

## A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited

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## Executive summary

1. On 29 April 2004 the Office of Fair Trading (OFT) referred to the Competition Commission (CC) for investigation and report the acquisition by Archant Limited (Archant) of enterprises carried on by, or under the control of, Independent News and Media Limited (INM). We published our provisional findings on 29 July 2004.
2. INM is part of an international media and communications group, based in the Republic of Ireland. Archant is the largest privately-owned local and regional newspaper group in the UK. On 11 and 30 December 2003, Archant announced that it had acquired in two stages the local weekly titles of INM's London Regionals Division. They were grouped into five publishing units in north-west, north and east London and parts of Essex and Kent.
3. We considered that this acquisition, including both of its stages, comprised a relevant merger situation that fell to be considered under the Enterprise Act 2002 (the Act) and that our jurisdiction to assess it was properly founded on the share of supply test under that Act, which we found was satisfied.
4. We considered the relevant geographic and product markets and the competitive effects of the merger. We found the principal geographic focus to be on local newspaper markets and concluded that the relevant market was wider than the 'footprint' of any individual title, but extending no wider than the respective areas of each former INM publishing unit. We found that the relevant product market covered free and paid-for weekly newspapers including some non-JICREG<sup>1</sup> newspapers but could also extend to some other publications such as advertising-only publications. In assessing the competitive effects of the merger we explored the possibility that Archant, by targeting particular categories of customers, would be able to enjoy and exploit market power and profitably to raise prices by an amount that would cause concern, either selectively or overall. We concluded, however, that there was insufficient evidence to justify such a finding.
5. Overall our conclusion is that we do not expect that a substantial lessening of competition has resulted or may be expected to result from the merger.
6. Our findings in this case are based on our analysis of newspaper advertising in areas of London. No presumption should be made as to the applicability of our findings to newspaper mergers in other parts of the UK.

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<sup>1</sup>Joint Industry Committee for Regional Press Research; see paragraph 4.5.

# Findings

## 1. The reference

- 1.1 On 29 April 2004 the OFT referred to the CC for investigation and report (under section 22(1) of the Act) the acquisition by Archant of enterprises carried on by, or under the control of, INM. We were asked to report by 13 October 2004. We published our provisional findings on 29 July 2004. Our terms of reference are in Appendix A.
- 1.2 This document (together with its appendices) constitutes our final report which we are required to publish under section 38(1) of the Act. Non-sensitive versions of main party and third party submissions, summaries of third party arguments and views, and the outcome of the two customer surveys which we commissioned are on our web site ([www.competition-commission.org.uk](http://www.competition-commission.org.uk)) along with a number of other documents relevant to this inquiry. We refer to them where appropriate.

## 2. The companies involved

### **INM**

- 2.1 INM is part of an international media and communications group, based in the Republic of Ireland. The group owns the leading national newspaper publisher there, as well as in New Zealand and South Africa—where it is also the market leader in outdoor advertising. In Australia, it owns 45 per cent of APN News & Media Ltd, the country's fourth largest media company, operating in regional newspapers, commercial radio and outdoor advertising. In the UK, it owns *The Independent*, *Independent on Sunday* and the largest newspaper group in Northern Ireland.
- 2.2 Group turnover was €1.4 billion in 2003. EBIT were €239 million, with a profit after interest, tax and minority interests of €47 million.
- 2.3 Before the acquisition, INM was one of the top ten publishers of regional and local newspapers in the UK, and the third largest publisher of local newspapers in London. The turnover of its London Regionals Division in 2003 was £[redacted] million, with EBIT of around £[redacted] million. In a briefing note for potential purchasers, INM described these titles as 'extremely profitable, with ... margins that are among the highest in the industry'. It attributed this to the newspapers' inherent strength, to their local management and to the focus on managing costs and centralized support services. The Division was itself made up of five publishing units: East London Newspapers; North London Newspapers; North West London Newspapers; Kentish Times Newspapers, which operated in south-east London and north-west Kent; and Post Newspapers, which operated in east London and Essex.
- 2.4 INM told us that it believed it could achieve the best price for its London regional titles by selling them as a single unit. To break them up, though not impossible, would have been difficult, even though each publishing unit was regarded as an individual business which was run to meet the needs of its local readers and advertisers (though liable to a charge for its share of centrally provided services). There was significant interdependence between the titles within each unit, including a sharing of content, advertising, and staff. Although INM did not produce profitability figures that allocated advertising revenue precisely to individual titles, it told us that they all made a positive contribution before overheads and central costs.

## **Archant**

- 2.5 Archant is the largest privately-owned local and regional newspaper group in the UK. It has its executive headquarters in Norwich, and publishes newspapers and magazines mainly in central and north-east Scotland, the South-West of England, East Anglia and the Home Counties, including parts of London, where it first established a presence in 1998. Before the acquisition it was the sixth largest publisher of regional and local newspapers in the UK, with a portfolio of four daily titles, 23 paid-for weekly titles and 32 free weeklies. The addition of the former INM titles makes Archant the UK's fifth largest regional and local newspaper publisher, with some 90 titles and a total circulation of more than 3 million copies a week. It also publishes around 60 consumer and regional magazines; is active in electronic publishing; and owns printing facilities in Norwich, Ipswich and Scotland. The Group currently has around 2,800 employees.
- 2.6 Archant's Group turnover, in the year to 31 December 2003, was £158 million (£176 million if the INM acquisition is included) and it produced pre-tax profits of £28 million. Within the total, UK local and regional newspapers accounted for a turnover of £132 million (£150 million if the INM acquisition is included). This compares with a combined 2003 turnover from local and regional newspapers among the four largest publishers of over £2 billion (Johnston Press plc (Johnston Press) £491 million; Trinity Mirror, £521 million; Newsquest plc, £525 million; and the Daily Mail Group (DMGT) £630 million).
- 2.7 Since the acquisition, Archant has revised its national structure, into seven geographic divisions: Archant London, Archant Hertfordshire, Archant Suffolk, Archant Anglia, Archant Norfolk, Archant Scotland and Archant South West. The weekly newspapers that it has purchased from INM continue to be grouped in five publishing units, but they all now report to Archant London, as a subdivision known as Archant Greater London. The titles which Archant previously owned in and around the capital (apart from the *Herts & Essex Herald*s) also report to Archant London. They are grouped into two other subdivisions: Archant North London, and Archant East London & Essex.

