Weekender*, the *Ilford and Redbridge Post* and the *Romford and Havering Weekly Post*.

146. The OFT found that the acquisition of both the *Barking and Dagenham Post* and the *Romford and Havering Post* created a share of circulation and readership in excess of 60 per cent (increment approximately 10 per cent) with more than 80 per cent of each title's circulation in JICREG areas where the post-Acquisition share of circulation exceeded 50 per cent. The OFT expressed concern at the reduction from three to two competitors in several JICREG areas - Archant and Trinity in 10 JICREG areas within the footprints of the *Barking and Dagenham Post* and the *Romford and Havering Post*, and three JICREG areas in the footprint of the *Ilford and Redbridge Post*. OFT therefore concluded that existing levels of price discrimination might increase.

Critique of OFT Decision

147. The OFT Decision is based on a flawed analysis of the market and of the competitive constraints faced by Archant post-Acquisition. First, the relevant geographic market is not delineated and is likely to be wider than the circulation area of the Post titles. Secondly, as before, the OFT's analysis is based on the fallacy that the JICREG data accurately portray the competitive landscape. Thirdly, other newspaper publishers are active in the Post area (notably Essex Enquirer and Newsquest). Fourthly, the competitive landscape in the Post area is very rich, as is shown below. Fifthly, Trinity Mirror is a very large and powerful competitor and the Post series operates in the heartland of Trinity Mirror's *Yellow Advertiser* series.

Who are Archant's competitors in the Post area?

148. In the Post series' area, there is vibrant competition from local newspapers and alternative advertising channels.

As in other areas of London, retail advertising has migrated to other media, such as local radio, cinema and leaflets/direct mail.

149. As with North and East London, the strength of competition exercised by alternative advertising channels is tangible.

Conclusions on Competition in the Post Area.

150. Although the combined shares of supply of Archant's titles in the Post series circulation areas following the Acquisition remain relatively high (see Appendix 7C), Trinity Mirror remains a strong competitor throughout the area with a very well-established series of titles. The *Essex Enquirer* is present, as is Newsquest in part of the area and Daily Mail Group's local titles are nearby. There is therefore no realistic danger of a duopoly arising in this area. Furthermore, the sheer number and strength of the competitors for Archant's advertising revenues in this area make it inconceivable that there could be an SLC in the Post area as a result of the merger.

<u>Conclusions on competitive effects</u>

151. The Acquisition is pro-competitive: it will increase competition between publishers for advertising revenue, and create the potential for new titles to be launched and improvements to be made to existing titles (e.g. pagination, more flexible advertising packages including volume discounts over a broader area, and lower fixed costs). Scale is the key for Archant to be able to compete more effectively.

152. Without the Acquisition, Archant remains a weak player in London compared with publishers not only of other local newspapers, but also of the other titles now available in London. After the Acquisition, it is still smaller than Newquest, Daily Mail Group and Trinity Mirror, and substantially smaller than publishers of many category-specific titles such as *Auto Trader*, the revenues from which far exceed Archant's overall revenue.

153. In each local area, and for each category of advertising, there is fierce competition, provided in each case by at least one significant competitor. This is a differentiated product market: different players compete to "match" advertisers and readers by constantly offering new products to generate more targeted advertising opportunities to advertisers. To define the market narrowly, thereby excluding titles such as *Avenues*, *London Property News*, *Loot* or *Auto Trader* (to name but a few examples) make no economic sense: the latter two titles sell the same product to advertisers (often with a bigger footprint to offer) as local newspapers.As a result, whilst calculating the market shares of local weekly paid-for and free newspapers, regardless of whether or not included in JICREG, paints a less unrealistic picture of the markets, it still underestimates the degree of competition faced by Archant after the Acquisition.

154. Central to the analysis is the unique nature of London advertising, and the speed with which it has evolved in the last ten years. London is unlike small towns, where the advertising catchment area and the local newspaper footprint match. In London, publishers compete to offer the most attractive advertising package for the different catchment areas of different category advertisers. That is why in London, many alternative advertising channels compete with local newspapers: they are selling the same product to the same people. The speed with which London has evolved, away from any resemblance with small towns in the U.K., towards an unstable and fragmented media environment, belies the notion that local newspapers can exercise any form of market power.

I. The Counterfactual

155. The appropriate counterfactual in this case is not the conditions of competition that prevailed before the acquisition, but those that would have resulted from the sale of the business to another buyer.

