

Completed joint venture between Daily Mail General Holdings Limited, the trustees of the Iliffe Settlement and Trinity Mirror plc

ME/5895/13

The OFT's decision on reference given on 28 June 2013. Full text of decision published 5 July 2013.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Northcliffe Media Limited (Northcliffe)** was the local and regional publishing arm of Daily Mail & General Holdings Limited (DMGH). Northcliffe achieved a UK turnover of approximately £213 million in the year ending 30 September 2012.
2. **Iliffe News & Media Limited (Iliffe)** was the local and regional publishing subsidiary of the Yattendon Group Plc (Yattendon). Yattendon is privately owned by the Iliffe family and operates in a range of sectors including local media, agriculture, property and marine leisure. It has operations in the UK, Europe and Canada. Iliffe achieved a UK turnover of approximately £[] million in the year ending 31 December 2011.
3. **Trinity Mirror plc (Trinity Mirror)** is a UK-based multimedia company with a portfolio of five national newspapers, over 130 local and regional newspapers and a range of websites and digital products. Its portfolio of products stretches across England, Scotland and Wales.
4. **Local World Limited (Local World)** is a joint venture owned by DMGH, Yattendon, Trinity Mirror, Odey European Inc. (Odey), Artefact Partners Opportunities Fund Limited (Artefact), David Montgomery and Alasdair Locke (together, Odey, Artefact, David Montgomery and Alasdair Locke,

the Other Investors). Local World acquired the local and regional newspaper business assets of Iliffe and Northcliffe on 7 January 2013.

TRANSACTION

5. Local World was incorporated on 3 March 2011. It acquired the local and regional newspaper business assets of Iliffe and Northcliffe on 7 January 2013 through a series of transactions (together, the **Transaction**). The Iliffe assets had been reorganised into a new company, Local Content Limited, the shares of which were purchased by Local World. Local Content Limited then acquired the Northcliffe assets. Local Content Limited is therefore a wholly-owned subsidiary of Local World, which holds the Iliffe and Northcliffe businesses.
6. The Transaction includes Northcliffe's portfolio of 132 regional and local publications and 26 regional portal websites, and Iliffe's portfolio of 52 regional and local publications and 34 related websites. It also includes all of Northcliffe and Iliffe's staff (including editorial, pre-press and finance staff), advertising agency contracts, supply contracts, and any property associated with the businesses.
7. Prior to 7 January 2013, Local World was owned by David Montgomery. On 7 January 2013, DMGH and Yattendonⁱ each received a certain number of shares (as detailed in Table 1) in consideration for the Northcliffe and Iliffe assets respectively and Trinity Mirror and the Other Investors each received a certain number of shares in consideration for their financial investment in Local World.

Table 1 Ownership structure of Local World

Shareholder	Shareholding (per cent)
DMGH	38.73
Yattendon ⁱⁱ	20.53
Trinity Mirror	19.98
Artefact Partners	10.55
David Montgomery	5.20 ⁱⁱⁱ
Odey European Inc	3.51 ^{iv}
Edward Iliffe	0.79
Alasdair Locke	0.70

Note: Figures do not add to 100 due to rounding.

8. In order to secure finances, Local World also entered into debt arrangements with various banks and DMGH.
9. The OFT opened its investigation into the Transaction on 6 December 2012.¹ The statutory deadline is 8 July 2013 and the administrative deadline was 21 May 2013.

JURISDICTION

10. The parties submitted that the Transaction constitutes a relevant merger situation under the provisions of the Enterprise Act with respect to Northcliffe and Iliffe.
11. Under section 23 of the Enterprise Act 2002 (the **Act**), a relevant merger situation arises when two or more enterprises cease to be distinct and either the UK turnover test or share of supply test is met.
12. Prior to 7 January 2013, Northcliffe was controlled by DMGH, and Iliffe was controlled by Yattendon. On 7 January 2013, Northcliffe and Iliffe were combined and integrated into Local World such that the enterprises Northcliffe and Iliffe ceased to be distinct. DMGH now has at least material influence over the former Northcliffe and Iliffe businesses (referred to below as Northcliffe and Iliffe), as a result of its shareholding and board representation in Local World. The OFT therefore considers that, as a result of the Transaction, Iliffe has ceased to be distinct from DMGH under section 26 of the Act.
13. The OFT has also considered below whether, as a result of the Transaction, Trinity Mirror has also ceased to be distinct from Northcliffe and Iliffe.

Material influence by Trinity Mirror

14. Enterprises will cease to be distinct if they are brought under common ownership or control. Control includes situations falling short of outright voting control, including the ability directly or indirectly to control or materially to influence the policy of an enterprise.² Three levels of control are therefore recognised: a controlling interest (**de jure** control); the ability

¹ The OFT accepted initial undertakings from the parties on 17 January 2013.

² Enterprise Act 2002, Section 26(3).

to control policy (**de facto** control); and the ability materially to influence policy (material influence).

15. The ability to exercise material influence is the lowest level of control that may give rise to a relevant merger situation and in order to determine if the acquisition of the minority shareholding gives rise to a relevant merger situation, it is sufficient for the OFT to show only that it may be the case that Trinity Mirror has acquired material influence over Local World. The parties submitted in this case that Trinity Mirror's involvement in Local World falls short of material influence.
16. OFT guidance states that the ability materially to influence policy relates to the management of the company's business, including the strategic direction of a company and its ability to define and achieve its commercial objectives.³ In making an assessment of whether an enterprise is able to exert material influence over another, the OFT will have regard to all the circumstances of the case, including but not limited to the shareholding, board representation, and any agreements in place between the enterprises. The OFT has considered these factors below.

Board Representation

17. OFT guidance states that it would be concerned to investigate cross-directorships between competing businesses where such representation raised the possibility that one party could in fact have material influence over a competitor and thereby raise the prospect that the duty to refer could be met. More specifically, the OFT will review the proportion of board directors appointed by the acquiring entity and the corporate/industry expertise of members of the board appointed by the 'acquirer'.⁴ The OFT has previously placed weight on board representation when deciding on the question of material influence.⁵
18. In this case, Trinity Mirror has the right to appoint two out of the 11 Local World board directors. This right derives from the Shareholders' Agreement which says that each shareholder has the right to at least one Board

³ See *Mergers Jurisdictional and Procedural Guidance*, OFT, paragraphs 3.15 to 3.28.

⁴ See *Mergers Jurisdictional and Procedural Guidance*, OFT, paragraphs 3.25.

⁵ *Anticipated acquisition by the Coca-Cola Company of a minority interest in Fresh Trading Limited*, ME/4091/09, 26 May 2009 and *Completed acquisition by JCDecaux UK Limited of rights in Concourse Initiatives Limited and Media Initiatives Limited*, ME/5303/11, 19 March 2012.

member and if it holds at least 19 per cent of the company it can appoint a second Board director.