### **3. The transaction and the relevant merger situation**

#### ***The transaction***

- 3.1 Before Archant had become involved, INM had signed an agreement (on 25 March 2003) for the sale of the titles in its London Regionals Division to Newsquest (London) Limited (Newsquest), a subsidiary of Newsquest plc, which is owned by the US-based newspaper group, Gannett Co Inc. INM did not seek other bids for these titles at that time, wishing to keep the transaction confidential and conclude it quickly. The proposed acquisition was subsequently referred to the CC by the Secretary of State for Trade and Industry on 20 May. Our report—*Newsquest (London) Limited and Independent News & Media PLC*, Cm 5651—was published on 21 October 2003. On the same day, the Minister of State at the DTI announced that he had, in line with the CC's advice, refused consent to the transfer of eight titles, consented to the transfer of 13 and would be considering further another two. He subsequently announced (on 21 November) his consent to the transfer of those two: the *Hornsey Journal* and the *North London Weekly Herald* series. (The reason why the 2003 report considered only 23 of the titles that were being sold was that the reference was made under the Fair Trading Act 1973 (FTA). Under section 57 of that Act, some of the titles were not considered to be newspapers, so their transfer did not require the consent of the Secretary of State.)

- 3.2 The agreement between INM and Newsquest—which had been conditional on regulatory consent being obtained for the purchase of all of the titles—lapsed, following the publication of our report. INM told us that, although there was no formal bidding process, once the CC’s report was public and the DTI had made its announcement, it received approaches from a wide range of publishers, including Northcliffe Newspapers Group Limited (Northcliffe) and Johnston Press, as well as Archant. Some approaches were concerned with the full portfolio of INM’s London Regionals’ titles; others were confined just to those that Newsquest was precluded from buying. It also continued to negotiate with Newsquest about the sale of the titles in the four publishing units where consent had been granted.
- 3.3 On 11 December Archant announced that it had paid INM £52 million for 12 weekly free and paid-for newspapers, with a total circulation of just over 316,000. These newspapers were grouped together into three publishing units:
- (a) North London, which consisted of two paid-for titles: the *Islington Gazette* and the *Hornsey Journal*; and one free series: the *North London Weekly Herald*;
  - (b) East London, which consisted of two paid-for titles: the *East London Advertiser* and the *Hackney Gazette*; and two free *Express* series covering Stratford, Stoke Newington, and Shoreditch; and
  - (c) Post, in Essex, which consisted of the *Barking and Dagenham Post* paid-for series and three free series covering Barking, Ilford and Romford.
- 3.4 At the same time, Archant announced that it had also entered into a separate agreement with INM which gave it the option to acquire the rest of its London Regionals titles: a further 15 weekly free and paid-for newspapers, with a total circulation of just over 304,000, grouped into two more publishing units:
- (a) North West London, which consisted of five paid-for titles: four of them in the *Times* series and a fifth, called *Job Watch*; and two free series: the *Wembley Chronicle* and the *Willesden Chronicle*; and
  - (b) Kent, which consisted of four paid-for titles in the *Kentish Times* series; and four free newspapers in the *Express* series, both of which covered Bromley, Bexley, Dartford and Gravesend.
- 3.5 On 30 December 2003, Archant announced that it had exercised the option to acquire the 15 additional titles. It paid £5 million at the time, [§] (see Appendix B for a fuller description of the transaction).
- 3.6 Archant told its shareholders that both acquisitions would be funded by a combination of cash and a £30 million credit facility from the Royal Bank of Scotland.

### ***The rationale for the merger***

- 3.7 INM told us that it had spent around €2 billion since 1993 in acquisitions and new investment, financed from cash flow and borrowings. Institutional investors and analysts had indicated that they wanted to see the resultant debt levels addressed. As a result, INM had embarked on a package of measures, which involved, inter alia, the sale of the titles in its London Regionals Division. In order to comply with statements it had made about the timing of these measures, INM attached a very high degree of importance to completing the sale—and receiving cash in exchange for these titles—before 31 December 2003—its financial year end.

3.8 The reason that Archant announced for making the acquisitions was that it would strengthen its position as the UK's leading independently-owned community media publisher, and be of significant strategic importance given their geographic proximity to its existing areas of publication, enhancing its coverage in and around north and east London. It subsequently told us that it saw a threat to its revenues—the great bulk of which came from five categories of advertising: property, recruitment, motors, retail and entertainment, and private and small business classified—which it thought would continue to migrate to other forms of print publications and to the Internet. To offset this, it needed to become more efficient. It saw the acquisitions as offering the scope for increasing investment in better processes and technology, and for cost reductions through sharing overheads. Buying these titles provided the only opportunity for large-scale growth within London—which it did not believe it could have achieved, organically.

### ***Jurisdiction***

3.9 Archant's acquisition of the London Regionals Division was completed by the 30 December sale agreement and was therefore a completed merger for the purposes of the Act. Under our terms of reference—and section 35(1)(a) of the Act—we were required to decide whether a 'relevant merger situation' had been created. There were three aspects of this question. We had to decide:

(a) first, whether two or more enterprises have ceased to be distinct;

(b) second, whether the reference was made in time;

(c) third, whether:

(i) the value of the turnover in the UK of the enterprises being taken over exceeded £70 million (the turnover test); or

(ii) the merger would create or enhance a share of at least one-quarter in the supply of goods or services of any description in the UK, or a substantial part of the UK (the share of supply test).

3.10 Appendix C considers these questions and a further legal issue that was put to us on jurisdiction. This is what we concluded.

