

26/04

7 June 2004

INQUIRY INTO THE ACQUISITION BY ARCHANT LIMITED OF LOCAL NEWSPAPERS PREVIOUSLY OWNED BY INDEPENDENT NEWS & MEDIA PLC

Statement of issues

The Competition Commission (CC) has today published an issues statement as part of its inquiry into the acquisition by Archant Limited (Archant) of local newspapers previously owned by Independent News & Media plc (INM).

This inquiry, which was referred to the CC on 29 April 2004, has focused, so far, on gathering information, views and evidence. As a result, a number of issues have been identified. This statement will form the basis of a hearing with Archant, at which it will be asked about the acquisition and its likely effects. The CC is seeking to establish whether there will be a substantial lessening of competition as a result of the acquisition. As part of that process, the CC will:

- assess the competitive effects of the merger;
- define a relevant market or markets;
- compare future effects with what would have been likely to have occurred, had the merger not taken place (the counterfactual); and
- consider any customer benefits that might arise from the merger.

If the CC finds that there is, or may be expected to be, a substantial lessening of competition, it will consider whether any remedies are necessary. Should it find that they are, the CC will issue a remedies statement. The CC is required to publish its report by 13 October 2004.

The newspapers in question are 27 weekly titles—some paid-for and some free—all of which are published in and around London.

This issues statement is designed to highlight matters that have been identified for further consideration. It is being made public to give interested parties the opportunity to bring to the CC's attention any further points that they wish to raise. The CC has reached no conclusions about whether the acquisition has resulted, or may be expected to result, in a substantial lessening of competition; and will not do so until after it has discussed these issues with the parties concerned.

Anyone wishing to comment on any of the issues set out below is requested to do so by Tuesday 15 June 2004 in writing to:

Inquiry Secretary (Archant/INM merger inquiry)
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

or by email: Archant.INM@competition-commission.gsi.gov.uk

The CC will continue to gather evidence in this inquiry and will publish its provisional findings according to the administrative timetable available on the CC's web site (www.competition-commission.org.uk).

Notes for editors

1. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million (see OFT Press Release PN 06/04).
2. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
3. The Communications Act 2003 gave the OFT powers to look at relevant newspaper mergers in the same way as any other relevant merger under the Enterprise Act 2002. Prior to its introduction, assessment and decisions on newspaper mergers was the responsibility of the Secretary of State for Trade and Industry.
4. The CC investigated and reported on the proposed acquisition of the same titles by Newsquest (London) Limited under the Fair Trading Act 1973 regime for newspaper mergers. Its report, *Newsquest (London) Limited and Independent News & Media PLC: a report on the proposed transfers*, The Stationery Office, Cm 5951, was published on 21 October 2003. See the DTI press release dated 21 October 2003 at www.dti.gov.uk.
5. Details on the OFT's decision to refer are available on their web site at <http://www.of.gov.uk/Business/Mergers+EA02/Decisions/Clearances+and+referrals/Archant+Limited.htm>.
6. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its web site at: www.competition-commission.org.uk.
7. Enquiries should be directed to Francis Royle on 020 7271 0242 or Rory Taylor on 020 7271 0398 rory.taylor@competition-commission.gsi.gov.uk.

ISSUES STATEMENT

The issues that the CC intends to consider are:

The competitive effects of the merger

(a) Whether the acquisition is likely to affect competition in any of the markets identified, and, in particular:

- the extent to which Archant and INM competed, before the acquisition, for customers wishing to advertise—whether for all, or for different categories of, business—in localities in London (or more widely); and
- whether the acquisition can be expected substantially to lessen that competition;
- whether, on the other hand, the strengthening of Archant’s position may lead to greater competition for business from advertisers;
- whether any overall lessening of competition is likely to lead ultimately to a significant
 - rise in prices, or a
 - reduction in the range, quality, or level of services offered,

for all, or at least some, customers, in the relevant markets—compared with what would otherwise have occurred;

- whether economies of scale or scope and the extent of the linkages between the individual newspapers acquired—such as common head offices, editorial staff, advertising departments, and bundled selling of advertising—makes it more meaningful to consider the effect on market shares by individual titles, by groups of titles or by publishing units;
- whether any features of the markets—such as links between local newspapers and other forms of advertising media, such as leafleting—have implications for competition;
- whether, as a result of the competitive conditions created by the acquisition in the relevant market, other UK publishers of local newspapers would be seriously weakened;
- whether any practices—such as price discrimination, predatory pricing, or bundled selling—may be expected to come into existence or be exacerbated as a result of the acquisition;
- whether other aspects of the acquisition could be expected to be to the detriment of customers or competitors; and
- whether any potential for a substantial lessening of competition resulting from the acquisition might be constrained:
 - by customers’ ability to find alternative supplies of such services locally or regionally; or
 - by their having sufficient buyer power; and
- whether as a consequence of lessening competition, following the acquisition, the competitive position of suppliers to local newspaper publishers may be affected adversely.