19. Board decisions are made by simple majority. The parties therefore submitted that Trinity Mirror is not able to unilaterally block any board decisions by voting alone. The parties further submitted that Trinity Mirror does not and will not play the role of industry expert in Local World matters because it has inherited the direction of Northcliffe and Iliffe. Furthermore, the presence of David Montgomery, Steve Auckland and Rachel Addison as executive directors on the board (all of whom have previous experience in the industry) indicates that Local World should be seen as a standalone business with its own strategic direction.
20. However, the OFT notes in this case that the two board members appointed by Trinity Mirror are Simon Fox, Chief Executive of Trinity Mirror, and Vijay Vaghela, Group Finance Director at Trinity Mirror. While the OFT recognises that they are not able to unilaterally block any board decisions, it considers that there may be scope for Trinity Mirror to exert influence over such decisions through participation in, and shaping, board discussions. The seniority of the two Trinity Mirror appointed board members, as well as Trinity Mirror's position as an industry leader, might enhance any such influence.
21. The parties submitted that David Montgomery, the Chairman of Local World, asked Trinity Mirror to make senior appointments to the board of Local World, because he wanted the board to be composed of highly experienced and knowledgeable individuals. The OFT considers that this indicates an intention that Trinity Mirror would have a degree of influence on the board of Local World. The parties also submitted that the appointment of these individuals was partly motivated by Trinity Mirror's wish to '**maintain a voice**' on the board, given the experience and seniority of other members of the board. The OFT therefore considers that the existence and identity of the board members by Trinity Mirror point toward it having the ability to exert material influence on Local World.

Internal documents

22. Trinity Mirror's internal documents in the lead up to the Transaction support the notion that part of its rationale for entering into the Transaction was to have influence over Local World. A July 2012 board paper states that:

[]

23. The parties argued that this board paper did not reflect the deal that was ultimately struck by the parties, and that deal had evolved by the September 2012 board paper. However, the OFT notes that an identical statement to that cited above was also present in the board paper dated September 2012, and that a later board paper (from October 2012) stated that:

[]

24. The OFT considers that the later board papers indicate that Trinity Mirror's rationale for entering into the Transaction went beyond being a financial investor, even in the immediate lead up to the Transaction, extending to []. The OFT sees [] as strategic in nature. There is no evidence in the later board papers that the deal structure had changed significantly, and the OFT notes that []. This suggests that Trinity Mirror's anticipated involvement in Local World is unlikely to have reduced in scope since the July board paper, and further supports the finding that the rationale for Trinity Mirror's involvement in the Transaction, rather than being purely financial, was a desire to influence the strategy of Local World as an important player in the development of the local newspaper industry. Trinity Mirror also informed the OFT that [].
25. For the reasons set out above, the OFT considers Trinity Mirror's board representation, in combination with the stated rationale for entering into the Transaction, supports a finding that it may be the case that Trinity Mirror is in a position to materially influence the policy of Local World.

Shareholding

26. OFT guidance states that the OFT may examine any case where there is a shareholding of 15 per cent or more in order to see whether the holder might be able materially to influence the company's policy.⁶ In previous cases where the OFT has found material influence on the basis of a shareholding below 25 per cent, it has considered a range of factors, including the distribution and voting power of shareholdings, board

⁶ See *Mergers Jurisdictional and Procedural Guidance*, OFT, paragraphs 3.20.

representation (dealt with above), and other commercial arrangements (dealt with below).⁷

27. In this case, Trinity Mirror acquired a 19.98 per cent shareholding in Local World. Trinity Mirror is the third largest shareholder after DMGH and Yattendon.
28. The Shareholders' Agreement sets out that most matters which are decided by shareholder vote require a shareholder majority of 60.25 per cent to pass. As such, Trinity Mirror does not have the right to unilaterally block any of these matters.
29. However, there are two decisions reserved to shareholders which require a shareholder majority of 86 per cent to pass:
 - i. an acquisition or disposal of a controlling interest, material part of or material interest in Local World, and
 - ii. the disapplication of pre-emption rights.
30. Trinity Mirror could therefore unilaterally block these decisions. The parties submitted that the ability to block an acquisition or disposal of a controlling interest, material part of or material interest in Local World, does not point to material influence. The OFT recognises that the scope of this veto right is not clear given that a 'material interest' is not defined in the Shareholders' Agreement. However, it notes that the other investors in Local World, notably Artefact Partners and Odey European Inc, do not have this ability, despite being significant financial investors.
31. The OFT and the Competition Commission (**CC**) have previously assigned particular importance to pre-emption rights in determining whether a company is able to materially influence another, particularly in the context of restricting the target's access to capital.⁸ However, the parties

⁷ *Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc*, Report to the Secretary of State for Trade and Industry 27 April 2007, *Anticipated acquisition by Centrica of 20 per cent of Lake Acquisitions*, ME/4133/09, 7 August 2009 and *Completed acquisition by First Milk Limited of a 15 per cent stake in Robert Wiseman Dairies plc*, 7 April 2005.

⁸ *Completed acquisition by Ryanair Holdings plc of a minority interest in Aer Lingus Group plc*, ME/4694/10, 15 June 2012, paragraphs 35-37; and *Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc*, Report sent to Secretary of State 14 December 2007, paragraph 3.41: 'the ability to block a waiver of pre-emption rights may be particularly important if the company is looking to raise funds quickly to finance a strategic acquisition, for example'.

submitted that in the case of a private company, the process of raising capital is necessarily different, because there is no publicly quoted share price, and therefore private companies are less likely to seek to raise capital quickly from persons who are not existing shareholders. The purpose of the ability to block the disapplication of pre-emption rights, the parties submitted, is to protect Trinity Mirror's shareholding from dilution.

32. The parties further submitted that, to the extent that any further funding is needed for Local World, such funding would be raised by further commercial borrowing, as set out in Clause 11 of the Shareholders' Agreement.
33. The OFT does not consider that Trinity Mirror's shareholding allows it to materially influence the policy of Local World.

Other

34. OFT guidance states that it may also consider whether any other factors, such as agreements with the company, enable the acquirer materially to influence policy.⁹
35. Trinity Mirror supplies printing services and national advertising sales services to Local World.¹⁰ The parties submitted that these arrangements do not give Trinity Mirror any further influence over the direction of Local World because:
 - i. they are set up on an arm's length commercial basis
 - ii. they were entered into prior to the Transaction
 - iii. Trinity Mirror currently prints [30 to 40] per cent of the Northcliffe titles (and none of the Iliffe titles)
 - iv. Local World is not reliant on Trinity Mirror for such contracts (because there are many other providers of these services []), and
 - v. there are provisions in the Shareholders' Agreement which limit the extent to which Trinity Mirror may be involved in decisions where there is a conflict of interest.