3.11 Enterprises are regarded as ceasing to be distinct where they come under common ownership or control. An enterprise is the activities, or part of the activities, of a business. The sale and purchase agreements of 11 and 30 December were agreements for the sale and purchase of assets. We had no doubt that the sale and purchases concerned, by which INM sold to Archant the London Regionals Division, constituted enterprises ceasing to be distinct.

3.12 As for the timeliness of the reference, we were satisfied that under section 27(5) of the Act we could treat the 11 and 30 December agreements as having been made at the same time, and that the reference was made in time, having regard both to when enterprises ceased to be distinct and to the time at which notice of material facts about the transactions was given to the OFT or made public.

3.13 As for share of supply, within the area of circulation and distribution of INM's London Regionals Division—which we regard as a substantial part of the UK, with a population of over 2.5 million people aged 15 years and over—the acquisition had increased Archant's overall circulation/distribution of weekly free and paid-for

newspapers from 37 to 45 per cent. In our view, the share of supply test was satisfied.

- 3.14 Finally, during the course of this inquiry a number of arguments had been put to us concerning the application of the newspaper merger provisions of the FTA to Archant's acquisition of the London Regionals Division. In consequence, it was said, our jurisdiction was called into question. We did not find these arguments persuasive and considered that the merger was subject to the Act.

### ***Conclusions on relevant merger situation***

- 3.15 So, for the reasons set out in paragraphs 3.9 to 3.14 and Appendix C, we conclude that a relevant merger situation had been created, and that there was no impediment to the CC's jurisdiction.

## **4. Market definition**

- 4.1 We divided this part of our analysis into two, examining the relevant geographic market for local newspapers and the relevant product market. In both cases we drew on JICREG local newspaper circulation data and on information from the surveys of advertisers that we had commissioned (see the CC's web site). We saw a particular interdependence between the geographic and product dimensions of the market.
- 4.2 As our Guidelines suggest, the appropriate way to define the relevant market (both product and geographic) is to consider whether a hypothetical monopoly publisher of a newspaper in a given locality could profitably raise the price of advertising by a small but significant and non-transitory amount, usually 5 per cent.

### ***The geographic market***

- 4.3 A full description of our analysis of the geographic market can be found at Appendix D. In summary, we found that the relevant geographic market appeared to be wider than the circulation 'footprint' of any individual former INM title acquired by Archant, but it was local and no wider than the area of the former-INM publishing units.
- 4.4 We tested whether the relevant market was local in our surveys, particularly the quantitative survey of advertisers carried out by Synovate on our behalf. In response to questions as to what they would have done had their main or only Archant or INM title not been available, a large proportion said that they would move to another title in the same area. (For details of these findings, see Appendix D, paragraphs 6 to 10.) This suggested a local market for advertising and whilst it did not provide any clear definition of its extent, it suggested that the geographic market was no wider than the area of the former-INM publishing units.<sup>2</sup>
- 4.5 As in previous local newspaper merger inquiries, the narrowest candidate geographic market that we considered was a collection of local areas within the circulation/distribution 'footprints' of the merging parties' titles, where there were significant overlaps—which we took to be 50 per cent or more of circulation/distribution (within any one area) with an increment of at least 10 per cent. (It is the convention in the newspaper industry to refer to the 'distribution' area of free newspapers and the

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<sup>2</sup>Referred to in Appendix D as 'the divisional level'.

‘circulation’ area of those that are paid for; and by ‘footprint’ we mean the area in which the former INM titles circulate or are distributed.) The best information that we have about a title’s circulation/distribution in a particular area comes from JICREG, the newspaper body that generates circulation, distribution and readership data broken down to the level of groups of contiguous postcode sectors, which, taken together, form areas that are considered to be useful for national advertising purposes. JICREG circulation, distribution and readership data are produced to allow newspaper publishers and advertising agencies to demonstrate the strength of local and regional titles to national advertisers. We believe that this data provides, at least, a practical and useful starting point for assessing local geographic markets. In this inquiry, we used JICREG’s figures as the basis for an analysis which attempted to address the well-documented limitations of this data, while building upon the approach to geographic market definition that the CC had used in previous reports.

- 4.6 Archant submitted to us that the footprint of an individual title could not constitute a relevant geographic market because:
- (a) advertisers are interested in a consumer catchment area, which might be only partly covered by the footprint of a particular local newspaper; and
  - (b) local newspapers’ footprints do not entirely overlap.

Nevertheless, not least for comparability with previous CC local newspaper reports, we considered the extent of any circulation/distribution overlaps between the acquired and previously existing Archant titles in the JICREG areas where the former INM titles circulated or were distributed.

- 4.7 The data we used in Appendix D is the newspaper volume figures for July to December 2003—and the related shares of circulation—in all of the JICREG areas where 13 acquired INM weeklies (in 24 editions) overlap with existing Archant titles. We found that there were eight titles (covering 23 unique JICREG areas) where the overlap satisfied the criteria for circulation and increment set out in paragraph 4.5.
- 4.8 These overlaps are discussed in Appendix D, paragraph 18. The eight former INM titles involved were: two from the North London publishing unit—the *Islington Gazette* and the *North London Weekly Herald*; two from the East London unit—the *East London Advertiser* and the *Stratford Express*; and four from the Post unit—the *Barking & Dagenham Post*, the *Barking & Dagenham Post Weekender*, the *Ilford & Redbridge Post*, and the *Romford and Havering Weekly Post*. Overlaps between Archant’s existing and acquired titles in the areas of north-west London, and south-east London and north-west Kent, which were covered by the other two former-INM publishing units were either much more limited, or did not exist at all.
- 4.9 However, using JICREG data alone may lead to an overly narrow approach to market definition as the data excludes some other local newspaper publications and use of circulation as a measure may understate the effect of paid-for weeklies compared with free weeklies, which tend to have higher volumes (see Appendix D, paragraphs 19 and 20).
- 4.10 To test the findings in paragraph 4.7 further we carried out price/concentration analysis to see if there was a systematic relationship between advertising yields and a range of concentration across narrowly-defined geographic markets. A positive relationship would have suggested that the market was no wider and that additional competitive constraints were not operating. Another explanation could be the possible variability in the underlying yield data, which could be considerable. In the

event we found no positive relationship but a high degree of dispersion. For details of these findings, see Appendix D, paragraphs 21 to 31 and 33.

