

2 Conclusions

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The reference

2.1. On 22 November 2001 the Secretary of State for Trade and Industry (the Secretary of State) referred to the CC an application from Johnston for consent to the transfer to it of eight free weekly newspapers currently published by Trinity Mirror. Our terms of reference are set out in Appendix 1.1. The eight titles, a list of which is in the schedule to the reference, are published and distributed in and around Derby, Northampton and Peterborough. We are required to investigate and report whether any of the proposed transfers may be expected to operate against the public interest, taking into account all relevant matters, particularly the need for accurate presentation of news and free expression of opinion.

The companies involved

2.2. Johnston is a public company listed on the London Stock Exchange but with 28 per cent of its shares still owned by the Johnston family. Its business is almost entirely focused on the publishing and printing of regional and local newspapers. It publishes nearly 200 titles in Scotland, the North-East of England, Yorkshire, the Central and East Midlands and the South-East of England (see Figure 1, Appendix 3.3).

2.3. Johnston has grown rapidly in recent years, primarily through acquisitions. In particular it acquired the newspaper business of EMAP plc (EMAP) in July 1996 for £211 million, a transaction which virtually doubled Johnston's size; and Portsmouth & Sunderland Newspapers plc in 1999 for £266 million. In 1996 Johnston's turnover was £165 million and its operating profit £29 million, an operating margin of 17 per cent. By 2001 the corresponding figures were £301 million, £90 million and 30 per cent. Return on assets has been broadly stable in the last five years in the range 17 to 20 per cent (see Table 4.1). Johnston is now the fourth largest publisher of regional and local newspapers in the UK and the third largest publisher of weeklies. Moreover on 12 March 2002, shortly before we were due to report, Johnston announced that it had agreed to acquire Regional Independent Media Holdings Limited (RIM), the fifth largest publisher of regional and local newspapers, for £560 million. The acquisition is subject to approval from Johnston shareholders and to certain other conditions being satisfied. If the acquisition proceeds, Johnston will still be the fourth largest publisher of regional and local newspapers but its share will rise from below 8 to over 12 per cent.

2.4. Trinity Mirror is also a public company listed on the London Stock Exchange. It is the largest publisher of regional and local newspapers in the UK but it also has other substantial interests, notably the publishing of national newspapers. It publishes nearly 250 regional and local titles in the South-East, Midlands, Yorkshire, North-East and North-West of England, Scotland and Northern Ireland (Figure 2, Appendix 3.3).

2.5. Trinity Mirror was formed by the merger between Trinity and Mirror Group in 1999. In 2001 its turnover was £1,131 million and its operating profit was £37 million, an operating margin of 3 per cent. Return on assets was 1 per cent.

2.6. Further information on the two companies is set out in Chapters 3 and 4.

The proposed transfers

2.7. Most of the eight titles which are the subject of this inquiry were started by an entrepreneur, Mr Keith Barwell, in the 1970s and 1980s and sold in the late 1980s to Thomson Regional Newspapers Limited (TRN). They were part of a group of titles which TRN then sold

on to Midland Independent Newspapers plc (MIN) in 1993. MIN was acquired by Mirror Group in 1997, and Mirror Group in turn was acquired by Trinity in 1999. Johnston told us that it had held talks with MIN, and then with Mirror Group, about the possible acquisition of the eight titles but each time the talks had been overtaken by mergers involving the other party. The discussions which led to the current proposal began in 2000 and eventually resulted in an agreement being signed in July 2001 (see paragraph 2.9).

2.8. Trinity Mirror told us that the eight titles were part of its Midland Weekly Media (MWM) division centred on Birmingham. Their performance was financially weak and, more fundamentally, they were regarded as peripheral to the division's operations. Following the acquisition of MWM as part of Mirror Group, Trinity Mirror had much to do to improve the division's performance and integrate it into the rest of the group. It had decided that the eight titles did not have a priority call on scarce management resources and should therefore be sold.

2.9. Two of the titles are published from Trinity Mirror's Derby publishing centre, four from its Northampton centre and two from its Peterborough centre. Trinity Mirror said that it had not conducted an open auction for the titles because it did not expect much interest in them given their marginal financial performance. Instead it had opened discussions with Johnston, which already published newspapers in the Northampton and Peterborough areas; and with Northcliffe Newspapers Group Limited (Northcliffe), a subsidiary of Daily Mail & General Trust PLC (DMGT), which published in the Derby area. Trinity Mirror expected that, since these were the only companies which had the potential to achieve synergies by publishing the titles from their existing centres, they would be able to offer a higher price than anyone else. Johnston had been prepared to buy all eight titles but Northcliffe was interested only in the two Derby titles. Trinity Mirror had therefore pursued the negotiations with Johnston and in July 2001 the two companies announced that they had entered into a conditional agreement for Johnston to acquire the titles for £16 million.

2.10. The proposed transfers require the consent of the Secretary of State under the Fair Trading Act 1973 (FTA). Normally a reference to the CC is required before consent is given. However, there are some exceptions to this rule. For example, if the newspaper concerned has an average paid-for circulation per day of publication of not more than 50,000 copies, the Secretary of State may give her consent without a reference. Newspapers distributed free are considered to have a notional circulation of zero for this purpose. The FTA enables a person to make an application to the Secretary of State conditional upon her being willing to grant her consent without making a reference to the CC.

2.11. Immediately after entering into the agreement with Trinity Mirror in July 2001, Johnston applied for the Secretary of State's consent to the transfer of the titles and made the application conditional on her being willing to grant it without making a reference to the CC. She could have granted her consent without a reference, as all eight titles are distributed free. In September 2001, however, having received representations from interested parties, the Secretary of State announced that she was not prepared to do so. Johnston submitted a revised application in October 2001 in the expectation that the matter would be referred to the CC. On 22 November 2001 the Secretary of State announced that she was referring the matter to the CC because of the competition issues which the transfers raised in that they would give rise to a potentially significant increase in concentration of ownership of local newspapers. In addition, a significant number of third parties had expressed concern: in particular, some advertisers had suggested the transfers would allow Johnston to raise advertising rates in certain areas.

2.12. The financial performance of the three centres from which the eight titles are published is discussed in paragraphs 4.15 to 4.24. In brief, the titles make a contribution to Trinity Mirror's group overhead costs but after allocation of all relevant costs they make a small loss, equivalent to around [§] per cent of turnover before financing costs. Their combined profitability performance has been stable in the last three years, although turnover fell by [§] per cent in 2001.

2.13. Trinity Mirror told us that the price for the sale had been negotiated as [] turnover for 2001. Several large acquisitions of regional and local newspaper groups had recently been made at multiples above three, and the lower multiple in the current case reflected the marginal operating performance of the titles. A multiple of [] would enable the transaction to be earnings neutral for Trinity Mirror and earnings enhancing for Johnston given the synergies open to it.

2.14. Johnston said that it would gain both cost and revenue synergies as a result of integrating the titles into its existing operations, [*Details omitted. See note on page iv.*]. These synergies, which are described in paragraphs 4.25 to 4.29, would not only make the transaction profitable for Johnston, it said, but would benefit readers and advertisers as a result of improvements in the titles.

Factors affecting competition

2.15. The Commission has reported on newspaper markets on many occasions over the past ten years (see list at Appendix 3.2), most recently concerning a case in which Johnston and two other leading publishers sought consent to acquire the newspapers of RIM (we refer to this as the RIM report¹). As in previous reports we look at the relevant markets in terms of competition for both readers and advertisers. We begin by considering competition between regional/local newspapers and other media before turning to competition within the newspaper sector.

Competition between media

Competition for readers

2.16. In this report we are concerned with local newspapers. The editorial content—which term refers to all the content of a newspaper other than advertisements—of local newspapers may be thought of as embracing the following categories: ‘hard news’, for example concerning council business and major local issues such as new development plans; ‘soft news’, mainly concerning local people, information about local events, entertainments and so on; and letters or other columns in which local people set out their opinions. Besides the editorial content, many readers are also interested in the advertisements carried in local newspapers.

2.17. Other media which provide alternative sources of such news and information include local radio and regional television stations; magazines; specialist publications such as guides to ‘What’s on’ and to local property markets; recorded information available by telephone; and the Internet which, we were told, is being increasingly used both to provide information and for web sites in which local news is exchanged and discussed. Overall circulation/distribution trends for regional and local newspapers show a long-term decline—although there are some niche areas of growth, principally free morning dailies in large cities and free Sunday titles—and that decline may indicate that people are increasingly looking to other sources for news and information.

2.18. Our view is that other media may provide good substitutes for some elements of the editorial content of local newspapers: this is true, for example, of the Internet web sites provided by entertainment venues. In general, however, the other sources do not represent close substitutes for readers of local newspapers, whether because they are less local, less accessible or less convenient. Thus, for example:

¹*Regional Independent Media Limited and Gannett UK Limited/Johnston Press plc/Guardian Media Group plc: a report on the proposed transfers*, The Stationery Office, Cm 4887, November 2000.

- (a) Local newspapers are typically aimed at much smaller geographical areas than most other media, and hence can provide more focused and detailed coverage of the news in their area of circulation/distribution.
- (b) Free newspapers are usually delivered to every household in their area of distribution and thus achieve very high penetration rates: hence they are likely to reach a higher proportion of households in a given area than some other media.
- (c) Most other media do not typically carry the wide range of news and information which is available in a local newspaper. Indeed local newspapers often provide the source material for some of the editorial content available through other media.

In short, anyone with a general interest in what is going on in a particular town or other locality will probably still want to read a local newspaper.

Competition for advertisers

2.19. Regional and local newspapers are heavily dependent on advertising, with on average about 84 per cent of their net revenue derived from this source (compared with only 60 per cent for national newspapers). The share of total UK advertising spend going to regional and local newspapers has declined from around 22 per cent in 1989 to around 16 per cent in 2000, reflecting the growth of other advertising media. Advertising expenditure in the economy generally, particularly on recruitment, is cyclical but the underlying trend is strongly upwards. Despite its reducing share of total expenditure, therefore, the absolute level of local newspaper advertising revenue has risen in real terms. As regards other media, the shares of total UK advertising expenditure on television, radio, outdoor posters/transport and direct mail have all increased over the past ten years or so, while the shares taken by national newspapers and consumer and business magazines, like those of local newspapers, have fallen (see Table 3.6).

2.20. Nearly two-thirds of the advertising revenue in regional and local newspapers comes from classified advertising and the rest from display advertising.¹ Recruitment is the single most important source of classified advertising, accounting for around 23 per cent of all advertising revenue in regional and local newspapers in 2000, with 13 per cent for motors, 12.5 per cent for property and 15 per cent for other forms of classified covering a broad range from articles for sale to births, marriages and deaths. Most of the display advertising is local, for example placed by retailers.