⁹ See *Mergers Jurisdictional and Procedural Guidance*, OFT, paragraph 3.27.

¹⁰ National advertising sales relate to advertising sold in the local or regional press but subject to national contracts, typically with large, national advertising buying agencies. Trinity Mirror's wholly-owned national advertising sales house, AMRA, sells such national advertising on behalf of Local World.

36. The OFT recognises that, for the reasons set out above, the supply arrangements between Trinity Mirror and Local World are unlikely to provide much further weight to any influence which Trinity Mirror might be able to exert on Local World.

Conclusion on Trinity Mirror

37. Given the conclusion set out below that the OFT has not found a realistic prospect of a substantial lessening of competition (**SLC**) under section 22(1) of the Act with respect to the Northcliffe/Iliffe/Trinity Mirror overlap, the OFT has not found it necessary to conclude on whether it may be the case that Trinity Mirror has the ability to exert material influence over Local World (and therefore the Northcliffe and Iliffe businesses).¹¹

Share of supply test

38. The parties submitted that the share of supply test in section 23(4) of the Act is met in this case with respect to the Northcliffe/Iliffe overlap since Northcliffe and Iliffe's combined share of total circulation of all JICREG-registered titles¹² in the UK exceeds 25 per cent in 35 JICREG areas. The parties submitted that these 35 JICREG areas amount to a substantial part of the UK because they comprise over 835,000 households in aggregate.¹³ Accordingly, the OFT considers that the share of supply test is met with regard to the Northcliffe/Iliffe overlap. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.
39. Given the conclusion set out below that the OFT has not found a realistic prospect of a SLC under section 22(1) of the Act with respect to the Northcliffe/Iliffe/Trinity Mirror overlap, the OFT has not found it necessary to conclude on whether the share of supply test under section 23(4) of the Act is met with regard to that overlap.

¹¹ Section 26(3) of the Act provides that the OFT **may** treat material influence as equivalent to control. OFT guidance says that it is the OFT's practice that the OFT would treat material influence as being equivalent to control whenever it considers that the test for reference would be met (*Mergers Jurisdictional and Procedural Guidance*, OFT, paragraph 3.16).

¹² The Joint Industrial Committee for Regional Press Research (**JICREG**) is a newspaper body that collects circulation, distribution and readership data broken down to contiguous post-code sectors.

¹³ Based on 2011 Census data, the OFT calculated that these 835,000 households are likely to house around 1.9 million people.

FRAME OF REFERENCE

40. The OFT considers that an analysis of the scope of the product and geographic markets serve to provide a framework in which the competitive effects of the Transaction can be assessed. The boundaries of any candidate market do not determine the outcome of the OFT's analysis of the competitive effects of a transaction.
41. Northcliffe, Iliffe and Trinity Mirror overlap in the provision of local and regional newspapers and associated websites across the UK. Northcliffe and Iliffe print titles overlap in 43 JICREG areas across eight counties: Staffordshire, Derbyshire, Essex, West Midlands, Leicestershire, Warwickshire, Cheshire and Hertfordshire. These overlaps involve 13 Northcliffe and 13 Iliffe titles. The main areas of overlap between Northcliffe and Iliffe publications are in Derbyshire and Staffordshire.
42. Trinity Mirror print titles overlap with Northcliffe and/or Iliffe titles in 131 JICREG areas across 11 counties: Staffordshire, Derbyshire, Essex, Warwickshire, West Midlands, Leicestershire, Hereford and Worcester, Suffolk, Cheshire, Shropshire, Hertfordshire. These overlaps involve 34 Northcliffe/Iliffe titles and 24 Trinity Mirror titles. The main areas of overlap between the Northcliffe, Iliffe and Trinity Mirror publications are in the Midlands, Outer London, and South Wales.
43. Northcliffe, Iliffe and Trinity Mirror also overlap in the operation of websites across the UK. The OFT has not considered the operation of websites further in this case given that they represent a small percentage of the parties' revenues and they are largely adjunct to the parties' print newspapers. Furthermore, the OFT has not received any concerns from third parties relating to the combination of the digital assets of the parties.

Product Scope

44. Local newspaper and website publishers can have two sources of revenue, the cover price (where the title is paid-for) and advertising sales (print and online). The two customer groups, readers and advertisers, are interdependent, forming a two-sided platform with the newspaper acting as an intermediary.

45. Both readers and advertisers can therefore be considered customers of local newspapers. The competitive constraints faced by local newspapers in respect of each group may differ but there are important links between the two. Local newspapers act as an intermediary between advertisers and readers, with advertisers acquiring access to demographic groups ('eyeballs'). Increases in the cover price of a newspaper, or a change in the editorial content, can affect the level or type of readership and therefore the yield on advertising inventory.
46. The OFT understands that advertisers may use multiple types of media, either across advertising campaigns or for the same advertising campaign. Their selection of media will depend on the specifics of the campaign, but in general they will select the medium/media which best delivers the demographic or area they wish to target in the most cost-effective way. Local newspaper advertising is sold both locally, via dedicated sales teams, or via national sales teams for larger advertisers and advertising agencies.
47. The OFT's consideration of market definition begins with the overlapping products of the parties in the narrowest plausible candidate product markets. In this case, the narrowest plausible candidate product markets are found by segmenting titles according to their common characteristics. The OFT has then considered whether it is appropriate to widen the markets to include titles that differ in respect of these characteristics.
48. The OFT has therefore considered whether it is appropriate to segment the market for local newspapers in the following ways:
 - i. whether local newspapers constitute a separate product market from regional and national newspapers
 - ii. whether paid for and free titles are part of the same product market
 - iii. whether daily titles and weekly titles are part of the same product market
 - iv. the extent to which other print publications and other media form part of the same product market, and
 - v. whether segmentation by advertising category is appropriate.

Local, regional and national publications

49. The parties submitted that regional and local publications form part of the same product market.

50. In previous cases, the OFT has found that local newspapers form a separate product market from regional and national newspapers, largely on the basis that advertisers in local media are generally unlikely to view regional and national newspapers as effective substitutes due to differences in content and circulation size, which is likely to result in advertising being more costly and less targeted than with local titles.¹⁴ This is consistent with the responses received by the OFT from local advertising customers, the majority of which indicated that they only advertise in local media. One third party noted that the particular strength of the local press is the ability to target a specific area, county, town or even postcode.
51. The OFT considers it appropriate to consider constraints from regional titles on local titles (and vice versa) on a case-by-case basis where they exist in areas of potential concern, while recognising that the constraint exerted by regional titles on local titles may be weaker than that exerted by other local titles.