- 4.11 In considering what wider geographic market would be appropriate, we noted Archant's view that any combination of local authority geographic boundaries below the level of the former-INM publishing unit territories was arbitrary and too narrow. Archant also referred us to surveys suggesting that the relevant area was wider still. However, bearing in mind in particular our own survey evidence to the effect that the market was local but was no wider than the areas of the former-INM publishing units (see paragraph 4.4), we considered it reasonable to examine overlaps between Archant and the former-INM titles within these areas as this provided, in our view, and in accordance with our Guidelines, an appropriate framework within which to analyse the effects of this merger on competition and a useful tool with which to do so.

### ***The product market***

- 4.12 A full description of our analysis of the relevant product market can be found in Appendix E. We considered a wide range of evidence on the extent of the substitutability within different categories of local newspapers, and between them and other sorts of news and advertising media, both generally and for specific categories of advertising. In summary, we found that the relevant product market covered free and paid-for weekly local newspapers including some non-JICREG newspapers but could also extend to some other publications such as advertising-only publications.
- 4.13 Our analysis first sets out some general features of the market and the views put to us by Archant and others. We then consider data on yields in the different categories of advertising. The results of our survey are considered in relation to advertisers' responses to possible price increases and we also consider the survey evidence on perceptions of the availability of substitute media. Essentially our analysis concentrates on the extent to which sufficient substitutes are available to advertisers in the various categories to make a hypothetical 5 per cent price rise unprofitable (see CC guidelines, CC2, paragraphs 2.4 to 2.27).

### ***Background***

- 4.14 As Appendix F makes clear, advertising in both regional and local newspapers accounted, in 2003, for some 17 per cent of the total advertising expenditure in the UK. Television accounted for 25 per cent, direct mail for 14 per cent and national newspapers for 11 per cent. The share of advertising held by regional and local newspapers has declined steadily over the past 30 years, as new forms of media advertising have emerged.
- 4.15 Archant, INM and other publishers from whom we heard believed that, as a medium for advertisers, local newspapers—including those published by local authorities and others not covered by JICREG data—should be seen not as a separate product market, but as part of a wider one that included other print media. The latter were particularly strong in London, involving two city-wide newspapers, *Metro* and the *Evening Standard*, and specialist advertising-only publications (or publications dedicated to advertising) for property, cars and jobs. Advertising was also possible on the radio, television, the Internet and in the cinema.
- 4.16 We took the view in previous reports that there were a number of factors that distinguished local newspapers from other printed and non-printed media—and so

affected the extent to which they could be regarded as effective substitutes. These included:

- (a) *Different media had different characteristics*: for example, advertising-only publications, or other publications dedicated to advertising, were often not delivered to homes, and so had lower penetration rates, and often a wider geographical coverage than local newspapers. And, in the main, these titles were oriented towards a particular type of advertising and so were less likely to attract people who were not actively looking for, say, a new home, or car, or change of job. It was also the case that many local newspaper publishers themselves had interests in these publications, which might indicate that they saw them as complementary to their local newspaper titles, rather than being in direct competition with them.
- (b) *Some alternative media were published less frequently*: for example, some directories were published only once a year and so were useful mainly for information that did not require regular updating.
- (c) *Direct marketing was less likely to be picked up*, read or kept for any length of time.
- (d) *Different media had different uses*, for example posters and radio built up brand awareness or advertised specific events. This might provide competition for some forms of display advertising, but was not an option for classified advertising. The Internet, on the other hand, was more effective at the classified end of the spectrum than in building brand awareness.
- (e) *There was, until recently, limited penetration by Internet sites*, which were usually seen as complementary to local newspapers, with some sites being owned by local newspaper groups and advertising on others sold as a joint deal with local newspapers.
- (f) *There was limited evidence of significant switching* between local newspapers and other media.
- (g) *There were different prices for different media*, reflecting their different product characteristics—this meant that the availability of alternative media was greater, and costs lower, for some types of advertising than for others.
- (h) *Advertising in local newspapers was perceived as important*, particularly for births, deaths and marriages, local classified advertisements and public notices, given the proportion of readers who turned to them first as a source of any local information that they wanted.

4.17 Our approach in recent local newspaper inquiries was to take the relevant product market to be local paid-for and free weekly newspapers, whilst acknowledging that other printed and non-printed media might impose some competitive constraint on local weekly newspapers for different categories of advertising. We adopted this approach in this case also.

### ***Categories of advertising***

4.18 In the context of local weekly newspaper advertising, we first consider whether there were separate, relevant product markets for different categories of advertising. It was clear to us that there was little or no demand-side substitutability between categories

of advertising. A public notice was not a substitute for an advertisement to sell a motor car. Supply-side substitutability appeared easier, and Archant told us of various possible measures it might consider in responding to an increase in demand for one category of advertising only. This suggested that the relevant product market extended to all categories of advertising (see Appendix E, paragraphs 6 to 8).