2.21. A number of other media offer alternatives, to varying degrees, for advertising in local newspapers: see paragraphs 5.131 to 5.160. The main points affecting the extent of this competition are as follows:

- (a) There are numerous publications whose content consists entirely, or almost entirely, of advertising. Some, usually in the form of ‘shoppers’, are locally-based and distributed free. They can carry a range of advertising broadly similar to that in free weekly newspapers—but generally for goods and services at a lower price level—and are either delivered door-to-door or distributed as ‘pick-ups’ in supermarkets, filling stations etc (or both). Shoppers generally achieve lower penetration rates than free weekly newspapers—those that are delivered tend to have a lower distribution—although people who pick up a copy may well have an active interest in some of the content. Other advertising-only publications may specialize in particular categories such as motors, property and recruitment. Some of these are distributed free and some have a cover price; some charge advertisers and some do not. They often cover a wider geographical area than local newspapers. Many are not delivered to homes and, as a consequence,

¹See glossary for the meaning of these terms.

they achieve lower penetration rates than local newspapers. They are more likely to be sought out by people interested in a particular purchase (or in finding a job) than by the population at large.

- (b) Other printed advertising media include directories, direct marketing, posters and notice boards. Directories, which are usually reissued only once a year, are useful for information that does not require frequent updating, such as contact details for local service providers. Direct marketing, a fast-growing sector, comprises addressed mail, favoured by financial services and mail order companies, and leaflets delivered door-to-door, which are used especially by certain types of local business such as retailers and leisure/entertainment providers. Such material is effective if the recipient is interested in the type of goods or services offered at the time it arrives but it is less likely than a local newspaper to be picked up, read and kept for a short time. Posters are used for brand-building and the advertising of particular events and as such compete with newspapers for some display advertising. However, as with several of these alternatives, they may complement rather than replace local newspaper advertising. Notice boards are used for personal advertisements, for example items for sale, and by small businesses, but have a small reach.
- (c) Radio may help advertisers in brand-building, and in the advertising of particular events and promotions, but it is clearly unsuitable for much classified advertising. This is also true of regional television, which also has a much wider reach than local newspapers and is a high-cost medium, particularly for advertisers targeting a local market (see also paragraph 2.30). Both may be complementary to advertising in local newspapers.
- (d) Internet web sites are very well suited for certain types of advertising which lend themselves to a 'search and retrieve' approach. Johnston and Trinity Mirror submitted that it was a growing threat to their business, particularly in the lucrative recruitment sector. At national level, however, the Internet is estimated to have taken only 1 per cent of total advertising spend in 2000, albeit that usage appears to be growing quite rapidly. Market research carried out for [] in 2000 showed that only 1 or 2 per cent of the readers of [] paid-for newspapers would turn first to the Internet for information on the range of items which makes up the bulk of newspaper advertising. Further, all the major publishers maintain Internet sites complementary to their local newspapers, and many offer advertisers package deals involving both newspaper and Internet placement of advertisements.

2.22. We commissioned a survey of the larger advertisers in the eight titles, and in Johnston's titles published in the same areas: see Appendix 5.4. While we recognize that the results of a survey carried out in the three areas affected by the proposed transfers will not necessarily be representative of the position in the country as a whole, we believe the survey was large enough—nearly 500 interviews were carried out—to shed some light on the general characteristics of these markets.

2.23. One aim of the survey was to find out the extent to which those advertisers—who are clearly committed to advertising in local newspapers—also use other media. While the proportion of respondents who advertise in local free newspapers was around 75 per cent and in local paid-for newspapers 85 per cent, the proportion of them using local radio was only about 30 per cent, the Internet 20 per cent and other media less than that. Only a small proportion of respondents said that they frequently switched spending between local newspapers and other media.

2.24. The median proportions of their advertising budgets which the respondents said they spent on different media were around 40 per cent in respect of local free newspapers and around 45 per cent on local paid-for newspapers. By contrast the proportions of their budgets spent on other media were only between 4 and 15 per cent (see Table 4 in Appendix 5.4).

2.25. Asked whether other types of publication were as effective an advertising medium as free weeklies, respondents' answers were as follows:

- (a) half agreed that paid-for weeklies were equally effective, with one-third disagreeing;
- (b) the proportions agreeing and disagreeing that paid-for dailies were equally effective were both around 30 per cent; and
- (c) twice as many disagreed that advertising-only publications were equally effective as the number who agreed with the proposition.

These findings are consistent with the view that advertisers tend to see paid-for weeklies as good substitutes for free weeklies; paid-for dailies less so; and advertising-only publications less so again. The parties argued that some respondents who said that they did not regard other types of publication as equally effective as free weeklies might have meant they were more, not less, effective. This is theoretically possible and may be true of some individual responses but we consider it implausible that many interviewees interpreted the question in this way. On the other hand, the broad picture resulting from these questions, as set out above, is entirely plausible.

2.26. The parties also submitted that these results were not surprising since the sample of advertisers surveyed comprised the leading advertisers in their local newspapers: by definition these were people who were convinced of the value of such advertising. In our view, however, the sample represents many of the advertisers who would be most affected if Johnston were able to increase rates after the merger. The extent to which this group of advertisers use other media, and see them as substitutes for local newspapers, is therefore germane to our inquiry.

2.27. A second piece of evidence bearing on this issue is the market research referred to in paragraph 2.21(d). The researchers asked what proportion of readers of [~~] paid-for newspapers 'turned first' to the company's paid-for weekly titles for information on particular categories of goods and services. The proportions ranged from 10 per cent in relation to new cars to 27 per cent for leisure and entertainment (see also paragraph 5.157 for more detail). There was some reduction in these proportions compared with the findings of similar research in 1997, three years earlier, although this was not true of all the categories. The question 'which medium do you turn to first' helps to illuminate the priorities of readers who are actively interested in particular categories of advertisement. Thus the results indicate that between one in six and one in four readers actively seeking information on home services, used cars, jobs, houses and flats, articles for sale, and leisure and entertainment regard local newspapers as the most important or likely source of the information they want. The results may be compared with those for usage of the Internet referred to in paragraph 2.21(d). We infer from this research that there are many local businesses which, while they may advertise in other media as well, will consider it important to advertise in local newspapers.~~

2.28. Relative prices are another indicator of whether different advertising media are seen as close substitutes. Information from Johnston showed that the yield per single column centimetre (scc) of its shopper-type publications tended to be much lower than its free weekly newspapers distributed in the same area. Johnston argued that this was because of the differences between the two types of product, and that in terms of cost per thousand copies distributed the shoppers were if anything more expensive to advertise in because of the smaller numbers distributed. Information from Trinity Mirror about its titles distributed in two areas of the UK showed that, in one area, the advertising yields of its shoppers were much lower, both in absolute terms (£ per scc) and when standardized for volume (cost per thousand) than those of its free weeklies distributed in the same area, but that in another area the shopper yields were higher. The latter situation appeared to be due to the fact that the shoppers in the area concerned were long established (ten years or more) and were substantial publications with a relatively high quality of advertising. This illustrates that shoppers can vary widely in quality.

Nevertheless we are satisfied that the absolute cost of advertising in shoppers is usually well below that in free weekly newspapers (see paragraphs 5.139 to 5.144).

2.29. This price difference, which reflects the product characteristics described in paragraph 2.21(a), supports the indication from our survey that these publications are not very close substitutes for local newspapers in the eyes of many advertisers (see paragraph 2.25). We take the view that the absolute price is important. Most shoppers exist in order to provide a medium—partly aimed at advertisers that cannot afford to advertise in local newspapers—which is low cost. Further, comparisons between free weeklies and shoppers in terms of cost per thousand copies distributed are not like for like, since free weeklies are more likely to be read. Although people who pick up copies of a shopper are likely to have some interest in the contents, it does not follow that a higher rate per thousand copies means that shoppers are more cost effective than free weeklies. If this were true, it would be hard to understand why free weeklies contain any editorial at all.

2.30. Johnston told us that the ITV franchises covering the Northampton and Peterborough areas had recently begun to offer customers the ability to advertise in particular parts of the franchise area, referred to as ‘micro-regions’, at lower prices than those applying to the franchise area as a whole. Anglia Television, for example, offered a package of 25 slots for advertising in its West micro-region, which covers both Northampton and Peterborough as well as a much wider area, which equated to £835 per 10-second slot, including the production cost. This compared with, for example, £802 for a half-page display advertisement in Johnston’s Northampton *Chronicle & Echo* and £966 in its Peterborough *Evening Telegraph*. We note that these comparisons would apply only to advertisers that wanted to take as much as half a page, and that were prepared to commit to 25 television slots, representing an outlay of some £21,000. In practice, few of the advertisers in Johnston’s titles are likely to be in this position. We believe that most advertisers in local newspapers will continue to see television advertising either as beyond their means or as being high cost in relation to their objectives.

2.31. In the light of these factors, which are set out more fully in Chapter 5, we take the view that the closest substitutes for local newspapers are advertising-only publications and, to a lesser extent, other forms of printed media. Radio and television are less direct competitors and may be seen by advertisers as complements to, rather than substitutes for, local newspapers. The Internet remains more of a potential than an actual threat; moreover some of the main Internet sites carrying local advertising are maintained by the publishers of local newspapers themselves. We believe that, for many advertisers, none of these alternatives is a close substitute for local newspapers. These advertisers are likely to have to use several alternative media at the same time in order to achieve an effect similar to advertising in a local newspaper, and this may not be practicable at all for small advertisers.

2.32. Looking at the main categories of advertiser, estate agents and motor dealers are more likely than others to have, or to be able to create, good alternatives to local newspapers, in particular because of the availability of advertising-only publications specializing in those categories, and the relative ease with which such publications can be launched. This may also be true to some extent of recruitment, but this has been a fast-growing and remunerative source of advertising for local newspapers in recent years. For retailers—the main source of display advertising—the most likely alternative to local newspapers is leaflets delivered to homes. Providers of home services (for example, builders and plumbers), and of local entertainment and leisure services, can use directories and direct marketing for some purposes but are unlikely to find these as wholly adequate substitutes for local newspapers. Public sector bodies and private individuals, though not without other possibilities for some purposes, are least likely to have good substitutes.

Competition between newspaper publishers

2.33. The market for regional and local newspapers in the UK is described in paragraphs 3.7 to 3.30, while summary descriptions of the leading publishers, and certain others of relevance to this inquiry, are set out in paragraphs 3.31 to 3.55. There has been a long-term decline in the circulation of daily and weekly paid-for titles in the UK over the past two or three decades. In the 1970s and 1980s this decline was more than offset by the growth in the distribution of advertising-funded free weeklies. Indeed this growth was to some extent the counterpart of the decline in paid-for weeklies, many of which closed, or were converted into free weeklies themselves, in the face of the competition from free weeklies.

2.34. The growth in free weeklies peaked in 1989. Since then the number of such titles has fallen by one-third and their total distribution by even more. In the same period (1989 to 2000) the number of paid-for weeklies has fallen by only 5 per cent, albeit that average circulations continue to decline (see Tables 3.4 and 3.5).

2.35. As noted in paragraph 2.19, regional and local newspapers depend heavily on advertising for their revenue. Free weeklies are almost totally dependent on this source (publishers derive modest additional income from distributing leaflets with their free newspapers). Paid-for weeklies derive 85 per cent of their revenue from advertising and the rest from sales. For paid-for dailies and Sunday newspapers the proportion of revenue from advertising is about 73 per cent. The total advertising revenue of all types of regional and local newspapers has risen in real terms from £2.2 billion to £2.4 billion between 1989 and 2000, an increase of nearly 10 per cent, despite their circulation decline.

2.36. The sector has experienced a wave of consolidation in recent years, largely as a result of acquisitions. The share of all regional and local newspapers held by the top five publishers rose from 43 per cent in 1990 to 72 per cent in 2001.