Paid for and free publications

52. The parties submitted that free and paid for publications compete in the same product market. While local paid for and free titles will generally differ in circulation (or for free titles, distribution) sizes, the OFT has established in previous cases that they are part of the same product market due to similarities in editorial content and geographic coverage such that advertisers consider them to be realistic alternatives.¹⁵ This is consistent with responses received from third parties in this case.
53. Accordingly, the OFT considers that free and paid for local publications compete in the same product market.

Daily and weekly publications

54. The parties submitted that publications of different frequencies compete in the same product market. In previous cases, both the OFT and the CC have

¹⁴ *Anticipated acquisition by DC Thompson & Co Limited of Aberdeen Journals Limited*, OFT, 15 June 2006, paragraphs 7-8

¹⁵ *Anticipated acquisition by DC Thompson & Co Limited of Aberdeen Journals Limited*, OFT, 15 June 2006, paragraphs 6-10; and *Anticipated acquisition of seven local weekly newspaper titles by Kent Messenger Group of several newspapers from Northcliffe Media Limited*, OFT, 18 October 2011, paragraph 24

recognised key differences in the nature of daily and weekly newspaper titles which suggest they are in separate product markets.¹⁶ However, in one previous case the OFT recognised that there may be circumstances in which daily and weekly titles form part of the same product market.¹⁷

55. The OFT considers that the appropriate product market should be judged in light of the particular circumstances of the case in hand and that it may be appropriate to include daily and weekly titles in the same product market where the evidence supports it.
56. In this case the OFT has scrutinised those areas which appear to raise concerns taking into account the extent of competition between weekly and daily titles based on the facts and evidence available.

Print and other types of media

57. The parties submitted that there is a single product market covering both print and online advertising because readers readily switch between different news sources.
58. The OFT has previously acknowledged that other print and non-print media are capable of imposing competitive constraints on local newspapers for advertising content.¹⁸ However, the strength of the constraints from other media in any geographic area will likely vary and need to be assessed on a case by case basis.¹⁹
59. The Local Media Assessment (**LMA**) submitted by the Office of Communications (**Ofcom**)²⁰ points to the growing constraints from alternative media sources as substitutes to local newspapers for some readers and advertisers. It notes that the internet has become an important source of local content through the emergence of various online services,

¹⁶ *Anticipated acquisition by DC Thompson & Co Limited of Aberdeen Journals Limited*, OFT, 15 June 2006, paragraphs 6-10; and *Johnston Press plc and Trinity Mirror plc: A report on the proposed merger*, Competition Commission, 2002, paragraph 5.7

¹⁷ *Anticipated acquisition by Northcliffe Media Limited of Topper Newspaper Limited*, OFT, 1 June 2012, paragraphs 17,18, 30-35

¹⁸ *Review of the local and regional media merger regime: Final report*, OFT1091, June 2009. Paragraphs 4.16-4.23

¹⁹ *Completed acquisition by Dunfermline Press Limited of several titles from Berkshire Regional News*, OFT, 4 February 2008, paragraph 58 and '*Review of the local and regional media merger regime: Final report*', OFT1091, June 2009, Paragraphs 4.16-4.23

²⁰ *Local World: Local Media Assessment*, Ofcom, 11 April 2013.

and that as online technologies evolve and the take up of mobile devices and smartphones continues to increase, the importance of online sources is likely to grow further. However, Ofcom notes that it is difficult to draw conclusions about the extent to which people view local newspapers as substitutes or complements to other platforms for local media.²¹

60. In this case third parties have indicated to the OFT that online media may provide a constraint for certain categories of advertising sales. More specifically, one third party highlighted the use of www.RightMove.co.uk for property advertising, www.AutoTrader.co.uk for motor advertising and www.Ratedpeople.com for classified advertising. However, some third parties noted that, in general, print newspapers remain the main competitors to each other.
61. The parties have provided some evidence that their behaviour is constrained by alternative media in particular categories of advertising, including:
 - i. In private motors, a 2012 Northcliffe internal strategy document noted that it was facing strong competition from online players, both in terms of price and the response rate they provide, and identifies the need to reduce its own prices. This resulted in a price cut trial in the Derby area. The parties also submitted a monthly report in which Northcliffe compares its share in the private motors advertising sector with Gumtree, Ebay, Auto Trader and Viva Street, showing that, for example in July 2012, Northcliffe held a six per cent share in such advertising in the areas in which Northcliffe titles circulate.
 - ii. In recruitment, a 2011 Northcliffe Recruitment Strategy document identified that it was performing poorly against online rivals, and highlighted the low cost alternative offered by online competitors. Following this strategy review, Northcliffe responded by changing the structure of its charges for recruitment advertising, in line with that used by its online competitors.
 - iii. In local radio, the parties submitted evidence that Northcliffe has monitored Signal Radio in the Stoke on Trent area for the last 10 years, as it is perceived to be a major competitor to the Stoke Sentinel and the Sentinel Advertiser.

²¹ *Local World: Local Media Assessment*, Ofcom, 11 April 2013, paragraph 4.50.

- iv. The parties have provided examples of the entry of hyper-local printed products (which are not represented in the JICREG data), which focus on local advertisers in the overlap areas. The parties argue that there are low barriers to entry for these products.
62. The OFT recognises that the evidence provided by the parties supports the fact that local and regional printed newspapers may be constrained by other media. Although the OFT does not consider that it has been provided with sufficient evidence to widen its frame of reference to include other media in this case, it considers that other media may provide a constraint on local and regional printed newspapers in certain circumstances. Given the conclusion set out below that the OFT has not found a realistic prospect of a SLC in this case even on the narrow basis of print titles, it did not consider it necessary to assess the extent of the constraint imposed by other media.

Advertising category

63. The parties submitted that the relevant product market should include all advertising categories, due to the ease with which publishers can adjust the relative space dedicated to each category.
64. The Merger Assessment Guidelines state that the relevant product market is generally determined by reference to demand-side substitution alone, but that there are circumstances where several narrow relevant markets may be aggregated into one broader one on the basis of supply-side considerations.²²
65. While the CC has previously concluded that advertising categories are 'self-evidently' not demand-side substitutes,²³ the OFT and CC have historically considered all advertising categories in the same product market.²⁴ In its most recent case relating to local newspapers, the OFT considered whether to assess the merger based on advertising category (motors, property, recruitment, notices, retail and leisure), and ultimately assessed the merger on both a wide and narrow basis.

²² *Merger Assessment Guidelines*, Joint publication of the CC and the OFT, Section 5.2.17.

²³ A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited', Competition Commission, 2004, Paragraph 6, Annex E.