### ***Other printed media as substitutes***

- 4.19 We also considered the extent to which other printed media might offer alternatives to advertisers, in particular national newspapers, regional newspapers and advertising-only publications.
- 4.20 National newspapers provide much more national and international news and serve different needs for advertisers. We noted two possible exceptions to this, namely advertising for 'up-market' property in affluent areas of north London (where the *Sunday Times* competes with Archant's *Hampstead and Highgate Express*, we were told) and run of paper (ROP) advertising by large retail chains. However, as we did not see any evidence that the former-INM north London titles compete with the *Sunday Times* in property advertising, and ROP advertising by large retail chains accounted for a small proportion of Archant's total advertising revenue in local weekly newspapers, neither of these instances caused us to alter our view that national newspapers did not offer an effective substitute for advertisers in local weekly newspapers (see Appendix E, paragraph 10).
- 4.21 Regional newspapers (for example, the *Evening Standard* and *Metro*) are a different matter and we consider that some advertisers view them as effective substitutes to local weekly newspapers for some of their requirements, but this is not sufficient to include these titles in the relevant product market (see paragraphs 4.31 and 4.32).
- 4.22 We took a different view in relation to some advertising-only publications (niche titles with some editorial content), particularly in relation to property, motor and recruitment advertising. Directories, however, appeared to exhibit differences from local weekly newspapers, such as their less frequent publication, that would make them less effective substitutes. Direct mail (for example, in relation to motor advertising from main car dealerships) may impose some competitive constraint but the greater ease with which direct mail could be targeted suggested that it is serving a different need for advertisers (see Appendix E, paragraphs 14 to 17).
- 4.23 The competition offered by local-authority-owned titles (and other publications) not included in JICREG data is discussed in paragraphs 5.17 to 5.20 and 5.28. We looked carefully at each such title before deciding whether it could be regarded as an effective substitute for local weekly newspapers included in JICREG data.

### ***Differences in advertising yields***

- 4.24 We considered the evidence on substantial and persistent differences between advertising yields for different categories of advertising in the relevant product market. In particular, it appeared to us that national ROP, public notices and recruitment advertising consistently commanded higher yields than others. It was put to us that these differences may be explained by differences in cost, and we considered this issue with reference to the responses to our surveys.
- 4.25 A fuller explanation of our survey responses is given in Appendix E, paragraphs 24 to 29. The key finding was that 23 per cent of Archant/INM customers who expressed

an opinion said that an increase of 5 per cent or less in the cost of advertising in local newspapers would stop them from advertising there. Although this evidence is in the form of a hypothetical response to a survey question, if it were true in practice it would suggest that a hypothetical monopolist of local newspapers would lose almost a quarter of its customers if it increased prices across the board by 5 per cent. It did not appear likely that corresponding costs could be reduced by a similar proportion, let alone significantly more. Taken on its own, this suggested that the product market was wider than local newspapers. Even on the extreme assumption that respondents who did not indicate a critical price increase would not switch at any level, 15 per cent of customers would still be lost to a 5 per cent price rise. Nevertheless, we found it necessary to look beyond a hypothetical across-the-board price increase and to consider the possibility for the hypothetical monopolist to charge different prices to different customers.

### ***Price discrimination***

- 4.26 Our analysis of possible price discrimination is set out in Appendix E, paragraphs 30 to 49. We considered this in relation to categories of advertising, former-INM publishing units and customer levels of expenditure with Archant. We found no systematic difference in reported critical price increases by category of advertising, nor by the former-INM publishing unit areas. However, in relation to possible differences by level of expenditure with Archant, we found that there was a noticeable difference, but the variations in levels of response suggested that Archant could not use the level of expenditure to identify whether any group of advertisers was price-insensitive.
- 4.27 In relation to discounts (off the published rate card), the evidence did not establish that this was a means of profitably targeting a 5 per cent price increase.
- 4.28 Our findings were qualified by the facts that survey responses did not necessarily show how advertisers would actually respond in practice and that our survey questions gave respondents an all-or-nothing choice, giving limited information on the possibility of partial substitution. We noted these qualifications, but they did not detract from the essence of what we found.
- 4.29 We also noted Archant's evidence of an actual [X] per cent unilateral increase in advertising rates attempted by INM in December 2003 for all customers for its four titles in its Post division. [X]
- 4.30 In summary, we did not find sufficient evidence to justify a conclusion that a price increase of 5 per cent by Archant would be profitable, or to find that Archant could price discriminate between customers to bring this about.

### ***Availability of substitutes***

- 4.31 The analysis of responses in our survey on substitution by other media are set out in Appendix E, paragraphs 50 to 62. Essentially, in response to questions about the other media where customers could and would advertise instead of their Archant local newspaper:
- (a) 48 per cent agreed that they could and would use other local newspapers;
- (b) 35 per cent said that publications devoted to advertising were an effective substitute for local newspapers;

(c) 50 per cent said that London-wide newspapers were an effective substitute; and

(d) 53 per cent said that non-print media were an effective substitute.

4.32 We examined whether possible differences in respondents' attitudes towards substitutes according to the category of their advertising corresponded to differences in their reported critical price increases to see if there was a systematic difference that might suggest separate product markets for different kinds of advertising. We found no systematic difference.

4.33 Whilst the figures in paragraph 4.31 were large, and the analysis reported in paragraph 4.32 showed no systematic difference, some caution was justified as the questions did not give a sense of what price rise would induce a move and there was no assessment of whether respondents would in fact use other forms of media. The figures in paragraph 4.31 should be contrasted with the much lower figures in Appendix D, paragraph 8, which were for customers of Archant/INM only.

### ***Conclusions on market definition***

4.34 So we concluded, in the context of this inquiry, that the relevant geographic market was wider than the 'footprint' of any individual title, but was local, extending no wider than the areas covered by the former-INM publishing units. The relevant product market covered free and paid-for weekly newspapers including some non-JICREG newspapers but could also extend to some other publications such as advertising-only publications.

## **5. Assessment of competitive effects of the merger**

5.1 This section considers the competitive effects of the merger in the relevant geographic market we have identified, namely in the parts of London, Essex and Kent covered by the former INM titles that Archant has acquired. We begin with the counterfactual, that is what the alternative situation would have been had the merger not occurred.

### ***Counterfactual***

5.2 INM's disposal of its London regional newspaper business formed part of a plan proposed to its bankers. Having announced it, INM used all reasonable endeavours to dispose of the business, before its financial year end (31 December 2003). INM told us that it would have sold all of these titles (less the Kent publishing unit) to Newsquest had Archant not bought them. Newsquest has confirmed that it was actively negotiating their purchase, right up to the announcement of INM's deal with Archant. INM would then have sold the Kent titles for the best price that it could achieve. Although Northcliffe had also expressed a serious interest in acquiring all of the London Regionals' titles, INM could not be certain that the deal would have gone through by the end of the year. So we considered that the likely counterfactual was that, without the Archant deal, four of the publishing units of INM's London Regionals business would have gone to Newsquest—these transactions having already been cleared by the Secretary of State—with the Kent titles being sold to someone else.