2.37. The parties told us that this process of consolidation had been caused by three factors in particular:

- (a) In the early to mid-1990s several diversified groups, such as EMAP, Pearson and Thomson, had decided to exit the regional and local newspaper business and sold out to other companies which were more narrowly focused and wished to expand their interests in the sector.
- (b) Technological developments had created both an opportunity and a need to invest in high-cost new equipment such as colour presses. Such investments could not be afforded by small companies, but could not be avoided by any publisher anxious to serve the advertising market profitably.
- (c) Partly for this reason, some smaller publishers, specializing in local newspapers, had also been willing sellers. This included a number of family-owned businesses which, for one reason or another, the family owners had decided to sell.

The parties said that they expected the process of consolidation to continue, although they thought there would always be a mixture of different sizes of firms publishing local newspapers.

2.38. There has long been a tendency for companies to publish clusters of titles in particular locations. As the ownership of regional and local newspapers in the UK has become more concentrated, the major publishers have continued to develop and enlarge their clusters of titles, whether organically or by acquisition. This tendency appears to be caused in part by economies of scale which can be achieved by publishing several titles from a single publishing centre. Economies arise in production, administration, advertising sales and in the pooling of editorial

resources. However, these economies appear to be relatively small and may not be the only driver of cluster publishing. From the evidence received, we believe a further motive for cluster publishing is that competitive pressures are likely to be less strong in areas where a publisher already has a high share of the local newspaper market, whereas the launching or acquiring of titles in areas where competing publishers are the main incumbents is less likely to be profitable, at least in the short term, because of intensified competitive pressures and the risk of market saturation. Consistent with these considerations, publishers tend not to launch titles at a distance from their existing areas of operation, nor to acquire small groups of titles which are isolated from those areas. They may, however, move into new areas by making more substantial acquisitions which can then form the basis of additional clusters of titles.

2.39. The maps at Appendix 3.3 show the areas where titles of the four leading publishers achieve a penetration of 30 per cent or more. The maps suggest that these publishers concentrate their resources in particular areas rather than spreading them more widely over the country as a whole. There are some overlaps between their respective territories but they are relatively small.

2.40. Other evidence for the existence of this tendency to focus on particular areas includes the following:

- (a) After Eastern Counties Newspapers Group Limited (Eastern Counties)¹ acquired Home Counties Newspapers Holdings plc (HCN) in 1998 it quickly sold on to Johnston the HCN titles in Bedfordshire and Buckinghamshire, areas where Johnston was already present but Eastern Counties was not.
- (b) Towards the end of the RIM inquiry the three bidders agreed among themselves that they would each acquire a package of the RIM titles. Johnston told us that these packages were designed to give the best geographical fit with the existing areas of operation of the respective groups. This plan was not implemented but that does not detract from its significance as an indicator of the publishers' strategies. Some of the RIM titles are circulated and distributed in Lancashire: Johnston told us that, if it did not acquire RIM, it was most unlikely to launch a new title in Lancashire because of the lack of synergies which could be achieved.
- (c) In the present case Trinity Mirror discussed a possible sale of the eight titles only with the two major publishers which already had titles in some of the areas concerned (see paragraph 2.9). Northcliffe was willing to buy the two titles published in the Derby area, where it is already present, but not those in Northampton and Peterborough, where for the most part it is not. Moreover Trinity Mirror's wish to dispose of the titles partly reflects the fact that they are geographically peripheral to its main operations in the Midlands, which are centred on Birmingham and Coventry.

2.41. We would expect that one consequence of the consolidation of ownership at national level, combined with the clustering of titles, would be an increase in local concentration—both in its level and in the number of individual areas affected. Trinity Mirror told us that in each of some 40 per cent of all UK postcode areas there was only one significant publisher, that is a publisher whose local titles achieved a penetration rate of 10 per cent or more. The list of these areas includes many of the larger towns and cities apart from London. In compiling this list, however, Trinity Mirror omitted a number of titles that we regard as regional.² If these were included, the number of areas with only one significant publisher would be lower, perhaps around 25 per cent. On either basis it is not possible to say whether the proportion has increased in recent years because the relevant historical data has not been retained.

¹On 4 March 2002 Eastern Counties was renamed Archant Limited.

²*Daily Record, Evening Standard, various Metro titles, Sunday Mail and Sunday Post.*

2.42. Since local newspapers exist to serve local markets, a growth in ownership concentration at local level raises important issues. On the one hand, there are potential benefits from such concentration to the extent that publishers use the economies of scale to improve the quality of their titles and provide a better service to readers and advertisers. On the other hand, the absence of direct competition from other local newspapers may—unless there is a credible threat of entry—enable publishers to raise prices to some advertisers, or reduce the incentive on them to invest in both quantity and quality of editorial content and to provide a good standard of service to advertisers. There might also be a loss of diversity of editorial standpoints if all local newspapers were in the same ownership.

2.43. We put it to the parties that publishers' tendency to develop clusters of titles and to focus their efforts in particular geographical areas might also be symptomatic of a mutual desire among major publishers to 'live and let live'; that is, tacitly to share the market on a geographical basis and avoid competing with each other head to head in the same local areas.

2.44. The parties rejected this suggestion. They said that there were numerous examples of places where major publishers were in direct competition with each other (see paragraphs 6.22 and 6.118). It appears to us, however, that these locations represent a small proportion of the total number of local newspaper markets in the UK. Further, this local competition appears generally to have resulted from acquisitions which, as a side effect, have caused one major publisher to encroach on another's territory. The existence of such areas does not undermine the proposition that there may be a general tendency to 'live and let live' among leading publishers, or that such an attitude might soon emerge if the enlargement of local clusters leads towards regional consolidation.

2.45. The coexistence of two major publishers in the same area sometimes leads to intensive competitive activity or 'battles'. Where such local battles break out, they are likely to bring significant benefits to customers. Northcliffe told us that, as a result of a current battle in Lincolnshire resulting from two acquisitions which Johnston had made there, Northcliffe had held down prices to advertisers in some towns and provided added value through improved newsprint quality and extra use of colour (see paragraph 7.56). Some such benefits may be temporary, some more long lasting. Trinity Mirror told us that some of the battles in which it was engaged had continued for several years.

2.46. As noted in paragraph 2.42, one consequence of local monopolies could be higher prices to advertisers. We have looked to see whether there is any evidence of a correlation between local concentration in newspaper ownership and high prices to advertisers. Establishing the existence of any such correlation is a difficult task because of the number of other factors which also influence prices to advertisers. The two main measures of such prices used in the industry are yields per scc, and yields per scc per thousand copies circulated/distributed (or, if good estimates exist, per thousand readers). Even on the latter basis, however, prices are likely to vary widely, for example according to the nature and quality of the individual newspapers, the amount of colour used, the extent of package deals involving more than one title, and the prosperity of the area of circulation.

2.47. We received evidence from the Institute of Practitioners in Advertising (IPA), the trade body for UK advertising agencies. The IPA said that its members handled over 80 per cent of the total amount of advertising handled by agencies, which principally comprised display advertising for advertisers seeking national, regional and sub-regional coverage. The IPA told us at a hearing that because of the economics of local newspapers it was the norm for any particular town to have only one paid-for title. The typical situation in small to medium-sized towns was a paid-for and a free title owned by the same company and another free title published by someone else. But in places where there were strong town and local monopolies in local newspaper ownership, the publishers could impose above-average rate increases in the free titles: the IPA's members paid substantially higher rates, in terms of 'cost per thousand', in such places.

2.48. We asked the IPA if it could provide quantified evidence in support of this view. Subsequently two of its member agencies compared the prices which they had paid across a range of titles published in two categories of area, determined according to whether there was a monopoly in the ownership of free newspapers. On the basis of these calculations, and the ‘feel’ of its membership in general, the IPA said that a premium of between 10 and 50 per cent in monopoly over non-monopoly areas was believed to be a fair representation of the free-sheet market as a whole, although there was massive variation by individual area. However, a number of member agencies felt that the difficulties of controlling for other variables made it impossible for them to commit themselves to any specific figure.

2.49. We have not attached any weight to the quantified evidence of the IPA referred to in paragraph 2.48. This is because, given the inherent difficulties of making such comparisons, the results derived from the experience of only two agencies and a relatively small number of areas/titles cannot be relied on to be representative. Nevertheless the IPA’s general view, recorded in paragraph 2.47, that there is such a differential is consistent with our own analysis that other advertising media are not very close substitutes for local newspapers (see paragraphs 2.19 to 2.32). The IPA’s evidence is set out in more detail in paragraphs 7.68 to 7.87.

2.50. Johnston and Trinity Mirror disputed the view that advertising rates were higher in places where a single publisher owned all the local newspapers. Trinity Mirror presented us with lists of rates which had been negotiated with various of its titles for six recent advertising campaigns booked through its national sales house. This information did not show any marked tendency for rates to be higher, in areas where the Trinity Mirror title did not face competition from other local newspapers, than elsewhere.

2.51. Johnston submitted that there was no evidence of a correlation between prices to advertisers and the level of concentration in the ownership of local newspapers. This was consistent, it said, with the view that local newspapers faced strong competition from other advertising media, as well as potential competition from new entry (see next section). Johnston presented three pieces of evidence in support of its view:

- (a) an analysis of rates paid in 2002 by two randomly selected national clients which had used Johnston’s titles in monopoly and competitive areas;
- (b) the results of a ‘mystery shopping’¹ exercise carried out by an advertising agency; and
- (c) average yields on national advertising in Johnston’s main free and paid-for titles as a whole.

None of these supported the hypothesis that local newspaper monopolies charged higher rates than titles which faced competition.

2.52. Johnston also said that, in the RIM report, the CC had looked at three sets of data and found that none of them provided a clear indication that yields had risen following earlier take-overs which might have been thought to create positions of market power.² We note that the report actually commented that, in view of the number of factors affecting yields, volatility in yields over time and limitations of the data, no firm conclusions could be drawn from this information. Johnston further argued that the IPA evidence was of little relevance to the inquiry because national display advertising accounted for only 7 per cent of Johnston’s total advertising revenues.

¹A form of market research in which the researcher represents himself/herself as a customer and does not disclose that the exercise is being conducted for the purposes of research.

²RIM report, paragraphs 2.36 and 4.99 to 4.120.

2.53. The evidence presented by the parties (referred to in paragraphs 2.50 and 2.51) is not conclusive, as they accepted, because it does not screen out the effect of other variables which affect advertising yields. Indeed there is no soundly-based evidence either way to show whether there is or is not a general tendency for publishers with a monopoly of local newspapers in particular geographical markets to charge advertisers higher rates than those that prevail in competitive areas. What we must do, therefore, is to consider in detail the facts of this particular case in order to take a view on whether prices to advertisers in Northampton, Peterborough and the other overlap areas may be expected to rise as a result of the transfer of the Trinity Mirror titles to Johnston.

Entry into local newspaper markets

2.54. The parties submitted that barriers to entry in the publishing of local newspapers, particularly free weeklies, were low, as the Commission had consistently found in previous reports on mergers in the sector. As a result, they argued, incumbent publishers were under continuous pressure to maintain standards and keep prices to advertisers at competitive levels, because failure to do so would create opportunities which entrants would rapidly seize. This was true both of challenges from other substantial publishers and those from smaller publishers and individual entrepreneurs.