156. In considering the counterfactual, the CC should take into account likely and imminent changes in the structure of competition in order to reflect as accurately as possible the nature of rivalry without a merger. Relevant circumstances include where a firm is about to enter or exit the market. It is clear from the circumstances of the Acquisition that the proposed exit from the market of INM is one such circumstance. It is not realistic to suppose that these titles would not have been sold, and therefore that situation is not an appropriate counterfactual. The CC should have regard to the actual effects on competition of the counterfactual in considering the SLC test in relation to the Acquisition.

J. Customer benefits

157. Archant's acquisition of INM titles has given it the ability to offer greater choice of and better value advertising packages. Archant can now seek to improve the quality of its products and its customer service. These improvements it can achieve by investing in better production and finishing equipment. For example, it is important to be able to offer quality colour printing to advertisers, as poor quality production, such as picture and description mis-matches, greatly weaken the attraction of a title for an advertiser. Archant will also be able to invest in online automated systems, which will be easier for advertisers to use and also help alleviate particular production difficulties. At the same time, Archant can direct investment into specific titles.

158. The Acquisition will also give Archant the scale it needs to compete more effectively in London. A stronger and more competitive Archant will be better able to serve the evolving needs of its advertiser customer, but also bring higher quality products to its readers.

K. Conclusions

Conclusions on SLC

159. The dynamic competition amongst local newspapers and between newspapers and other publications would prevent Archant from profitably raising prices to advertisers, reducing product quality or reducing innovation after the Acquisition. Product repositioning and/or new entry in localised territories by competing publishers (possibly already active in neighbouring areas) would defeat any attempted price rises and restore competition in the market.

160. The Acquisition represent a very different change in the market from that considered in the CC Inquiry. Last year the INM titles were to be bought by a major regional and local newspaper publisher, itself owned by a major US corporation. Newsquest is the second largest publisher of London regional and local newspapers. By contrast, Archant is a small, family-owned UK regional and local newspaper publisher, that is dwarfed in size by Trinity, Daily Mail Group and Newsquest in London, and most of its business is based outside London. On the supply-side of the market the Acquisition would increase competition among publishers active in the London market. The pace of change in the market over the past year cannot be ignored.

161. Finally, in this case the areas of competitive overlap (parts of East London (inner and outer) and the Highbury & Islington area) are quite different from those in the Newsquest/INM inquiry (Kent and the Hornsey area) and must be looked on afresh.

Fierce rivalry continuing after the Acquisition

162. The Acquisition does not raise any concerns about increases in concentration in the hands of the larger local newspaper publishers or the clustering of titles of such publishers in certain areas: these were concerns in previous CC inquiries. The Newsquest/INM deal would have further strengthened the duopoly between Newsquest and Trinity in the supply of local

newspapers in the Greater London Area, whereas the Acquisition would address these concerns by creating a fourth strong player in the supply of local/regional newspapers in the London area Even after the Acquisition, the other regional players would still have a scale exceeding Archant's by between three and five, in terms of both circulation and revenue.

163. More precisely, Archant will still be considerably smaller than both Newsquest and Trinity in London, with a market share of circulation of Greater London weeklies/Sundays of 17.9 per cent., compared with 35 per cent. and 44 per cent. for Newsquest and Trinity, respectively (based on JICREG data). In the UK as a whole, Archant's position is even weaker, with an increase in share to approximately 4.6 per cent.

164. Archant's major competitors in the London area include Trinity, Newsquest, Daily Mail Group, Guardian Media Group and UBM which are very sizeable players with interests not only in local newspapers, but also in many of the specialist category-specific publications that draw so much revenue away from Archant titles. They have the scale, financial resources and skills to compete with Archant throughout London. All of these publishers have large operations in the London area and could exploit economies of scale and scope to launch new titles and/or extend their existing titles to new territories.

165. In many respects, rivalry will increase in the capital, as Archant will be a significantly more effective competitor across London as a whole as it can take advantage from the synergies arising from the Acquisition.

No SLC

166. The analysis above shows that the Acquisition does not create a relevant merger situation because neither the turnover nor the share of supply tests are met. Even if a relevant merger situation has been created, it has not resulted, and may not be expected to result, in a substantial lessening of competition. This is clearly shown by the vibrant competition that Archant faces for advertising revenue in all geographic areas, and across all categories of advertising. It follows that the Acquisition would not lead to an SLC.