²⁴ *Completed acquisition by Dunfermline Press Limited of several titles from Berkshire Regional News*, OFT, 4 February 2008, paragraphs 32, 42

66. On the basis of supply-side substitution, and the fact that the OFT has not been provided with any evidence indicating that the market should be segmented for different advertising categories, or that the competitive effects of the current Transaction would be materially different for different advertising categories, the OFT decided to conduct its assessment on the basis of one market for all advertising categories.

Geographic Scope

67. Northcliffe, Iliffe and Trinity Mirror's publications are circulated across the UK. The main areas of overlap between Northcliffe and Iliffe publications are in Derbyshire and Staffordshire. The main areas of overlap between the Northcliffe, Iliffe and Trinity Mirror publications are in the Midlands, Outer London, and South Wales.
68. In previous cases, the OFT and the CC have generally assessed the competitive effects of a merger between two local newspaper publishers at a local level.²⁵ While they do not necessarily amount to geographic markets, previous analysis has made use of 'JICREG areas',²⁶ as well as looking at aggregated JICREG areas within the area of circulation of the titles in question (referred to below as their 'footprint'),²⁷ and in some cases also at wider areas such as a local authority level.²⁸
69. The OFT considers JICREG areas to be an appropriate starting point for its assessment in this case. However, given that JICREG areas are very narrow and therefore may not capture any harm arising on a wider basis, the OFT has also gone on to consider the effect of the Transaction at a more aggregate level to assess the extent of the constraint lost for individual titles.
70. In light of this, the OFT considered it appropriate to also assess the Transaction on the basis of the total footprint of the titles that raise

²⁵ *Anticipated acquisition by Northcliffe Media Limited of Topper Newspaper Limited*, OFT, 1 June 2012, paragraphs 50-53

²⁶ For example, *Anticipated acquisition by Northcliffe Media Limited of Topper Newspaper Limited*, OFT, 1 June 2012, paragraph 53 and *Completed acquisition by Dunfermline Press Limited of several titles from Berkshire Regional News*, OFT, 4 February 2008, paragraph 51

²⁷ For example CC, *Johnston Press plc and Trinity Mirror plc, a report on the proposed merger* (2002).

²⁸ For example, *Anticipated acquisition of seven local weekly newspaper titles by Kent Messenger Group of several newspapers from Northcliffe Media Limited*, OFT, 18 October 2011, paragraphs 41-46

concerns, while paying attention to variations in the competitive constraints within that footprint, across JICREG areas. This approach resulted in a frame of reference of the total footprint of 12 titles for the Northcliffe/Iliffe overlap, and 34 titles for the Northcliffe/Iliffe/Trinity Mirror overlap.

71. The OFT has also assessed the Transaction at a regional level because, while the readers of local newspapers are local, some advertisers are based outside of the circulation footprint of the title. The parties and third parties indicated that businesses may advertise in a local title as part of a campaign targeting a wider area such as a county, and may therefore advertise in a number of different local titles. Insofar as such advertisers may be able to substitute between different titles (or bundles of titles, or other media) within a region or across the country, this suggests that it is also appropriate to assess the Transaction on a regional and national basis.

Conclusion on frame of reference

72. The OFT considered it appropriate, on the evidence available, to assess this Transaction on the basis of a market for local newspapers, including free and paid, weekly and daily, and across all advertising categories, taking account of the varying degree of constraint on a case-by-case basis.
73. On the basis of the evidence provided by the parties and the conclusions of Ofcom, the OFT has taken into account other media and the constraint that it might impose on local and regional printed newspapers in its overall competitive assessment.
74. With regard to the geographic frame of reference, the OFT considered it appropriate to assess the Transaction at the local and regional level, using the total footprint of 12 titles for the Northcliffe/Iliffe overlap, 34 titles for the Northcliffe/Iliffe/Trinity Mirror overlap, as well as the JICREG areas in which those titles circulate.

HORIZONTAL UNILATERAL EFFECTS

75. The OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction through the following local theories of harm:

- i. unilateral incentives for Local World to increase prices or reduce quality or circulation of Northcliffe and/or Iliffe titles, as a result of local overlaps between Northcliffe and Iliffe, and/or
- ii. unilateral incentives for Trinity Mirror to increase prices or reduce quality or circulation of Trinity Mirror titles, as a result of local overlaps between Local World and Trinity Mirror.

76. At a regional level, the OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction through the following regional theories of harm:

- i. a weakening of potential competition by the reduced threat of entry or expansion by neighbouring titles, and/or
- ii. a weakening of direct competition through the reduced competition for those customers targeting an audience within a region (rather than specific local areas).

Horizontal unilateral effects at the local level

Framework for local analysis

77. The OFT and CC have, in past local newspaper mergers, used a set of four filters as set out below. The OFT notes that the filters are intended as a mechanism to identify the areas in which competition concerns are most likely to arise as a result of a transaction in order to assess those in more detail, without ruling out any areas that may give rise to concerns. In terms of the filters used in past cases, initial focus is placed on areas where:²⁹

- i. the parties concerned have a share of the total circulation/distribution of titles in that area of at least 50 per cent, and
- ii. the combination of the parties concerned would lead to an increment to the share of supply of at least 10 per cent of that total circulation/distribution.

²⁹ *Anticipated acquisition by Trinity Mirror plc of the regional newspaper titles of Guardian Media Company plc*, OFT, 4 May 2010, paragraph 44; *Completed acquisition by Dunfermline Press of the Berkshire regional newspapers business from Trinity Mirror plc*, OFT, 4 February 2008, paragraph 61; *Completed acquisition by Johnston Press of Scotsman Publications Limited*, OFT, 17 May 2006, paragraph 61; CC, *Johnston Press plc and Trinity Mirror plc, a report on the proposed merger* (2002) paragraph 5.28.

78. Applying these two initial filters there are four JICREG areas with respect to the Northcliffe/Iliffe overlap which remain for closer examination and 31 JICREG areas based on the Northcliffe/Iliffe/Trinity Mirror overlap.³⁰
79. In past cases, potential competition concerns have then been further identified using two more filters:³¹
- i. areas that constitute 'core' areas for both of the titles concerned. That is, the areas account for at least 30 per cent of the title's circulation.³² The rationale for this filter is that non-core areas may be unlikely to give rise to competitive concerns as the parties are unlikely to adjust prices or editorial content on the basis of circulation in those areas, and
 - ii. areas where the both titles in question have a household penetration of at least 10 per cent.³³ The rationale for this filter is that if a title achieves less than 10 per cent household penetration, the title is unlikely to be considered an effective advertising medium for that area.
80. Applying all four of these filters, there is no JICREG area of overlap between Northcliffe and Iliffe that is highlighted as a concern. There are, however, two JICREG areas of overlap between Northcliffe/Iliffe and Trinity Mirror that fail all four filters: Nuneaton and Loughborough Rural.
81. The OFT notes that, irrespective of the application of the above filters, within some local JICREG areas and at a wider level, the merging parties have a very significant combined share of supply and the Transaction removes the last remaining print constraint(s) on certain titles. The OFT has

³⁰ For clarity, the OFT considers it appropriate to include both JIREG and non-JICREG registered titles in the product frame of reference where there is evidence of the competitive constraint exerted by any non-JICREG title, as per *Completed acquisition by Dunfermline Press Limited of several titles from Berkshire Regional News*, OFT, 4 February 2008, paragraph 16.