(b) Whether there are significant barriers to entry or expansion in the relevant markets, and whether the acquisition may be expected to raise or lower them, for example:

- whether the acquisition by Archant—rather than by one of the four larger local newspaper publishers—makes it more or less likely that Archant or the other publishers will seek to launch additional new titles in the relevant areas of London; and
- whether Archant enjoys benefits from already operating in neighbouring parts of the London area; and
- whether the likelihood of entry or expansion by smaller publishers in the relevant markets will be affected by their:
 - vulnerability to Archant responding by, for example, lowering prices to advertisers, or launching extra titles;
 - lack of economies of scale in purchasing, production and administration;
 - greater difficulty in raising finance on the same terms as larger groups;
 - dependence on other publishers for high quality colour printing; or
 - inability to:
 - offer advertising packages; or
 - pool editorial resources.

(c) Whether technological progress in related markets, such as the rapid growth of the Internet and other forms of electronic media, is likely to affect competition, and if so, how; and

whether there are identifiable trends in the development of the relevant markets that might affect competition in the future.

Market definition

(d) The appropriate definition of the relevant product markets affected by the acquisition, in particular:

- whether local newspapers can be regarded as a separate market (or a distinct segment of a market) from regional newspapers (such as the *Evening Standard* and *Metro*) or national newspapers;
- whether weekly publications can be regarded as a separate market (or a distinct segment of a market) from daily/Sunday, or paid-for publications as separate from free;
- whether newspapers face competition—for all, or for particular categories of, advertisements—from other media, such as:
 - advertising-only publications, or other publications dedicated to advertising;
 - other printed media, such as directories or leaflets;

- Internet sites;
- local radio; or
- outdoor posters; and
- whether the effectiveness of such alternatives may vary by type of advertiser;

(e) the relevant geographic markets, for example:

- the extent to which they can be regarded as local, given:
 - readers' preference for borough or more local news and advertising coverage; and
 - advertisers' targeting of local areas; or
- whether they should be seen as regional (ie London-wide) or
- national;

(f) whether, for either the relevant products or geographic markets identified:

- competitive pressures from outside the relevant markets (however defined) affect the behaviour of the parties operating within them;
- the situation in London is significantly different from that in other parts of the UK; or
- any of the factors referred to above—and, if so, to what extent—have changed in recent years.

The counterfactual

(g) What would have happened to local newspapers in the London area—and in certain localities within it—had the acquisition not occurred; in particular:

- the implications for the level of competition in the provision of local advertising in the absence of the acquisition, taking into account:
 - the possible effect on prices;
 - Archant's ability to offer wider advertising packages; and
 - other possible buyers of the business.

Customer benefits

(h) Whether there are likely to be benefits to customers from the acquisition; if so:

- what are they likely to be;
- to whom will they accrue; and
- whether they can be achieved only as a result of the acquisition.

Jurisdiction

- (i) It has also been put to the CC, not least because this is the first newspaper merger that falls to be considered under the Enterprise Act, that the question of jurisdiction also raises issues that need to be considered. Among those that have been mentioned are:
- *the significance of the two-part structure of Archant's acquisition:* the fact that there was a contract plus an option agreement entered into on 11 December followed by the exercise of that option at the end of December, so that the transfer of titles fell either side of the repeal of the Fair Trading Act scheme for the scrutiny of newspaper mergers;
 - *the timeliness of the reference by the OFT:* was the reference made within the four-month period allowed;
 - *the geographic area over which the share of supply test should be applied:* what is the 'substantial part of the United Kingdom' that is affected by the acquisition; and
 - *whether the scale and nature of the acquisition is sufficiently large to warrant investigation.*

Particular issues

- (j) The CC will consider all the issues described in sections (a) to (i) and has yet to take a view on any of them. Nevertheless, from its consideration so far, it is assuming that the issues of particular relevance will be:
- jurisdiction (i);
 - the relevant geographic area to assess and any particular features of the situation in London (the first bullet point of (e) and the second of (f)); and
 - the assessment of competitive pressure on the merged business, in relation to advertising, particularly from other newspapers and other media (the fourth bullet point of (a) and the first four of (d)).