2.55. Considering first the case of major publishers, these have all the resources needed for publishing newspapers already at their disposal and are well equipped to launch new titles. As discussed in the previous section, however (see paragraph 2.38), they are much more likely to do so in areas where they already have titles circulated and distributed and can benefit from cost synergies and existing relationships with advertisers. Besides the evidence from Johnston already cited, the Guardian Media Group PLC said it doubted that it could be competitive when launching from scratch in a new area where it had no existing business. In fact we have found very few examples of entry by major publishers into new areas effected by the launching of titles (see paragraphs 5.84 to 5.91 and 5.97 to 5.105).

2.56. We have no doubt about the ability of major publishers to launch new titles in areas adjacent to where their existing titles circulate. In view of the evidence we received, however, we do have doubts about their willingness to do so. Trinity Mirror told us that its policy was to launch titles in places where it already had a presence. There was no sense in its looking beyond those areas unless it could see the possibility of developing a substantial business, which would require a sizeable gap in the market offering the prospect of sustainable competitive advantage. Johnston also said that its future organic growth would almost certainly be focused on the areas where it was already present, since that was where the best returns were to be made (see also paragraph 2.40(b)).

2.57. We find this reasoning persuasive. The major publishers have grown rapidly and successfully by acquisition, and there is no reason to think that the number of potential targets for acquisitions has dried up. For substantial groups like Trinity Mirror, DMGT, Gannett and Johnston, the possibilities for organic growth through individual new title launches are modest by comparison, particularly in small local markets. It may make sense for them to launch additional titles in their existing areas of operation in order to maximize their revenues from those areas and eliminate gaps in the market which might tempt an entrant. It is much less likely to make sense for them to launch titles into areas which other major publishers regard as their own territory and which they are therefore likely to defend vigorously. As noted in the previous section, such confrontations between major publishers appear to be largely confined to areas where acquisitions have brought them together. We note that Johnston has made very few launches of new newspaper titles in recent years, and that all of them have been in areas where it already had a presence (see Chapter 5).

2.58. Johnston drew our attention to the launching by Associated Newspapers Ltd (Associated Newspapers), a subsidiary of DMGT and hence a sister company of Northcliffe, of a series of free morning dailies under the *Metro* name in places where the DMGT group had no existing regional or local titles. However, as the name suggests, these titles are aimed at large cities, not towns and smaller cities the size of those affected by this inquiry. Moreover Associated Newspapers operates the titles under cooperative arrangements with incumbent publishers in the locations concerned, so they do not represent independent new entry (see paragraph 5.65). Trinity Mirror told us that it remained to be seen whether this initiative would be viable outside London.

2.59. Johnston nevertheless argued that major publishers would be ready to launch titles into areas close to their existing operations if an incumbent were performing poorly or abusing its market position by charging excessive prices to advertisers. However, Trinity Mirror said that a neighbouring incumbent would have to be performing very badly before Trinity Mirror would be tempted to enter into head-to-head competition with it, and could not recall an occasion when it had done so.

2.60. Both parties argued that entry was more likely to come from small-scale entrepreneurs than from major publishers. It may, indeed, be the case that entrepreneurs have the advantage of a low cost base and great flexibility. They have few overheads and no inherited costs (such as property leases and employment contracts). Entry requires modest capital investment; printing and distribution can be outsourced; advertising teams can be employed on the basis that most of their remuneration is in the form of commission; and editorial content can be obtained from existing sources and/or from freelance staff. Sunk costs are low. Entrepreneurs are not under the same pressure as a plc to earn a particular rate of return as a minimum. Moreover it is relatively easy to identify dissatisfied advertisers: an entrepreneur may be able to pre-sell advertising space, or indeed to enter into a joint venture with a group of advertisers, such as estate agents, which want to develop an alternative vehicle to the titles of an incumbent publisher. Finally, entry with a free weekly does not require expenditure on marketing in order to attract readers, since the copies are simply delivered to homes. This method of distribution also enables the publisher to guarantee to advertisers that a specified penetration of households in particular areas will be achieved from the outset.

2.61. Entrepreneurs nevertheless face certain difficulties in competing with major groups:

- (a) they lack economies of scale in purchasing (notably of newsprint) and in production and administration, although we understand that many contract printers offer package deals, including the supply of newsprint at a competitive price, which might offset some of this disadvantage;
- (b) they may not be able to raise finance on the same terms as large groups: although investment costs are low, an entrant is likely to have to fund losses over an initial period, of perhaps two years, before a new title will become profitable;
- (c) they are not generally in a position to offer packages to advertisers allowing them to advertise in two or more titles at favourable rates ('cross-selling'), making their offers somewhat less attractive than those of incumbents that already own several titles in a given area;
- (d) similarly, they cannot pool editorial resources between titles in the same way as, for example, an incumbent publisher with a paid-for and a free title in the same area;
- (e) they may be vulnerable to a robust response by an incumbent publisher, who may, for example, cut advertising rates or cross-sell in a way which lowers prices for space in publications that compete head-on with the entrant; launch an additional title as a 'spoiler'; or strengthen the editorial content of its existing titles in response to entry; and

- (f) they are likely to depend on other publishers for access to high-quality colour printing (this may or may not be a disadvantage in an individual case depending on the terms available for contract printing).

2.62. The bigger and more efficient are the incumbents, and the more titles they control in the area targeted by an entrant, the greater the relative importance of these disadvantages. Thus, those noted at (c), (d) and (e) are likely to be more significant if the incumbent is the sole publisher of titles in the area concerned. It seems, therefore, that while entry by entrepreneurs into markets where the incumbent publishers are small, inefficient and fragmented may, in principle, be rather easy, entry into monopoly markets occupied by forceful and alert incumbents which already own several titles may be much more difficult.

2.63. We noted earlier that there has been a sharp decline in the number of free weeklies in the last ten years. This is likely to be in part a reaction to markets having become oversaturated as a result of the boom in free weeklies, but it is also consistent with the view that entry of free weekly titles has become more difficult than it was in the 1970s and 1980s. Trinity Mirror told us that entrepreneurs were now more likely to go after advertising revenue directly, by introducing advertising-only publications, than to launch free weeklies which required expenditure, albeit modest, on wide distribution and editorial content.

2.64. Both parties argued, however, that in some respects entry was easier into a market with only one publisher, compared with markets where there were two or more, because advertisers would be keen to cooperate with an entrant in order to create an alternative to the monopoly incumbent. Entrants, they said, were less likely to see a gap in a market already served by at least two publishers, each of whom could be expected to resist attempts to win its advertising business.

2.65. There is a difference of view within the group on this and certain other issues. We all see some force in the arguments in paragraph 2.64. But four of us¹ think that a monopoly publisher can more easily offer a portfolio of titles designed to meet the varying needs of advertisers than can competing duopolists, making it less easy for an entrant to find a niche. We four consider that a monopolist stands to lose more if there is a new entrant (because the loss of customers will not be shared), and has more scope to retaliate in different ways, than a publisher that already faces local rivals. Finally, when one of a pair of duopolists operates relatively weak titles (as is arguably the case in this inquiry), the four of us believe that an entrant may stand more chance of succeeding by displacing these titles than would be the case if they were managed by an efficient incumbent monopolist. The other member, Will Gibson, believes that the prospects for entry into areas where one publisher has a monopoly of local newspapers are no different from those in other areas.

2.66. Johnston submitted that, whatever the theoretical arguments about the ease or otherwise of entry by small, entrepreneurial publishers, what mattered was that such entry had frequently taken place and continued to do so. In particular, Johnston provided evidence about the development of two publishing groups, Local Sunday Newspapers Ltd (LSN) and Observer Standard Newspapers, both of which had been founded in the 1970s and 1980s in areas not far distant from Northampton and Peterborough and which continued to launch titles into new areas. We consider this evidence in the public interest section of the chapter.

2.67. This is an industry in which there has been a lot of new entry over the years (see paragraphs 5.72 to 5.76). Certain aspects of the way the market has evolved, however—consolidation of ownership, increasing efficiency, growth by acquisition, cluster publishing and the development of advertising-only publications—lead us to the view that the launching of new local newspapers, by publishers not already present in the area concerned, is now rather

¹At several points in the rest of this chapter the views of four members of the group—Paul Geroski (the Group Chairman), Linda Christmas, Anthony Clothier and Gill Owen—diverge from the views of the fifth member, Will Gibson.

less likely than it was. In particular, four of us believe that the prospects for entry into the territory of a strong and efficient publisher with a monopoly of existing titles are highly uncertain, and that in these circumstances local monopolies may have scope to raise prices, or reduce service levels, at least to some of their customers, without inducing entry.

The public interest

2.68. We now turn to consider the effects on the public interest of the proposed transfer of the eight titles from Trinity Mirror to Johnston. We begin by examining the effect on competition for readers and advertisers, then the effect on the accurate presentation of news and free expression of opinion, and finally the effect on employment and efficiency, before drawing our overall conclusions. Up until paragraph 2.153 we shall conduct our analysis on the basis that, if the transfers did not take place, the eight titles would continue to be run as at present. We then consider what we would expect to happen in practice if the transfers did not proceed, and whether that affects our conclusions.

Competition for readers and advertisers

Concentration at national and regional level

2.69. The proposed transaction is small in relation to the size of the regional and local newspaper sector. Its effect would be to reduce Trinity Mirror's overall share from 24.7 to 24.2 per cent and to increase Johnston's from 7.7 to 8.2 per cent.¹ This effect on concentration at national level is not material.

2.70. We considered whether there was any regional dimension to the merger's effect on the public interest, noting in particular that Johnston's share of all regional and local newspapers circulated or distributed in Northamptonshire would rise to over 95 per cent.

2.71. The parties submitted that Northamptonshire did not constitute an economic market for the purposes of the inquiry. The titles of both Johnston and Trinity Mirror that were published in the county were all local in character. Johnston told us that, of the total amount of advertising carried in its titles in the areas of overlap with the eight Trinity Mirror titles, only 5 per cent was regional. Johnston also submitted information showing that, on each of three different regional bases, several other publishers, large and small, had significant shares.

2.72. We agree that the merger raises no issue of regional concentration, as such. The merger would, however, intensify Johnston's cluster of titles in and around Northampton and Peterborough. Given our earlier analysis of entry into local newspaper markets (see paragraphs 2.54 to 2.67), we consider below whether this factor could affect entry into the areas of overlap after the merger.

Concentration at local level

2.73. Paragraphs 5.24 to 5.60 and Appendix 5.2 describe in detail the effect which the proposed transfers would have on local concentration in the ownership of local newspapers. In brief the position is as follows:

¹If Johnston's proposed acquisition of RIM goes ahead, the transfer of the eight Trinity Mirror titles would increase its share from about 12.3 to 12.8 per cent.