## **Competitive effects**

- 5.3 Although we identified the geographic market as local in this case, as in previous local newspaper inquiries, we also considered the possible effects of the merger at national and regional levels.
- 5.4 At the national level, this acquisition (from the figures in Table 2 of Appendix G) increased Archant's share of regional and local newspapers from 3.5 to 4.5 per cent. As only local weeklies were involved (again on the figures in Appendix G), the acquisition would increase Archant's national share of these newspapers from 4.5 to 6.6 per cent. The combined market share of the top four publishers of regional/local newspapers—which has been a concern in earlier reports—was not affected by the acquisition.
- 5.5 We received no evidence pointing to any concerns at the national level and we saw no cause for such concern; the issues raised were at regional and mainly at local level.
- 5.6 At the regional level, in this case looking at the London area as a whole, combining Archant's existing titles with those of INM created an additional strengthened player which, while smaller than the other two major publishers—or the publisher of London's regional titles—nonetheless represented a more significant challenge to them than either Archant or INM would do on its own. Archant told us that, unlike INM—which had been seeking to sell off these titles for some time and has, as a result, been reluctant to invest extensively in them, or launch new initiatives—the acquisition would enable it to offer a wider choice—and better value—in the packages it provides to advertisers: particularly the agencies looking to place advertisements across a range of titles covering large parts of London. It also said that it would seek to increase its share of advertising revenue by:
- investing in better production and finishing equipment—for example, in colour printing—and in online automated systems;
  - creating new titles or expanding current ones: for example, it planned to double the size of *Jobwatch*—adding an editorial and extending its area of distribution—and to offer *The News* on other commuter routes in Hertfordshire, Essex and Kent; and
  - providing title-specific and classified advertising web sites.

Archant also told us that the greater scale that the acquisition had brought about would enable it to compete more effectively across a number of fronts—not just in the London area, but in other parts of the country too. This offered the prospect of a response to the concerns about 'clustering' that had featured in a number of recent CC reports on local newspapers. This term refers to the development of geographically-concentrated clusters of complementary publications—both in London and more widely—which could be symptomatic of a mutual desire among major publishers to 'live and let live', sharing the market on a geographic basis and avoiding head-to-head competition in the same local areas.

- 5.7 Archant put it to us that the nature of advertising in localities in and around London was significantly different from the rest of the UK, that this was an increasing trend, and that London was unlike many smaller towns where advertising catchment areas and a local newspaper's footprint matched. Archant argued that civic boundaries meant much less in London than they did elsewhere, and quoted evidence from a 2003 Future Foundation survey which suggested that because of different travelling

patterns within the M25 compared with other parts of the country, advertisers had to appeal to customers, or potential customers, who lived in one borough, worked in another, and routinely shopped in a third. Whilst we obviously accepted that the London area had some distinctive features, we did not consider that travel distances were necessarily helpful in assessing price sensitivity of marginal customers in the areas served by the former-INM publishing units and we noted that the Future Foundation Survey was only one of many travel-time surveys (see Appendix D, paragraph 37).

- 5.8 Archant also told us that it faced competition from *Metro* and the *Evening Standard*; and from advertising media, such as leaflets, direct mail, the Internet, local radio and cinema throughout London, and that two major local newspaper publishers—Trinity Mirror and Newsquest—had a considerable presence in many parts of the capital: although the intensity of their coverage—and the incidence of other, smaller publishers—varied from place to place and between different categories of advertising. A more detailed list of the competitors that Archant told us it faced in north London, east London, and the Post area of east London and Essex is set out in Appendix H, categorized by different types of advertising.
- 5.9 Whilst these issues were part of the background to our analysis, the main focus was on whether or not the acquisition could be expected to lead to a substantial lessening of competition in the localities where these titles were circulated/distributed and, more particularly, in those where there were significant overlaps between Archant's existing and acquired publications. Competition varied in each of these localities, and for each category of advertising, depending on the extent and nature of the local players that offer a range of target audiences to different types of advertisers. Archant's competitors may include other local weeklies—whether or not they appear on the JICREG database—that were present in all or part of their circulation or distribution area; in other cases their activities may just (or also) be constrained by more specialist titles, such as *London Property News*, *Loot* or *Auto Trader*. Such publications would usually have a larger circulation/distribution and a wider footprint than a local newspaper, but a much more focused appeal, aimed normally at only one or two categories of advertisers.
- 5.10 Before examining the areas of overlap, we observed that many of the considerations discussed in section 4 and more fully described in Appendices D and E, in relation to market definition, were relevant also to the consideration of competitive effects. Of particular relevance was our overall assessment that the available evidence suggested that Archant would not, as a result of the merger, have sufficient market power to raise prices to a level that would cause concern. This evidence is discussed in paragraphs 64 to 70 of Appendix E but was essentially as follows:
- 23 per cent of customers in our survey said that a price rise of 5 per cent or less would stop them advertising in local newspapers, and this may represent a higher proportion of revenue.
  - There did not appear to be clear evidence that Archant could discriminate between its customers effectively enough to sustain an average price rise of 5 per cent.
  - There was very little concern about this merger from the customers we surveyed.
  - A wide range of tests that we carried out found no positive indication of the existence of market power in all or part of the market, even in sectors where yields were high (recruitment and public notices).

- 5.11 Against this background it is appropriate to consider the overlaps of Archant and former-INM titles within the areas of the former-INM publishing units.

### **Kent**

- 5.12 Archant had no presence before the merger in the Kent publishing unit area; there is accordingly no overlap and we did not consider this area further.

### **North-west London**

- 5.13 In the north-west London area, the combined post-merger share of circulation/distribution is 28.5 per cent with an increment of 1.9 per cent, insufficient to raise competition issues.