1st June 2004

Appendix 1

GLOSSARY OF TERMS USED IN THIS SUBMISSION

ABC	Audit Bureau of Circulation Ltd: ABC publishes circulation data for paid-for newspapers, and VFD distribution data for free newspapers
Acquisition	The completed acquisition by Archant of INM's London regional newspaper business and titles, comprising the North London, East London and Post Divisions, completed on 11th December 2003, and the North West London and Kent divisions, completed on 30th December 2003.
Advertising-only Publications	A publication consisting wholly or mainly of advertising and having either no editorial content or a very limited amount (under 10 per cent), often relating solely to the subject matter of the advertisements.
Archant	Archant Limited
CC	Competition Commission
CC Inquiry	The CC's inquiry into the proposed acquisition by Newsquest of the London regional newspaper business of INM
CC Report	The CC's report into the proposed acquisition by Newsquest of the London regional newspaper business of INM
Circulation	The average number of copies of a paid-for newspaper sold per issue.
Classified advertising	Newspaper advertisements grouped by subject and published in a continuous section of a newspaper, often towards the back or in a supplement.
Display Advertising	Newspaper advertisements designed to attract attention by illustrations, graphics and large type and contained within the

	editorial section of the newspaper (sometimes referred to as 'run-of-paper' ROP)
Distribution	The number of copies of a free newspaper distributed within a defined geographic area, as certified by VFD (which is operated by ABC).
EA 2002	The Enterprise Act 2002
Footprint	A geographical area. For local publications, including local newspapers, this is the area in which the title circulates. For advertisers, this is the target area of readers/consumers.
INM	Independent News and Media PLC
JICREG	Joint Industry Committee for Regional Press Research
OFT Decision	The decision by the Office of Fair Trading dated 29th April, 2004 referring the Acquisition to the CC
Household Penetration	The percentage of households in a given area receiving a particular newspaper.
Pick-up	A free newspaper available for readers to collect at supermarkets, newsagents, dump-bins, stations or other locations
ROP	Run of Paper (mainly retail/entertainment advertising)
SLC	Substantial Lessening of Competition
VFD	Verified free distribution, an accepted industry standard operated by ABC for certifying the validity of net free distribution for newspapers made available within a defined geographic area
Yield	Commonly-used measure of realised advertising revenue, generally quoted in £ for single column centimetre (£/scc)

Appendix 2

List of Archant's newspaper publications before the Acquisition

Daily Newspapers

East Anglian Daily Times
Eastern Daily Press
Evening News
Evening Star

Paid-for Weekly Newspapers

Beccles & Bungay Journal
Buchan Observer
Cambridgeshire Times Series
Dereham & Fakenham Times
Ellon Times & East Gordon Advertiser
Ely Standard Series
Exmouth Journal Series
Fraserburgh Herald
Great Yarmouth Mercury
Green Un
Hampstead & Highgate Express Series
Hunts Post Series
Ilford Recorder Series

Lowestoft Journal
Newham Recorder Series
North Norfolk News
Pink Un
Romford Recorder Series
Sidmouth Herald
The Royston Crow Series
Welwyn & Hatfield Times Series
Weston & Somerset Mercury Series

Wisbech Standard

Free Weekly Newspapers

Ayrshire Extra (formerly Ayrshire Leader Series)
Bearsden, Milngavie & West End Extra
Diss Mercury
Dunmow Broadcast & Recorder
Exmouth Herald
Glasgow South & Eastwood Extra
Hamilton Extra
Havering Herald
Herts Advertiser Series
Herts & Essex Herald Series
Hunts Post
Midweek Herald
Motherwell Extra
North Devon Gazette & Advertiser
North Herts Comet Series
North Somerset Times
Paisley & Renfrewshire Extra
Saffron Walden Reporter
Stevenage Herald
The Advertiser – Ipswich edition
The Advertiser – North Essex edition
The Advertiser – North Norfolk edition
The Advertiser – Norwich edition
The Advertiser – South Norfolk edition
The Advertiser – Suffolk edition
The Advertiser – Waveney edition
The Advertiser – Yarmouth edition
Thetford & Watton Times
The News
The Wee Buchanie
West Suffolk Mercury Series
Wymondham & Attleborough Mercury