- (a) Two of the eight Trinity Mirror titles—the *Peterborough Herald & Post* and the *Stamford Herald & Post*—are distributed in Peterborough and in nearby small towns and rural areas. In each case the transfers would give Johnston a virtually 100 per cent share of all local newspapers circulated or distributed in the areas concerned.
- (b) Four of the titles are distributed in Northampton and in small towns and rural areas around it. In the case of two of these titles—the *Northampton Herald & Post* and the *East Northants Herald & Post* series—the transfers would again give Johnston a near 100 per cent share of all local newspapers. In a third case, Johnston would have an 83 per cent share if it acquired Trinity Mirror’s *Brackley & Towcester Post*, in a market where Gannett has a 17 per cent share. In a fourth case, Trinity Mirror’s *Harborough Herald & Post*, the transfer would give Johnston a 91 per cent share in an area where Northcliffe has 9 per cent.
- (c) Two of the titles are published in or near Derby. A transfer of one of these, the *Derby Trader*, would give Johnston a 37 per cent share of local newspapers in the relevant area while Northcliffe has 63 per cent through a free weekly and a paid-for daily. A transfer of the other, *The Trader*, which is distributed in several small towns near Derby, would give Johnston an 84 per cent share, with Northcliffe having the remaining 16 per cent.

2.74. We have no concerns about the effect on competition of the *Derby Trader* being transferred to Johnston, since Northcliffe would continue to be the leading publisher in the area concerned.

2.75. The transfer of the *Brackley & Towcester Post*, the *Harborough Herald & Post* and *The Trader* would give Johnston between 83 and 91 per cent of all local newspapers in the relevant areas. In each case another major publisher has the remaining share of the market:

- (a) In Brackley and Towcester, a free weekly published by Gannett has a penetration rate of 27 per cent and a 17 per cent share of all local newspapers circulated and distributed in the two areas.
- (b) In Market Harborough, Northcliffe’s paid-for daily *Leicester Mercury* has a penetration of 14 per cent and a 9 per cent share of all local newspapers.
- (c) In the main circulation areas of *The Trader*, three Northcliffe titles—two paid-for dailies and a free weekly—have a combined penetration of 32 per cent (though there may be some overlap between them) and a 16 per cent share of all local newspapers.

2.76. To a degree the existence of these competing titles gives advertisers wishing to advertise in a local newspaper in the relevant areas an alternative to Johnston. Brackley, Towcester and Market Harborough are, moreover, geographically peripheral to the heartland of Johnston’s Northampton publishing centre. More importantly, and consistently with our analysis of entry (see paragraphs 2.54 to 2.67), we believe that Johnston would see a real threat of expansion by the other publisher, whether by the extension of an existing title or the launch of a new one, and would be constrained by that threat in its behaviour towards readers and advertisers. This view is supported by the fact that we received very few representations about the possible transfer of these titles. We therefore believe that the effect on competition of the transfer of these titles to Johnston would not have effects adverse to the public interest.

2.77. We have therefore focused our attention primarily on the effects if the other four titles—the *Peterborough Herald & Post*, the *Stamford Herald & Post*, the *Northampton Herald & Post* and the *East Northants Herald & Post* series—were to be transferred to Johnston, giving it a virtually complete monopoly in the ownership of local newspapers in the areas concerned. The combined revenue of these titles in 2001 was £[§] million, of which £[§] million was from advertising.

Effects on readers

2.78. In this section we consider the possible effects of the transfers on the quality and diversity of editorial content in local newspapers in the areas affected. This is a separate matter from the effects on accurate presentation of news and free expression of opinion, which we address separately later (see paragraphs 2.122 to 2.136).

2.79. The parties submitted that the Trinity Mirror titles, in common with many free weeklies, carried relatively little editorial content (around 20 to 25 per cent of the total pagination). Moreover their editorial content was largely recycled from Johnston's paid-for dailies circulating in Northampton and Peterborough or was soft news of the 'human interest' kind (see paragraph 2.16). The titles did not have an editorial column and were not campaigning newspapers. The consequences of the transfers for readers could not, therefore, be a material consideration in the inquiry.

2.80. We nevertheless received a number of representations from residents of Northampton and, more especially, Peterborough expressing concern at the prospect of Johnston buying up the local Trinity Mirror titles. The thrust of these representations was twofold: first, that the local Johnston newspapers had shown political bias in favour of the Labour Party, to which the Trinity Mirror titles provided a counterbalance; and second, that there would be a more general loss of diversity of viewpoint if all the local newspapers were to be in the hands of one publisher.

2.81. We considered carefully the allegations of political bias and held hearings with some of those making them, as well as exploring the matter with Johnston. Johnston firmly rejected the allegation and provided us with numerous examples of items in the titles concerned which were critical of Labour Party policies and personnel. Johnston submitted that its editors often took a strong line on matters of local political controversy and this sometimes caused resentment among those criticized. This was particularly the case in Peterborough where support for the two main political parties was closely balanced in both parliamentary and local elections and the rivalry between them was therefore especially keen.

2.82. Having weighed the evidence, we take the view that the political coverage of the Johnston titles cannot be said to be biased in any significant sense.

2.83. In considering the second issue, we see the argument in principle that the presence of two vigorous campaigning local newspapers in a particular area, owned by different publishers, might be the best guarantee of editorial diversity. This is not, however, the situation that faces us in considering the four titles listed in paragraph 2.77, because in recent years the titles have not been given priority by successive owners. Indeed, as emerges from paragraph 2.7, they have effectively been up for sale, on and off, for five or six years. One editor, based in Northampton, is responsible for all six of the titles published from Trinity Mirror's Northampton and Peterborough centres, and the journalistic resources available to him are sparse. We were not convinced by the examples quoted to us by Peterborough Council of instances where the *Peterborough Herald & Post* was said to have taken a strong editorial line. The council noted with regret, in any event, that the title had been unable to engage in debate latterly, apparently because of reduced resources and the newspaper's uncertain future. (Trinity Mirror had a separate editor in Peterborough until 2001 but in order to reduce costs the incumbent was not replaced when he left.)

2.84. Johnston told us that, if the transfers went ahead, [

Details omitted. See note on page iv.

]. As a result it would be able to offer a better service to readers as well as a wider choice to advertisers. Each of the two [☞] free weeklies in

these areas would be likely to have a ‘content editor’ who was also on the staff of the corresponding paid-for daily. The content editor would be fully responsible for the editorial side of the titles except that matters involving possible legal implications would be referred to the local editorial director (who was also editor of the corresponding paid-for daily).

2.85. It appears to us that, with such a structure, there is less chance of the free weeklies developing as strong, alternative voices to the paid-for dailies also owned by Johnston than if the editors were completely separate from the other title. Our task, however, is to address the expected effects of the transfers: given the way the titles are currently run, we cannot say we expect that the transfers would make matters worse in this respect. (We are assuming at this stage that the titles would otherwise continue to be run as at present: see paragraph 2.68.)

2.86. Another consideration, however, is that since four of us believe that the transfers of the four titles would reduce the likelihood of new entry into the areas of overlap (see paragraphs 2.118 and 2.119), those four also consider that the prospect of new titles being launched in those areas which might provide better editorial content would be diminished.

2.87. We have therefore given attention to a more general proposition, that head-to-head competition between different publishers provides a spur which causes free newspapers in such areas to be of higher quality than those produced by monopoly publishers. We noted that most of the main awards for free newspapers given by the UK Press Gazette and The Newspaper Society in recent years had gone to titles which faced a direct competitor (see paragraphs 5.193 and 5.194). The parties argued that there were other factors which influenced the position: awards tended to go to free titles that were market leaders, which was the case in areas where there were no paid-for titles; and to go to titles published in the more prosperous parts of the country, which generated high advertising revenues and enabled good editorial content to be financed.

2.88. We are not wholly convinced by these arguments. For example, we note that the *Manchester Metro News* has twice won the UK Press Gazette award despite the fact that it could not be described as market leader in its area of distribution. Johnston’s argument that in 9 of the 12 cases we had cited the winner was the lead title for the publisher concerned in that particular market, does not encourage us to believe that a free weekly from a publisher which also has a paid-for newspaper in the same area is likely to be of outstanding quality. We suspect that competition is at least one factor that causes free weeklies in particular areas to be of higher quality than those elsewhere, and that in general readers are likely to be better served, as regards quality of editorial material, if there are local newspapers published by separate companies. Clearly there are other factors, too, however, and the evidence available is not sufficient for us to draw any firm conclusion on the matter in this particular case.

2.89. In view of the factors set out in paragraphs 2.79 to 2.88, and despite the view expressed in paragraph 2.86, we consider, mainly because of the titles’ existing weakness, that there are insufficient grounds for believing that the transfer of the four titles to Johnston would have adverse effects on readers because of the likely effects on diversity of view and quality of editorial material.

Effects on advertisers

2.90. We received representations from a number of advertisers that the transfer of the Trinity Mirror titles in the Northampton and Peterborough areas to Johnston would cause advertising rates to rise. Essentially this was because advertisers felt that they would no longer be able to play off the two publishers’ titles against each other (see paragraphs 7.96, 7.99, 7.100, 7.108, 7.119 to 7.121 and 7.131 to 7.134).

2.91. We described in paragraph 2.21 the possible alternatives to local newspapers which are available to advertisers in the UK. All these alternatives are available in the Northampton and Peterborough areas, and the parties provided specific evidence about them, including, for example, a list of some 35 advertising-only publications which are distributed in these particular geographical areas. They also cited numerous examples of individual advertisers which had removed some or all of their advertising from the parties' local newspapers in these markets in favour of other media.

2.92. Nevertheless, this evidence may be not inconsistent with our view that none of the alternatives is a close substitute for advertising in local newspapers for some advertisers. However long the list of alternatives, it is not clear that many poor substitutes add up to what is, in aggregate, a close substitute (see paragraphs 2.31 and 2.32). We have seen that, while regional and local newspapers have lost share of overall advertising expenditure, their advertising revenues have nevertheless continued to rise in real terms (see paragraph 2.35). Johnston's operating margins have also risen strongly in recent years (see paragraph 2.3) and its advertising yields in the Northampton and Peterborough areas have risen at a rate ahead of general inflation despite the competition they face from the Trinity Mirror titles (see paragraph 5.145).

2.93. A key question for us is whether, as a result of the transfers, Johnston would be able profitably to raise advertising rates for a significant period of time, by a material amount (say 5 to 10 per cent or more), to a significant proportion of advertisers. The parties denied that this would be the case. Besides their arguments about the range of competing advertising media and the threat of entry from other publishers, they submitted that:

- (a) the particular categories of advertising that form the bulk of the advertising carried by the Trinity Mirror titles were precisely those which were most 'mobile', that is which could most easily find alternatives to local newspapers, notably estate agents and motor dealers; and
- (b) in any event a publisher of local newspapers could ill afford to lose any significant proportion of its advertising revenues—as would happen if it raised its prices above the competitive level—since costs were largely fixed, and hence the loss of revenue would translate directly into loss of profits.

2.94. As regards (a), we note that 34 per cent of the advertising revenue of the four titles listed in paragraph 2.77 came from display advertisements, 24 per cent from motors, 21 per cent from property, 9 per cent from recruitment, and 12 per cent from other categories of classified advertising (see Appendix 4.7). Compared with regional and local newspapers in total, this breakdown is skewed towards motors and property, the two lowest-yielding categories, and away from recruitment, which has been a fast-growing and high-yielding category. This pattern goes some way to explain the weak financial performance of the Trinity Mirror titles. In comparison, the Johnston free weeklies in Northampton and Peterborough carry much more recruitment advertising, although that may be partly because they are in the same ownership as the local paid-for dailies, some recruitment advertising being sold as packages covering both types of title (see Tables 5.10(a) and 5.10(b)).