### **North London**

- 5.14 In the north London area, the combined post-merger share of circulation/distribution was 32.9 per cent, with an increment of 4.5 per cent. Again we did not consider that these figures were of sufficient magnitude to raise competition concerns. The description in Appendix D (see paragraph 18, together with the tables in section 5) shows how the position would be different if a narrower view of the relevant markets were adopted.

### **East London**

- 5.15 The existing Archant titles in the east London area were the *Ilford Recorder* Series and the *Newham Recorder* Group. The former INM titles that it acquired were the *East London Advertiser*, the *Hackney Gazette* and *North London Advertiser*, the *Hoxton & Shoreditch Express*, *Stoke Newington & Stamford Hill Express* and the *Stratford Express* (which came in two editions—the *Stratford & Newham Express* and the *Docklands Express*). All of the *Express* titles were free; the others were paid-for.
- 5.16 As shown in Appendix D (see paragraph 18 and section 5), on the basis of JICREG figures for east London, the transfer of the *Stratford Express* would give Archant a 100 per cent share in three JICREG areas: East Ham (with an increment of 18.3 per cent), Forest Gate (14.6 per cent) and Plaistow (30.6 per cent); and a very significant share in three others: Stratford/West Ham (94 per cent/increment 27.2 per cent) Manor Park (86 per cent/19 per cent) and Canning Town (79 per cent/38.5 per cent). The transfer of the *East London Advertiser* created a further Archant monopoly area in Bethnal Green (with an increment of 10.4 per cent) and two more where the share was significant: Bow (70 per cent/increment 13.6 per cent) and Stepney (69 per cent/10.8 per cent).
- 5.17 Unlike the position in the north London area, where the combined post-merger shares of circulation/distribution was 32.9 per cent, a figure lower than any considered to be an issue in previous local newspaper merger inquiries, in east London Archant's post-merger share over the 16 JICREG areas covered by editions of the four former INM titles was 81.1 per cent. Trinity Mirror was the only other major publisher of local weeklies in this area with 18.8 per cent of circulation. We therefore considered whether the potential creation or significant strengthening of Archant's market power in this part of London, to which this share gave rise, might be mitigated

by other factors, such as the presence of non-JICREG local newspapers or of other advertising media.

- 5.18 Whether non-JICREG publications should be included in our competitive assessment depended on two questions. The first was how significant these titles were as competitors to Archant's local newspapers or, to look at it another way, how effective they were as substitutes for local advertisers. Our assessment—from which Archant did not dissent—was that some were much more relevant than others. The titles that clearly offered effective competition were the *East London Enquirer*, *East End Life*, which was a local authority publication, and the east London edition of *Avenues*, which started out as an advertising-only publication devoted to property, but since introduced editorial material and broadened the range of the advertising which it carried. At the other end of the spectrum were *Hackney Today* and the *Newham Magazine*, both local authority titles, and both fairly new arrivals. While they did carry advertisements, their extent and range was limited and neither title could be regarded as a credible alternative for, say, a property or motor advertiser, seeking to move business away from Archant. Archant made the point that *East End Life* also carried little advertising at its launch and had since grown into a much more credible player. While this may be true, there could be no certainty about whether—or how quickly—either of these local authority titles would do the same.
- 5.19 The second question was how robust non-JICREG titles were. The statistics on which we carried out our analysis were those for July to December 2003—the most recent six-month period available at the time of our investigation. At that time, *Docklands News* was included in the figures, claiming a distribution of 80,000 copies for each edition. However, we subsequently learnt that its owner, Dockland Media Ltd, was wound up in June 2004 and that publication was currently suspended. While we were also told that there were plans to relaunch the title—a print run of 60,000 copies had been mentioned—there could be no certainty, at the moment, that it would reappear.
- 5.20 As we have seen (see paragraph 5.17), if we ignored non-JICREG titles altogether, then Archant's combined share of supply within the area of the four former INM titles in the East London publishing unit was 81.1 per cent (with an increment of 13.6 per cent). This fell to 40.3 per cent (with an increment of 6.8 per cent) if all of the non-JICREG newspapers available in the latter half of 2003 were included—figures lower than any considered to be an issue in previous local newspaper merger inquiries. But if we removed the *Newham Magazine* and *Hackney Today* from our calculations—because of their limited competitive impact—then Archant's share rose to 58.8 per cent, with an increment of 8.5 per cent. Excluding *Docklands News* too would take Archant's share to 65.5 per cent, with an increment of 9.5 per cent. This would make Archant's position in east London much more marginal in relation to the thresholds that we previously considered of potential concern—being above 50 per cent in its share, but below 10 per cent (just) in increment.
- 5.21 We considered the possible effect of advertising-only publications in this area. The publications of this kind that Archant cited to us were: *Hot Property*, *East London & West Essex Guardian Property*, *London Property News*, and *East London Property Mart*, for property; *Job Opportunities*, *Works for me*, *London Jobs*, *Loot Recruit*, *9-5* and *Girl About Town* for recruitment; *Auto Freeway*, *Auto Exchange*, *Auto Trader* and *Van Finder Weekly* for motors; *London Property News* and *North* for retail; and *Loot* for classified. We heard from one local authority in the area that the Internet offered an increasingly effective option for recruitment advertising. Some of our survey results also showed that just over one-third of advertisers saw publications of this sort as effective substitutes for local newspapers, while around half also saw regional newspapers and non-print media as effective substitutes too, although we treated

these figures with some caution as other results suggested much lower figures (see Appendix E, paragraphs 50 to 52).