³¹ *Anticipated acquisition by Trinity Mirror plc of the regional newspaper titles of Guardian Media Company plc*, OFT, 4 May 2010, paragraph 44; *Completed acquisition by Dunfermline Press of the Berkshire regional newspapers business from Trinity Mirror plc*, OFT, 4 February 2008, paragraph 61; *Completed acquisition by Johnston Press of Scotsman Publications Limited*, OFT, 17 May 2006, paragraph 61; CC, *Johnston Press plc and Trinity Mirror plc, a report on the proposed merger (2002)* paragraph 5.28

³² Overlaps in non-core areas are unlikely to give rise to competitive concerns as the parties would be unlikely to adjust prices on the basis of advertising in those areas.

³³ If a title achieves less than 10 per cent household penetration, the overlap is unlikely to be problematic as the title is unlikely to attract sufficient coverage of local news to be considered an effective advertising medium for that area.

therefore applied sensitivity tests to examine those areas where the parties have very high combined market shares (albeit with an increment of below 10 per cent).

82. While the removal of this remaining constraint may represent only a small increment in an individual JICREG area – or involve titles that have low penetration and/or for whom the area is not core as described above – the OFT considers that the large combined shares of supply and the removal of the only remaining print title acting as a competitive constraint raises **prima facie** competition concerns sufficient to warrant further analysis.

Furthermore, the OFT notes that:

- i. given that the JICREG areas are very small, the requirement that an area accounts for at least 30 per cent of the total circulation (that is, 'core') for each party's titles may not in each case be sufficiently cautious to rule out a SLC as a result of the Transaction (bearing in mind that filters are intended to be an initial filter of areas which clearly do not give rise to concerns)³⁴
- ii. the requirement for an area to be 'core' for **both** titles may ignore asymmetric constraints, whereby a smaller title might be constrained by a larger title, but this overlap will be filtered out because the overlap area is not 'core' for the larger title, and
- iii. the recent decline in the local newspaper industry is likely to have led to a decrease in household penetration figures significantly below what they were when the filters were developed, meaning that overlaps are increasingly filtered out on the basis of the household penetration filter.

83. The OFT is mindful that it is important to ensure that the filters and underlying metrics determining those filters are robust and properly reflect the extent of competition between titles that is lost as a result of the Transaction and has therefore, as is set out below, tested the underlying metrics in order to ensure that it has properly identified the areas which may raise competition concerns. The OFT has therefore initially considered all JICREG areas in which the parties have a combined share of at least 50

³⁴ It may be the case that overlapping titles may both have large shares of circulation in the same contiguous JICREG areas.

per cent (as per the previous filter), and has applied a sensitivity analysis designed to examine increments of two per cent or more.³⁵

Local overlaps – Northcliffe/Iliffe

84. As set out above, the OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction through unilateral incentives for Local World to increase prices or reduce quality or circulation of the Northcliffe and/or Iliffe titles. In order to assess this, the OFT followed the framework above which resulted in a further analysis of eight JICREG areas relating to overlaps between Northcliffe and Iliffe titles: Ashbourne, Burton-Upon-Trent-Rural, Cheadle, Swadlincote, Uttoxeter, Stone, Alsager and Atherstone.
85. The OFT then considered all Northcliffe and Iliffe titles which circulate in those areas (as set out under Reference Title in Table 1 below). The OFT aggregated the data for all JICREG areas in which each title circulates, so as to conduct its analysis at the level of the entire footprint of that title. Subsequently, in order to identify the largest constraint removed by the Transaction on each reference title, the OFT identified the title belonging to the other party that appeared to provide the strongest constraint pre-Transaction (as set out under Paired Title in Table 1 below).³⁶ The paired title was chosen based on its frequency, share of circulation within the footprint of the reference title, and the focal point of its circulation compared with the reference title.

³⁵ Applying a sensitivity check of five per cent would reduce the number of JICREG areas for investigation from eight to six although the number of titles remains the same.

³⁶ For two reference titles, Burton Mail and Ashbourne News Telegraph, two paired titles were chosen because they both appeared to exert a similarly strong constraint on the reference title.

Table 1: Reference and Paired Titles

Reference Title	Paired Title
Burton Advertiser (Iliffe)	Lichfield Mercury (Northcliffe)
Lichfield Mercury (Northcliffe)	Burton Advertiser (Iliffe)
Leicester Mail Group (Northcliffe)	Burton Advertiser (Iliffe)
Uttoxeter Advertiser (Iliffe)	Lichfield Mercury (Northcliffe)
Uttoxeter Post & Times (Iliffe)	Lichfield Mercury (Northcliffe)
Derby Telegraph (Northcliffe)	Burton Mail (Iliffe)
Burton Mail (Iliffe)	Derby Telegraph (Northcliffe)
Burton Mail (Iliffe)	Lichfield Mercury (Northcliffe)
Ashbourne News Telegraph (Iliffe)	Telegraph Lite (Northcliffe)
Ashbourne News Telegraph (Iliffe)	Derby Telegraph (Northcliffe)
Staffordshire Newsletter (Iliffe)	Sentinel Advertiser (Northcliffe)
Leek Post & Times (Iliffe)	Sentinel Advertiser (Northcliffe)
Stoke Sentinel (Northcliffe)	Staffordshire Newsletter (Iliffe)
Tamworth Herald Series (Northcliffe)	Nuneaton News (Iliffe)

86. The OFT assessed the strength and closeness of competition between each of these pairs of titles as indicated by: (i) the titles' penetration within each other's footprints, and within specific JICREG areas inside those footprints; (ii) the share of titles' circulation which lie within each others' footprints, and within specific JICREG areas inside those footprints; and (iii) the titles' characteristics: frequency, free/paid, size.
87. In addition, the parties submitted evidence for each pair of titles (as summarised in Annex 1) purporting to demonstrate that they do not compete for the same advertisers because:
- i. Advertisers are 'hyperlocal' and are mostly located in titles' core areas.
 - ii. There are generally very few overlapping advertising customers between the paired titles. The vast majority of these overlapping advertisers are located outside of the area of overlap and are therefore likely to be treating the titles as complements (in order to reach the two titles' non-overlap areas, as part of a wider campaign) rather than substitutes (in order to reach the overlap area).