2.95. We agree that estate agents and motor dealers are, in general, more likely to be able to protect their position by switching, or threatening to switch, their advertising to other media. Even if they still considered it essential to place some advertising with local newspapers, a threat to switch part of it would in many circumstances be credible and would enable them to negotiate with a monopoly publisher from a position of strength. The low rates they currently pay, relative to other advertisers (see paragraph 5.115), reflect this bargaining power, as well as the high volumes of advertising which they place. Nevertheless, information from Johnston relating to its titles in Northampton showed that rates paid by motors and property advertisers varied widely, and with no very close relationship to relative volumes (see paragraphs 5.117 to 5.119).

2.96. Retailers, which are likely to form the bulk of the display category, make considerable use of local radio and direct marketing, as well as local newspapers. Our survey (see paragraphs 2.22 to 2.26 and Appendix 5.4) indicated that, compared with other groups of respondents, relatively high proportions of retailers would switch advertising to other media, or cut back on their advertising, in response to a 10 per cent price increase by all local weekly papers.

2.97. Our survey suggested that the categories of advertiser that are less likely to be able to switch to other media include providers of leisure and consumer services, recruitment agencies and local government. These categories already pay, on average, much higher prices than estate agents and motor dealers. The survey did not cover small advertisers, including private individuals: it is reasonable to expect that, as a generality, smaller advertisers will be less mobile, and less able to negotiate rates effectively, than are larger advertisers, although data from Johnston showed that rates are not necessarily closely related to volume. Johnston submitted information showing that there was considerable variability in the population of small advertisers in two of its Derbyshire titles, arguing that this showed that even this group of customers had a high propensity to switch. However, there must be many reasons why the population of small advertisers in particular titles change over time and we did not consider that this evidence cast doubt on the presumption we have expressed.

2.98. The categories of advertiser mentioned in paragraph 2.97, which represent a minority but nevertheless a significant proportion of the total, are those which we believe would be most vulnerable to an increase in advertising rates in local newspapers.

2.99. One question in our survey asked how advertisers would react if all the local weekly papers in their target area increased rates by 10 per cent (see Table 12, Appendix 5.4). Overall, 30 per cent of respondents said that they would do nothing, 14 per cent said that they would switch advertising to another medium, 14 per cent said that they would negotiate a price, 9 per cent said that they would cut back their advertising, 7 per cent said that they would switch advertising to another local paper and 7 per cent said that they would cut out local weekly paper advertising. The proportions in individual categories giving the response that they would do nothing were broadly similar except for local government and recruitment agencies, where the figures were much higher, which is consistent with the view that they may be more vulnerable than other advertisers to a rise in rates. We note that advertisers who consider themselves to be 'locked in' to using local newspapers would not be in a strong position to negotiate a favourable price. And, of course, the option of switching to another local newspaper would not be useful if the same publisher owned all the local newspapers in an area.

2.100. Johnston argued that those who responded that they would 'do nothing' might have meant that they would continue to spend the same amount of money on advertising in local weekly newspapers, reducing the amount or quality of space they bought. This does not seem to us the natural interpretation. Had respondents wished to convey this meaning, we think it likely that they would have referred to cutting the volume of their advertising in order to stay within the same budget. We believe the more likely interpretation is that they meant they would accept the price increase and continue to buy the same amount and quality of space.

2.101. More generally, the parties submitted that these results showed that it would not be profitable for a monopoly owner of local newspapers to raise prices above the competitive level. This was because the loss of revenue from advertisers switching to other media or reducing their spend, which would not be offset by cost savings, would outweigh the gain in revenue from those who would accept the price increase. Johnston estimated that, on average, a £1 reduction in revenue would be accompanied by cost savings of [£0.5] depending on whether the lost pages comprised only advertising or a mixture of advertising and editorial.

2.102. We do not agree with this interpretation of the responses to the question concerned, for a number of reasons.

2.103. First, for a 10 per cent price rise to be unprofitable for a publisher, it must be the case that the increase in price induces a disproportionately large fall in revenue. If all costs were fixed, a larger than 10 per cent fall-off in quantity consequent on a 10 per cent rise in prices would reduce revenues and, therefore, profits, but the smaller the margins between prices and unit costs, the larger the fall-off in quantity has to be in order to reduce profits.

2.104. We note, however, that publishers have considerable freedom to tailor prices to the circumstances of individual advertisers. Rather than raise prices across the board, therefore, a monopoly publisher might well raise prices only to those advertisers which it judged would have no good alternatives, or to increase prices by different amounts to different advertisers. Trinity Mirror argued that there were constraints on publishers' ability to charge different rates to different advertisers: for example, some local businesses were parts of chains in which the different branches were able to compare rates. Johnston said that it was not possible for publishers to identify a group of vulnerable advertisers to whom rates could be increased. We agree that publishers' ability to discriminate in their pricing is not unconstrained. Nevertheless it is clear that rates vary considerably, and not only by volume of spend. Advertising sales departments in publishing centres know their customers and are well placed to take account of changing circumstances in negotiating rates.

2.105. Furthermore we consider that the survey is likely to have overstated the extent to which advertisers would in some way resist a price increase. Two points are relevant here:

- (a) a monopolist could raise prices gradually over a period of two to three years, say, rather than by making a sharp 10 per cent increase which would prompt resistance; and
- (b) Johnston told us that it planned to [*Details omitted. See note on page iv.*] if the transfers went ahead. More over advertisers are continuing to switch to the use of colour rather than monochrome advertisements. Four of us consider that, rather than seeking higher prices for the same product, Johnston could sell to its advertisers improved and/or better targeted products at prices which incorporated a disguised element of price increase. (Will Gibson believes that most advertisers would be sensitive to price increases even in these circumstances.)

2.106. A further consideration is that, while the categories of more vulnerable advertiser represent a minority of the total revenue for the four Trinity Mirror titles, a wider community of advertisers may benefit from the present competition between the Trinity Mirror and Johnston titles in the areas concerned. Thus, for example, while the Trinity Mirror titles carry a relatively small amount of recruitment advertising, advertisers in this category who use the Johnston titles have the option, at present, of turning—or threatening to turn—to the Trinity Mirror titles instead if they become dissatisfied with Johnston's prices or service. This option would disappear were the transfers to go ahead.

2.107. Four of us believe that, unless Johnston felt constrained by the threat of potential entry—an issue which we consider in the next section—it would be likely to raise prices to some advertisers. In this regard we four attach weight to the following considerations:

- (a) Prices to advertisers are not transparent: although there is usually a published rate card, the negotiation of discounts is routine practice. Moreover the discounts granted vary hugely between different advertisers, even in the same category, and can be very large: thus, for example, on one Johnston title in Peterborough, the average yield on motors and property advertising is only about [] per cent of the rate card, while for local display it is [] per cent and for recruitment [] per cent. Yet some advertisers pay the full published rate. Information from the parties showed that prices charged to advertisers within a given category can vary by a factor of two or more times, and as we have noted, the relationship between price and volume does not appear to be close.

- (b) Advertisers other than estate agents and motor dealers do not generally fall into cohesive groups of firms that may compare notes and perhaps negotiate rates together. Similarly these other advertisers do not form an easy target for a potential entrant to aim at and may not, therefore, provide an attractive platform for entry unless there is serious dissatisfaction with the incumbent publisher.
- (c) As noted in paragraph 2.99, 30 per cent of respondents to our survey said that, faced with a 10 per cent increase in rates charged by all local weekly papers, they would do nothing and a further 7 per cent said that they would switch to another local paper, an option that would not be useful if Johnston owned all the local papers in the relevant area. In practice, if Johnston considered that it could raise prices, it would be likely to do so more gradually, so as not to provoke an adverse reaction and to do so in a disguised manner (see paragraph 2.105). Moreover our survey focused on larger advertisers: smaller advertisers would be less likely to resist a price increase or turn to other media.

2.108. For these reasons the four of us expect that a significant number of advertisers, particularly in the categories mentioned in paragraph 2.97, which use either Trinity Mirror or Johnston titles or both in the areas where the titles listed in paragraph 2.77 are distributed, would experience price increases if those four Trinity Mirror titles were transferred to Johnston and Johnston felt unconstrained by the threat of entry.

2.109. Will Gibson, however, believes that the available evidence is not strong enough to warrant taking this view. Relatively few spontaneous representations have been received from advertisers in the areas affected by the proposed transfers. In his view, the evidence from the survey is inconclusive and of uncertain quality. He notes, for example, that in response to the question how advertisers would react to a 10 per cent price increase (see paragraph 2.99), 35 per cent of the estate agents surveyed said that they would do nothing, which he considers is not credible given the known behaviour of estate agent advertisers.¹ He further notes that a majority of respondents said that they would react to such a price increase in ways that would reduce their advertising and that these included advertisers in the groups which appeared more vulnerable to price increases. While he considers there is a possibility that Johnston could increase prices above the competitive level to a minority of advertisers in the two sets of titles in the Northampton and Peterborough areas, it would be very mindful of the risk of losing revenue as a consequence. Given the high gross margins earned on advertising, it would not need to lose much before such price rises became unprofitable.

2.110. We now turn to consider whether the threat of entry would be sufficiently strong to prevent Johnston from raising prices if it acquired the four Trinity Mirror titles.

Entry into the local markets affected

2.111. We reviewed in paragraphs 2.54 to 2.67 the general arguments and evidence concerning entry into local newspaper markets in the UK. Referring to the particular markets served by the eight titles, the parties submitted that these areas were close to other areas which were relatively densely populated, and had good transport links. They were also within easy reach of existing publishing centres of several other large and medium-sized publishers, including Eastern Counties, Gannett, Northcliffe and Trinity Mirror's other interests in the Midlands, as well as smaller publishers such as LSN. Any of these would be well placed to enter the Northampton and Peterborough areas if Johnston sought to push up advertising rates.

¹The majority note that, because Trinity Mirror made an error which resulted in the larger estate agent advertisers in some of its titles being omitted from the survey, the respondents included some smaller estate agents whose bargaining position would not necessarily be strong.

2.112. The parties added that a number of entrepreneurs with connections to these or neighbouring areas, notably the publishers of LSN and Observer Standard Newspapers, had a record of launching free weeklies to compete with incumbent publishers and could be expected to do so again if an opportunity arose.

2.113. We noted earlier that there are reasons to doubt the willingness of major publishers to launch titles into neighbouring areas where they do not already have a presence (see paragraphs 2.56 to 2.59). The information set out in Chapter 5 shows that there are few examples of such launches in recent years in the industry generally. Paragraphs 5.84 to 5.91 record what major publishers told us about the possibility of their launching titles in the Northampton and Peterborough areas. These views are consistent with our earlier analysis. We would in addition note the following:

- (a) Several publishers said that Johnston was an efficient operator and unlikely to leave open the kind of opportunity which would attract entry.
- (b) Northcliffe had the opportunity to move into the Northampton and Peterborough areas by buying all eight of the titles which Trinity Mirror wished to sell but was interested only in the two Derbyshire titles.
- (c) Eastern Counties told us it was not disappointed that it had not been invited to bid for the titles. It said that it would be interested in launching a title in the Peterborough area, adjacent to its existing operations, only if there were evidence of long-standing dissatisfaction among advertisers.
- (d) It is unlikely that Trinity Mirror, which said that it wished to give priority to its interests elsewhere in the Midlands, would consider moving back into the Northampton and Peterborough areas, even though there is no provision in the agreement with Johnston covering the sale of the eight titles that would prevent it from doing so.
- (e) Some of the evidence from other publishers indicated that, for a market opportunity to be sufficient to attract them, it would have to be more than a matter of prices to advertisers being too high. Given the evident ability of Johnston to cut prices quickly if challenged by an entrant, this view is understandable.