- 5.22 We had regard to the survey evidence (see Appendix E, paragraph 63) which showed that a substantial majority of advertisers expected the acquisition to have no effect. We also noted (see Appendix E, paragraphs 30 to 49) the absence of clear evidence on possible price discrimination.
- 5.23 So, in east London, Archant's position straddled the thresholds that we normally regarded as having the potential for concern, even if some non-JICREG titles were included in our analysis; but a wide range of advertising-only publications and non-print media advertising was available in the area and our economic analysis suggested that Archant would not be able profitably to raise prices by an amount that would cause concern, either across the board or on a targeted basis.
- 5.24 Taking all these considerations into account, we concluded that, on balance, no substantial lessening of competition arose from the transfer of any titles in INM's former East London publishing unit.

### ***The Post area of east London and Essex***

- 5.25 The Archant titles that circulated in the Post Series' footprint were the *Newham Recorder*, the *Romford Recorder*, and the *Ilford Recorder* (all paid-for weeklies) and the *Havering Herald* (a free weekly). The former INM Post Division titles were the *Barking & Dagenham Post*, the *Barking & Dagenham Post Weekender*, the *Ilford & Redbridge Post* and the *Romford & Havering Weekly Post*.
- 5.26 As shown in Appendix D (see paragraph 18 and section 5), the transfer of these *Post* titles would give Archant a monopoly in two JICREG areas: Chadwell Heath (with an increment of 27.6 per cent) and Becontree Heath (15.2 per cent); and a significant share in 11 others: Dagenham (73 per cent/increment 14.1 per cent), Romford (73 per cent/30.1 per cent), Hornchurch (71 per cent/30.6 per cent), Seven Kings/Goodmayes (70 per cent/9.8 per cent), Ardleigh Green (69 per cent/28.8 per cent), Gidea Park (68 per cent/26.5 per cent), Upminster (68 per cent/24.3 per cent), Gants Hill/Newbury Park (64 per cent/10.8 per cent), Ilford (63 per cent/11.5 per cent), Barkingside (58 per cent/9.3 per cent) and Collier Row (51 per cent/21 per cent). The transfers created, overall, a reduction from three competitors to two—Archant and Trinity Mirror—in ten JICREG areas within the footprints of the *Barking & Dagenham Post* and the *Romford & Havering Weekly Post*, and three within the footprint of the *Ilford & Redbridge Post*.
- 5.27 As with the discussion of east London (see paragraph 5.17 and Appendix D), we could not be confident that, on the definition of the geographic market alone, the acquisition would be unlikely to create or significantly strengthen Archant's market power in these parts of London and Essex. This was because, in the area of the *Post* publishing unit, Archant's combined post-merger share of circulation over the 16 JICREG areas covered by editions of the four former INM titles was 63.8 per cent with an increment of 24.8 per cent.
- 5.28 If we recalculated Archant's combined post-merger share of circulation, taking into account the only significant non-JICREG title in the area—the *Essex Enquirer*—the figure was still 59.5 per cent, with an increment of 23.2 per cent—high enough to have been considered an issue in earlier inquiries.

- 5.29 We considered the possible effect of advertising-only publications in this area. The publications of this kind that Archant cited to us were: *Hot Property*, *Property Mart* and *Daltons Weekly* for property; *Job Opportunities* and *Loot Recruit* for recruitment; *Auto Freeway*, *Auto Exchange*, *Auto Trader* and *Auto Weekly* for motors; and *Friday Ad*, *Exchange and Mart (Southern)* and *Loot Essex* for classified. As with east London, some of our survey results showed that just over one-third of advertisers saw publications of this sort as effective substitutes for local newspapers, while around half also saw regional newspapers and non-print media as being effective substitutes too, although we treated these figures with some caution as other results suggested much lower figures (see Appendix E, paragraphs 50 to 52).
- 5.30 The survey evidence (see Appendix E, paragraph 63) showed that very few customers in the Post area thought the merger would have a negative effect. We also noted (see Appendix E, paragraphs 30 to 49) the absence of clear evidence on possible price discrimination. Archant pointed to a [X] per cent increase in advertising prices which INM introduced, just before the acquisition, in the advertising rates for its *Post* titles. [X]
- 5.31 The Post area was the one that raised most concerns. Even taking into account the one non-JICREG title distributed here still left Archant above the thresholds that we normally regarded as having the potential for concern, in terms both of share and increment. As with east London, we found that a wide range of advertising-only publications and non-print media advertising was available in the area. Our survey evidence showed that the proportion of customers in the Post area thinking that the merger would have a negative effect was very low (see Appendix E, paragraph 63) and our economic analysis suggested that Archant would not be able profitably to raise prices by an amount that would cause concern either across the board or on a targeted basis.
- 5.32 For all these reasons we concluded that, on balance, no substantial lessening of competition arose from the transfer of any titles in the former INM's *Post* publishing unit.

### **Conclusions on competitive effects**

- 5.33 We concluded that, on balance, none of the transfers of former-INM publishing units to Archant as a result of this acquisition gave rise to substantial competition concerns.
- 5.34 We described our view of the likely counterfactual situation in paragraph 5.2, namely that four of the former INM publishing units would have gone to Newsquest with the Kent titles being sold to someone else. As we found no substantial competition concerns arising from the present merger in respect of any of the former INM publishing units, and as the Secretary of State approved the sale to Newsquest of the four former INM publishing units north of the Thames, we saw no grounds for altering our view of the present merger by reference to the counterfactual in relation to Newsquest. In relation to the former INM Kent publishing unit (an area where Archant previously had no presence at all), we again saw no reason to alter our view of the present merger by reference to any likely counterfactual situation.

### **Market entry**

- 5.35 As we did not find that substantial competition concerns were raised by this acquisition, it was not necessary for us to consider whether any consequent increase

in prices or reduction in service would rapidly attract new entry into the markets affected. We did, however, receive a considerable amount of evidence on this issue from Archant and others, and this—together with our reflections upon it—is set out in Appendix I. Our overall assessment was that, despite there being some evidence of successful entry of various sorts, incumbents retained significant advantages, and new entrants faced considerable risks if they attempted to overcome them.

### ***Conclusions on the substantial lessening of competition test***

- 5.36 For all the reasons given, we do not expect that a substantial lessening of competition in any market or markets in the UK for goods or services has resulted or may be expected to result from this merger.