- iii. Switching data shows that few advertising customers switch between the paired titles.
 - iv. Both Northcliffe and Iliffe undertook competitor monitoring activities pre-Transaction. However, neither party monitored the other party's paired title.
 - v. In some cases, the parties submitted that the socioeconomic status of the paired titles' readership differs significantly.
88. No piece of evidence is determinative, since each has limitations in the inferences that can be drawn from it on the extent of competition between the parties' titles. However, the OFT considers that when all of the evidence provided by the parties is considered together it corroborates the view obtained using the filters (which draw on measures of household penetration and the extent to which areas are core for titles), if not necessarily the exact thresholds used as part of the filtering exercise. The OFT's assessment involved consideration of household penetration and the extent to which areas are core for titles, alongside the other evidence submitted by the parties, for each overlap of concern.
89. On the basis of the evidence submitted, the OFT considered that the paired titles of concern could be split into two categories of overlap: (i) the paired titles are of similar size but focused on neighbouring areas; and (ii) the smaller of the paired titles circulates within the footprint of the larger title. The OFT identified a set of paired titles for each of these two categories of overlap which it considered to be of potentially most concern and analysed the evidence at a more granular level for these two pairs of titles (the Burton Advertiser/Lichfield Mercury and the Derby Telegraph/Burton Mail). The OFT considered that these pairs of titles were potentially of most concern on the basis that:
- i. in both cases, each reference and paired title were identified as a title of concern individually, and the pairs were each others' key constraining titles (this can be seen from the fact that they appear twice as a pair in Annex 1)
 - ii. the paired titles are of the same frequency and are either both paid for or free
 - iii. the paired titles have a relatively high share of circulation and household penetration in the overlap area, and
 - iv. the paired titles have a sizeable overlap in advertiser customers.

Burton Advertiser/Lichfield Mercury

90. For the category of titles of similar size but focused on neighbouring areas, the OFT considered that the Burton Advertiser/Lichfield Mercury pairing was of most concern. These titles are both free and circulate weekly. They only overlap in the JICREG area of Burton upon Trent Rural.
91. The parties submitted JICREG data which shows that neither title circulates in the JICREG area with the highest percentage of the other's circulation (Burton upon Trent for the Burton Advertiser and Lichfield for the Lichfield Mercury). The overlap consists of 2,178 copies of the Lichfield Mercury circulated in Burton upon Trent Rural, which constitutes only six per cent of the Lichfield Mercury's total circulation. The parties submitted that an advertiser wanting to advertise in the Burton area (who might therefore currently advertise in the Burton Advertiser) would incur an uneconomical amount of wastage of 94 per cent of the adverts being read by readers not in the target area, should they advertise in the Lichfield Mercury instead.
92. The household penetration of the Lichfield Mercury within the footprint of the Burton Advertiser is three per cent (and eight per cent in Burton Upon Trent Rural). The parties submitted that this would make advertising in the Lichfield Mercury an unattractive option for advertisers targeting the Burton area. The reverse is also true, given that the household penetration of the Burton Advertiser within the footprint of the Lichfield Mercury is four per cent.
93. The parties also submitted evidence regarding the overlapping customers of the Lichfield Mercury and Burton Advertiser in 2010, 2011 and 2012. The data shows that one to two per cent (seven-10 per cent by value) of the Lichfield Mercury's customers also advertised in the Burton Advertiser, and of the Burton Advertiser's customers, four to six per cent (13-16 per cent by value) also advertised in the Lichfield Mercury. Of the advertisers using both titles in 2012, 88 per cent were located outside the overlap areas. The parties argued that this indicates that they were treating the titles as complements rather than substitutes, unless the advertisers were using each at different times of the year. The parties provided some data on the largest overlapping customers for each title pair, which supported this view by showing that overlapping customers tend to be those with multiple branches (within the separate core areas of the overlapping titles), or those

that appear to be aiming for brand awareness across a wider geography than the narrow area of overlap.

94. Finally, the parties submitted evidence tracking customers who stopped advertising with either the Burton Advertiser or the Lichfield Mercury in one year, and started advertising in the other in the following year. This data shows that for both the Burton Advertiser and the Lichfield Mercury, less than three per cent of the turnover lost in 2011 was lost as a result of customers who advertised in the other title in the following year.
95. The OFT recognises that this switching and overlapping customer data submitted by the parties has limitations, including not taking into account the possibility of intra-year switching or fully reflecting the dynamics of purchase decisions by advertisers. However, the OFT considers that, in combination, the different types of evidence presented by the parties indicates that the Burton Advertiser and the Lichfield Mercury did not compete closely prior to the Transaction. In light of the evidence available to the OFT regarding the extent of the constraint imposed on each other by the Burton Advertiser and the Lichfield Mercury, and the fact that the OFT has not received any third party concerns relating to this overlap, the OFT does not consider there to be a realistic prospect of a SLC (with respect to these titles) as a result of the Transaction.

Burton Mail/Derby Telegraph

96. The second category of overlap identified by the OFT was that where a smaller title circulates in the footprint of a larger title. This OFT considers that titles in this category are likely to impose asymmetric constraints on each other, as referred to in paragraph 82 above. The OFT considers that the Burton Mail and the Derby Telegraph is the overlap of most concern in this category. These titles are both paid-for and circulate daily. The Derby Telegraph is present in all but one of the JICREG areas forming the Burton Mail's footprint (Ashby de la Zouch, Burton upon Trent, Burton upon Trent Rural, Chellaston, Lichfield, Melbourne, Swadlincote and Uttoxeter).
97. The Derby Telegraph circulates in 29 JICREG areas, but 73 per cent of its circulation falls within one JICREG area (Derby) in which the Burton Mail does not circulate. The parties therefore submitted that the number of Derby Telegraph copies circulating in the eight overlap JICREG areas listed above is very low (1,668 copies or six per cent of the Derby Telegraph's

total circulation). Again, the parties submitted that an advertiser wanting to advertise in the overlap area (who might therefore currently advertise in the Burton Mail) would incur an uneconomical amount of wastage of 94 per cent of the adverts being read by readers not in the target area, should they instead chose to advertise in the Derby Telegraph.