2.114. Among smaller publishers, LSN is the most likely to be interested in these markets because it has been actively expanding in neighbouring parts of Bedfordshire and Buckinghamshire. LSN told us that it had planned to launch a new free Sunday title in Northampton but that Johnston had got wind of this and pre-empted the move by launching *Northamptonshire on Sunday*. Johnston denied that it had launched this title in order to forestall LSN. We did not investigate the matter further, but undoubtedly the outcome was that LSN substantially scaled down its expansion plans and contented itself for the time being with launching a monthly publication (the *Rushden Voice*) in Rushden, a small town between Bedford and Northampton.

2.115. Most of Observer Standard Newspapers' titles are in the West Midlands but in 1997 it launched into parts of Bedfordshire and Hertfordshire with a shopper-type product which initially concentrated on property but now carries a full range of advertising. It has continued to launch new, mainly advertising-only publications at the rate of about one a year (although its most recent, an advertising publication in Luton launched in February 2001, closed after 11 weeks). It has not so far sought to enter the local markets concerned in our inquiry.

2.116. There has in practice been little entry by the launching of new newspapers, as opposed to advertising-only publications, in the Northampton and Peterborough areas in recent years. The parties argued that this was partly a reflection of the fact that, with both of them active in these areas, the local markets were perceived to be well served. The situation would

change, they said, if the transfers went ahead and Johnston became the sole publisher of local newspapers. At that point Johnston would have to be careful not to appear to be taking advantage of its position by raising prices to advertisers because that would quickly attract an entrant, perhaps invited by some of the bigger advertisers in Johnston's expanded portfolio of titles who would be looking to protect their position.

2.117. Four of us commented in paragraph 2.65 that there were grounds for believing that a monopoly publisher would be well placed to deter and fend off entrants. For the reasons referred to in paragraph 2.113, we four believe that other large publishers would be unlikely to enter the local markets where the four titles listed in paragraph 2.77 are distributed, even if Johnston raised prices to the more vulnerable advertisers.

2.118. Furthermore, the four of us do not believe that small, entrepreneurial publishers such as LSN and Observer Standard Newspapers would be likely to launch new titles into these markets unless Johnston were to raise prices substantially across the board and/or offer a significantly worse service to advertisers. LSN told us that it had experience of Johnston jealously guarding what it perceived to be its market territory. We would expect Johnston to respond vigorously if a small publisher were to enter, or plan to enter, the areas where the transfers would give it a near 100 per cent share of local newspapers. Moreover Johnston's reputation in this regard would in itself be a deterrent to such entry.

2.119. For the reasons set out in paragraphs 2.111 to 2.118, four of us would not expect that actual or potential entry by other newspaper publishers would constrain Johnston from raising prices to a significant proportion of advertisers in the areas that would be affected by the transfer of the four titles.

2.120. Will Gibson believes that the threat of entry by entrepreneurial publishers is sufficiently real to place a constraint on Johnston's pricing to advertisers to the extent that—taking into account also the other considerations referred to in paragraph 2.109—any price increases following from the transfers would be unlikely to be material.

Summing up on the effects of increased concentration at local level

2.121. Pulling together the evidence and arguments set out in paragraphs 2.69 to 2.120, we have focused attention on the four titles listed in paragraph 2.77 whose transfer to Johnston would give it virtually 100 per cent of the relevant local newspaper markets. As regards readers, we have found that, mainly because of the titles' existing weakness, there are insufficient grounds for believing that the transfers would have a harmful effect on quality and diversity (see paragraph 2.89). As regards advertisers, four of us expect that a significant number of advertisers, using both Trinity Mirror and Johnston titles in the areas concerned, would experience price increases above the competitive level if the four titles were transferred to Johnston (see paragraphs 2.108 and 2.119).

Accurate presentation of news and free expression of opinion

2.122. In considering the public interest in a newspaper merger inquiry we are required by the FTA to have particular regard to the need for accurate presentation of news and free expression of opinion. We distinguish these aspects from the issues of the transfers' possible effects on quality and diversity which we considered in paragraphs 2.79 to 2.89.

2.123. The parties argued that these aspects should not be a significant issue in our inquiry given that the Trinity Mirror titles were free weekly newspapers with limited editorial content. Nevertheless Johnston informed us about its editorial policies both in its own submission and in response to a separate questionnaire which we drew up addressing this subject.

2.124. Johnston said that it believed it was renowned for giving its editors full independence. They were selected for their professional competence, judgement and management qualities. Once appointed they were expected to follow guidelines which reflected the principles of Johnston's editorial policy. Subject to that, and to budgeted ratios between the editorial and advertising elements of its titles, they had virtually complete control of the editorial content of their newspapers. Johnston's editorial policy, which is set out in Appendix 5.8, includes a requirement that 'editors must avoid overt and sustained political bias and must strive at all times to make the contents of their papers fair and accurate'.

2.125. As regards accurate presentation of news, we noted in paragraphs 2.80 to 2.82 that we received some allegations that Johnston titles in the Northampton and Peterborough areas did show political bias, but found that these could not be sustained. There were also a small number of suggestions that Johnston's titles contained inaccuracies but we did not find these to be significant. We received no convincing evidence to indicate that either Johnston or its editors in the areas concerned in this inquiry were failing to adhere to Johnston's stated policy in respect of either political bias or accuracy of reporting. Nor is there any reason to think that, under Johnston ownership, financial constraints would put the accurate presentation of news at risk.

2.126. As regards editorial freedom, we take the view that the situation in practice is often not as absolute and clear-cut as publishers sometimes imply. Editors operate within the framework of commercial businesses and face financial and other constraints in consequence. They are likely to be mindful of their own career prospects, and of the desirability of their newspapers being profitable as well as respected for the quality of their journalism. Johnston's editorial policy refers to commercial constraints and specifically states that, while the editor has freedom to edit without interference from general management, this does not preclude management from making its views known.

2.127. On 11 February 2002 an article appeared in the *New Statesman* magazine under the heading 'The hero they tried to muzzle'. This concerned Mr Don Hale, editor of Johnston's paid-for weekly, the *Matlock Mercury*, who conducted a long and ultimately successful campaign to overturn the conviction for murder of a local man, Mr Stephen Downing. The article alleged, inter alia, that Johnston put pressure on Mr Hale to drop the story. Since this allegation, if true, would have cast doubt on Johnston's general commitment to editorial freedom, we considered it necessary to investigate the matter. At our request, therefore, both Johnston and Mr Hale provided us with written submissions, together with supporting documentation, and we questioned both parties at separate hearings specially arranged for the purpose.

2.128. Mr Hale told us that his work as an editor with Johnston had not been free of interference. However, he said that his complaint did not concern the Downing case, where there had been little interference: rather, it concerned interference over other stories and general meddling in editorial matters. He told us that the vast majority of problems within the local management primarily concerned one particular manager. Mr Hale cited two cases where, he said, this manager had supported requests from members of the public that particular stories should not be covered, and referred to a number of other matters where disputes had arisen between himself and local Johnston management. There had not been any instances, however, where he had actually dropped or changed a story as a result of pressure from management.

2.129. The Johnston representatives at the hearing with the company, who included the managers concerned, denied that there had been any interference in Mr Hale's freedom as editor of the *Matlock Mercury* to cover the Downing story. Johnston gave us its account of events surrounding the various other matters which Mr Hale had drawn to our attention. Johnston maintained that, while some of the disputes that had arisen between local management and Mr Hale might have been better handled, in no case had management's actions amounted

to interference with his editorial freedom. Johnston provided us with recent statements from its leading editors and a number of its former editors (29 in total), and from the 20 managing directors of its subsidiary companies, all of which supported Johnston's account of its policy on editorial matters.

2.130. We note that Mr Hale did not endorse the central allegation of the *New Statesman* article, that Johnston had sought to interfere with his coverage of the Downing story. The other matters which he raised, while not unimportant, were less serious. There were discrepancies in the evidence we received from the two parties in that the Johnston managers concerned denied Mr Hale's version of events—some of which concerned episodes which took place several years ago.

2.131. Some of the matters raised questions as to the effectiveness of Johnston's procedures, at certain times, in ensuring that its policy on editorial freedom was always observed. It was clear to us that Mr Hale felt at times that management took or proposed measures which restricted—or would have restricted, had they been implemented—his ability to perform his editorial role as he wished. It was also clear that relationships between Mr Hale and certain local managers were not good, and that he felt he did not have effective recourse to higher management.

2.132. We attribute these problems partly to the normal stresses and strains which arise from time to time in most publishers, where there are natural tensions between the editorial and commercial sides. Beyond that we believe that, as Johnston grew rapidly as a group through a series of acquisitions, the development of its management structures and personnel practices may not always have kept pace. Changes have been made both at group level, for example with the appointment of a human resources director, and at local level in the Derbyshire area. Moreover the evidence we saw, both from Johnston and from the Society of Editors (see paragraphs 7.92 and 7.93), suggested that the problems which arose in connection with Mr Hale were not typical of the general position within Johnston as regards relationships between editors and management.

2.133. We decided not to investigate Mr Hale's allegations further. We considered that, even if his allegations were established to our satisfaction, they would fall short of casting material doubt on the effective implementation of Johnston's policy on editorial freedom.

2.134. We noted in paragraph 2.84 that Johnston adopts a structure in which the content editor of its free weeklies is not in sole charge of the editorial content of the newspaper but reports to a local editorial director on matters with possible legal implications. This seems to us to be a dilution of the normal approach that every newspaper has its own independent editor, particularly as the content editors are also assistant editors of Johnston's paid-for dailies in Northampton and Peterborough and report to the editorial directors in that capacity also. Nevertheless it is still editors, rather than managers, who have the responsibility for editorial content. Moreover we note that, at present, Trinity Mirror has only one editor responsible for all six titles published from its Northampton and Peterborough centres, which gives no grounds for believing that the transfer of the titles to Johnston would weaken editorial control compared with the present position.

2.135. Like our predecessors in earlier Commission inquiries, we take the view that the term 'free expression of opinion' used in the FTA refers to editors' freedom from control by managers or proprietors in determining the editorial content of their newspapers.¹ We are satisfied that the transfer of the Trinity Mirror titles to Johnston would not be harmful in this respect.

¹A full list of Commission reports on newspaper mergers since 1990 is set out at Appendix 3.2.

2.136. We therefore conclude that the transfers of the titles would not have adverse effects on the public interest as far as accurate presentation of news and free expression of opinion are concerned.

Efficiency and employment

2.137. Johnston told us that it would be able to achieve revenue and cost synergies of some £[redacted] million a year as a result of acquiring the eight titles. A breakdown of these synergies is given in Table 4.8, which shows, inter alia, that the bulk of the benefits would arise from the acquisition of the titles in the [redacted] areas.

2.138. [

Details omitted. See note on page iv.

]

2.139. As a result of the synergies it hopes to achieve, Johnston would expect to earn annual profits of some £[redacted] million before interest and tax as a result of the acquisition, compared with an assumed financing cost of around £0.9 million.

2.140. We consider that there are no factors arising from these effects of the transfers on efficiency and employment which are adverse to the public interest.

Consistency with previous newspaper merger reports

2.141. Four of us have reached the view that the transfer to Johnston of the four titles listed in paragraph 2.77 could be expected to have adverse effects on at least some advertisers—though not readers—compared with the present situation, and that these effects would not be prevented by the threat of entry (see paragraph 2.119). We have not found any additional adverse effects as regards the transfers' effects on accurate presentation of news and free expression of opinion, or on employment and efficiency.

2.142. The parties argued throughout the inquiry that it would be consistent with the conclusions of previous Commission reports for us to find that the transfers would have no adverse effects. In particular the RIM inquiry of 2000, the most recent, had had to deal with the prospect that the transfer of RIM's titles to Gannett would have created several monopolies in local markets in Lancashire which were greater in scale, and more isolated, than those to which the present case would give rise in Northampton and Peterborough.

2.143. As the parties recognized, we are not bound by precedent: each transfer and set of transfers has to be dealt with on its own facts. Nevertheless we have taken seriously the parties' argument that the RIM report was a precedent which should have guided us, and we have examined the reasons for the differences of view between this inquiry and earlier ones, not only the RIM report.

2.144. We note first that concerns similar to those which have weighed with us were voiced in a previous case involving the possible transfer of titles to Johnston in an area close to Northampton and Peterborough, namely the case of *Johnston Press plc and Home Counties Newspapers Holdings plc*¹ in 1998. We consider this to be the closest and most relevant precedent to the present case. The inquiry group in that case said they did not think that the

¹*Johnston Press plc and Home Counties Newspapers Holdings plc: a report on the proposed transfer to Johnston Press plc of the newspapers of Home Counties Newspapers Holdings plc*, The Stationery Office, Cm 3962, June 1998. See paragraphs 2.66 to 2.92.

interests of advertisers in Luton, Dunstable and Milton Keynes would be adequately protected if Johnston's titles were not subject to effective competition from other newspaper publishers. If the merger were to proceed, they expected that, at least in the short term, Johnston would not be subject to sufficient competitive pressure to avoid detriments to the interests of local advertisers in the form of higher advertising rates. However, in concluding that the transfer of the HCN titles in these areas to Johnston would not be against the public interest, the Group took account, inter alia, of the likelihood, in their judgement, that the titles would close if Johnston did not acquire them. (We consider in paragraphs 2.152 to 2.157 the prospects for the Trinity Mirror titles in the present case if Johnston were not to acquire them.)

2.145. Turning to the comparison with the RIM report, we have taken account of evidence concerning effects on advertisers that was available to us. More importantly, based on the evidence that we have assembled in the present case, we have reached a particular view about the likelihood of entry constraining Johnston if it were to become a monopolist in local newspapers in the areas which have given us concern. Our view is based largely on the evidence we received from and about publishers of varying sizes, and this evidence reflects the way in which the particular markets that we are concerned with here have evolved in recent years. Furthermore in the RIM inquiry three bidders were in effect competing for the market positions which acquisition of the RIM titles would have brought. The present inquiry, by contrast, is a case in which one major publisher, Trinity Mirror, is seeking to withdraw from head-to-head competition with another, Johnston, thereby conferring on it a 100 per cent monopoly in the ownership of local newspapers in four local markets.

Possible benefits

2.146. Returning to the present case, since we have found that adverse effects may be expected to flow from the transfer of four of the titles, we must consider whether these would be offset by any benefits.

2.147. Johnston submitted that it had an excellent record of investing in and improving titles which it acquired. [*Details omitted. See note on page iv.*] (see paragraph 2.84). In these ways it would provide a better service to readers and a more comprehensive product range to advertisers.

2.148. We recognize that the extent and quality of editorial content in one each of the free weeklies in the areas where the four titles listed in paragraph 2.77 are distributed might improve if the transfers went ahead. [

Details omitted. See note on page iv.

] The additional revenue could be used, at least in part, to increase investment in the editorial side of the titles concerned. For example, Johnston said that it would put an editor into the *Peterborough Herald & Post*, which is currently edited from Trinity Mirror's Northampton centre. More generally the titles would be likely to benefit from being run by an owner which was committed to them and which would remove the long-standing uncertainty as to their future.

2.149. On the other hand, there would no longer be any competitive pressure on Johnston from local newspapers published by a separate company. Provided the editorial content of the remaining free weeklies was sufficient to encourage people to pick up and open the newspaper, and hence draw their attention to the advertising content, Johnston's purpose would be served. Given the editorial structure that Johnston adopts in areas where it publishes both a paid-for daily and a free weekly (see paragraph 2.84), and the view it takes of the role of free weeklies, there is no reason to expect the free weeklies in the areas affected to develop as rivals to the dailies, with a distinctive editorial voice.

2.150. There would be an increase in the variety of products available to advertisers if Johnston were to convert one free weekly in some or all of the local markets affected into a shopper. We do not believe that this factor outweighs the loss of competition for the business of local advertisers which a majority of us expect would lead to price increases. In any event, if there is significant untapped demand for shopper-style products in these markets, which cannot be met by the existing free weekly newspapers, it is to be expected that a publication of this type would be launched, whether by Johnston or someone else.

2.151. For the reasons set out in paragraphs 2.147 to 2.150, the four of us consider that the adverse effects that we have identified would not be offset by benefits if the transfers were to proceed.

The counter-factual

2.152. So far we have assumed that, in the absence of the transfers, Trinity Mirror would continue to run the eight titles as hitherto. It remains for us to consider what would in practice be likely to happen if the four titles were not transferred to Johnston.

2.153. Trinity Mirror said that, if it were not able to sell the titles to Johnston, [
Details omitted. See note on page iv.
].

An entrepreneur wishing to enter the markets that concern us would be more likely to do so, it said, by starting afresh than by buying the eight titles. Trinity Mirror therefore considered that it would be likely to retain the titles. [
Details omitted. See note on page iv.
]

2.154. As regards the possibility of closure, the four of us mentioned in paragraph 2.65 note that at present the titles are loss-making if all relevant costs are attributed to them, and that [*Details omitted.*]. However, Johnston has agreed to pay £16 million for the eight titles taken together; while no prices have been set for the individual titles, it would be reasonable, taking account of relative turnover (which is the basis of the agreed price) to allocate around £*Details omitted.* million of the price to the four titles we are concerned with. The extent of the losses which they are incurring is small when expressed as a percentage of turnover or of this valuation, and it would require only a modest increase in turnover or reduction in costs for them to break even. On the other hand, were Trinity Mirror to close the titles it would incur significant costs, [
Details omitted. See note on page iv.
].

2.155. The four of us believe that, for these reasons, it is unlikely that Trinity Mirror would close the titles in the near future. We note the possibility that it would aim to cut costs, possibly to the extent of eliminating the editorial content of some of the titles altogether and converting them into a kind of shopper. We believe, however, that Trinity Mirror would also explore the possibility of increasing revenue as well as cutting costs. (Trinity Mirror had earlier told us that, since it expected to dispose of the eight titles, it had put little effort into seeking additional advertising revenues.) Thus we consider that all the titles would be likely to continue for the time being as free weekly newspapers.

2.156. The four of us further believe that, if the transfer to Johnston of any of the four titles listed in paragraph 2.77 did not take place, new entry into the relevant geographical markets would be more likely than if they did. This is for the reasons set out in paragraph 2.65.

2.157. Will Gibson believes that, if the transfers did not go ahead, further doubt would be cast on the future of titles which have been mired in uncertainty for several years already. In

these circumstances, and given the prospect that Trinity Mirror would look for further substantial cost savings, staff morale and customer confidence would fall further and it would be difficult to maintain viability at any level of operation. Since there has been significant cost cutting already, any further cuts would be likely to be damaging (since the easy cuts have already been made). He therefore believes that, rather than expend further management time, Trinity Mirror would be likely to close most or all of the six titles published from its Northampton and Peterborough centres in the fairly near future. Moreover he is not convinced that entry would be more likely, in that situation, than if the transfers proceeded and Johnston became a monopoly publisher of local newspapers in the relevant markets.

Conclusion on the public interest

2.158. Four of us have found that the transfer of four titles to Johnston would have adverse effects and that these would not be offset by benefits resulting from the transfers (see paragraphs 2.121 and 2.151). We four therefore conclude that the transfer to Johnston of the *East Northants Herald & Post* series, the *Northampton Herald & Post*, the *Peterborough Herald & Post* and the *Stamford Herald & Post* may be expected to operate against the public interest. All of us conclude that the transfer to Johnston of the other four titles—the *Brackley & Towcester Post*, the *Derby Trader*, the *Harborough Herald & Post* and *The Trader*—may not be expected so to operate.

2.159. Will Gibson concludes that none of the eight transfers may be expected to operate against the public interest.

Recommendations

2.160. In cases where, on a newspaper merger reference, we find that the transfer of a newspaper might operate against the public interest, we are required by section 61(2) of the FTA to consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent it from so operating. Since the adverse effects that we have identified concern prices to advertisers, we have considered whether there are conditions which might protect their position, and we invited the main parties' views on this.

2.161. Trinity Mirror said that it regarded this as a question for Johnston to address. Johnston said that it could not see how a behavioural remedy in the advertising sphere could be made workable. Given the extent of discounting, a control on rates would be very complex and difficult to operate. It was not clear how a behavioural remedy of this kind would apply, for example, if Johnston desired to extend the distribution of a title or launch new titles. Behavioural remedies would also limit Johnston's ability to respond to rivals' competitive initiatives, to carry out product developments, and to respond to advertisers' requirements.

2.162. We agree that any behavioural remedy concerning advertisers would be unworkable. We therefore conclude that there are no practicable conditions which would protect advertisers from the adverse effects that we have identified. This being so, the four of us who have reached an adverse finding recommend that the Secretary of State should not give her consent to the proposed transfers of the four titles listed in the second sentence of paragraph 2.158.

Wider considerations

2.163. One issue of more general application which has arisen in our inquiry is cluster publishing, and the implications for local concentration if consolidation in the ownership of

regional and local newspapers were to continue (see paragraphs 2.36 to 2.53). As we have commented, local concentration may offer benefits in terms of efficiency, but these may not be passed on to readers and advertisers. Further, local monopolists may not have the incentive to produce editorial content of a high quality for readers, or good service for advertisers. An underlying question is the extent to which local monopolies in newspaper publishing are economically inevitable, in some geographical markets, and whether they are likely to give rise to a 'live-and-let-live' attitude on the part of publishers which would attenuate competition in local markets up and down the country.

2.164. We have addressed these issues in the particular circumstances of our inquiry to the extent necessary. It was beyond our remit to address them in a more general way. In the light of our experience, however, we consider that the Office of Fair Trading should give early attention to whether an industry-wide inquiry into these issues should be initiated.