98. The household penetration of the Derby Telegraph within the footprint of the Burton Mail is one per cent. The parties submitted that this would make advertising in the Derby Telegraph an unattractive option for advertisers targeting the Burton area, as they would only reach one per cent of households in that area. Similarly, the household penetration of the Burton Mail within the footprint of the Derby Telegraph is only two per cent.
99. The parties also submitted evidence regarding the overlapping customers of the Burton Mail and Derby Telegraph in 2010, 2011 and 2012. The data show that two to three per cent (15-21 per cent by value) of the Derby Telegraph's customers also advertised in the Burton Mail, and of the Burton Mail's customers, nine to 11 per cent (30-35 per cent by value) also advertised in the Derby Telegraph. Of the advertisers using both titles in 2012, 70 per cent were located outside the overlap areas. The parties argued that this indicates that they were treating the titles as complements rather than substitutes, unless the advertisers were using each at different times of the year.
100. Finally, the parties submitted evidence tracking customers who stopped advertising with either the Burton Mail or the Derby Telegraph in one year, and started advertising in the other in the following year. This data shows that for both the Burton Mail and the Derby Telegraph, less than three per cent of the turnover lost in 2011 was lost as a result of customers who switched their spending to the other title in the following year.
101. As above, the OFT recognises that some of the data submitted by the parties has limitations and none of the evidence, on its own, necessarily points to limited competition between the parties' titles. Furthermore, the OFT considers that overlap of customers between the Burton Mail and the Derby Telegraph – particularly by value – is not insignificant. However, the OFT considers that, in combination, the different types of evidence presented by the parties indicates that the Burton Mail and the Derby Telegraph did not compete closely prior to the Transaction. On balance, in light of the evidence available to the OFT regarding the extent of the

constraint imposed on each other by the Burton Mail and the Derby Telegraph, and the fact that the OFT has not received any third party concerns relating to this overlap, the OFT does not consider there to be a realistic prospect of a SLC (with respect to these titles) as a result of the Transaction.

Remaining overlap titles

102. The OFT went on to consider the remaining paired titles of concern. The evidence presented by the parties for each pair of titles is summarised and presented in the table in Annex 1. Based on this evidence, the OFT's analysis did not find any title pairing which raised competition concerns. For example, where the titles have a sizeable overlap in advertiser customers there was a low share of one title's circulation and household penetration in the overlap area (as in the case of the Leicester Mail, Uttoxeter Advertiser and Uttoxeter Post & Times).
103. In other instances both titles have a relatively high share of its circulation in the overlapping area, but there was a low rate of customers moving from one title to the other and the titles were either of different frequencies or one was paid for whilst the other was free to the reader (as in the case of the Burton Mail, Ashbourne News Telegraph, Stoke Sentinel and Tamworth Herald Series). In the case of the Leek Post & Times, there is a sizeable overlap in advertiser customers between it and its paired title, the Sentinel Advertiser. However, its household penetration in the overlap area is low, and, as above, there was a low rate of customers moving from the Leek Post & Times to the Sentinel Advertiser and vice versa.
104. In light of this, the OFT has not found a realistic prospect of a SLC with respect to any overlaps of the paired titles.

Aggregated constraints

105. The evidence described above was sufficient for the OFT to rule out concerns regarding titles that might compete against each other on an individual basis. However, the OFT considers that parties may have been constrained by a group of competing titles within the same ownership group in aggregate, none of which may individually provide a sufficient constraint for its removal to raise concerns. For example, the second or third strongest constraint on any title may also be published by the same

company as that of the strongest, so that the Transaction may result in the loss of an aggregated constraint on that title.

106. The OFT therefore assessed in more detail the extent to which the footprint of one party's titles overlapped with the footprints of several titles of the other party. The OFT noted that the area of potentially most concern in that respect is the footprint of the Burton Advertiser, in which Northcliffe circulated three titles: Lichfield Mercury, Derby Telegraph and Leicester Mail. Although these three Northcliffe titles span across the three JICREG areas in which the Burton Advertiser circulates, none of their shares of circulation exceed one per cent in Burton upon Trent, which is the primary area of focus for the Burton Advertiser. Further, none of the three titles circulate more than 3,000 copies (or more than six per cent of their own circulation) within the footprint of the Burton Advertiser.
107. On this basis, and the fact that the OFT did not receive any third party concerns in this respect, the OFT did not consider there to be a realistic prospect of a SLC from the removal of the aggregate constraint imposed by Northcliffe's Lichfield Mercury, Derby Telegraph and Leicester Mail. The OFT considers that, having ruled out concerns on an aggregated basis in the footprint of the Burton Advertiser, it is able to rule out concerns of a similar nature in other areas.

Implication for the use of filters

108. The OFT has considered the implication of the conclusions above regarding the appropriateness of the filters used in previous cases. The totality of the evidence provided by the parties supports the application of filters that use the metrics of combined share of circulation, increment, share of title's circulation and household penetration. These metrics remain useful for highlighting the overlap areas which may raise concerns. In particular, the evidence provided by the parties supports the inclusion of household penetration and 'core' measures in the filters. However, the OFT has not been able to confirm that the higher thresholds for these metrics, set in previous cases, are still correct – particularly in light of recent developments in the industry.
109. While the current case has not provided insight into the correct level at which the thresholds should be set, it is clear what type of evidence will be useful to the OFT in assessing whether concerns can be ruled out in

overlap areas which give rise to prima facie competition concerns. Such evidence includes data on switching between the merging parties' titles, the extent of the merging parties' overlapping customers, and the location of their customers.

Local overlaps – Northcliffe/Iliffe/Trinity Mirror

110. The OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction arising from unilateral incentives for Trinity Mirror to increase prices or reduce quality or circulation of the Trinity Mirror titles. The OFT also considered whether the Local World's titles may be subject to an increase in price or reduction in quality or circulation as a result of the Transaction. However, with regard to the latter, the OFT considers that, even if Trinity Mirror has the ability influence the strategic direction and commercial objectives of Local World, it does not consider that it would have a sufficient level of influence to unilaterally control prices, quality or circulation of Local World's titles.
111. In order to assess the unilateral incentives for Trinity Mirror to increase prices or reduce quality or circulation of the Trinity Mirror titles, the OFT followed the framework set out in paragraph 83 above which resulted in a further analysis of 36 JICREG areas relating to overlaps between Northcliffe, Iliffe and Trinity Mirror titles. On the basis of factors including the parties' combined share of circulation, increment of this share and the presence of independent titles across the footprint of these titles, the OFT considered that the overlap with the following six titles were most likely to lead to concerns: Solihull News, Nuneaton Weekly Tribune, Wales on Sunday, Sunday Mercury, Coventry Telegraph, Hinckley Times.
112. The OFT's starting point was that a unilateral incentive for Trinity Mirror to increase prices or reduce quality or circulation of its own titles would only arise if the loss that it would incur from such behaviour would be offset by the benefit it derives from (i) its approximately 20 per cent stake in the Local World titles; and/or (ii) the profit it would make from supplying printing and advertising sales house services to the rival titles. The OFT considers that this is likely to be the case in those areas where:
- i. Trinity Mirror titles have relatively low profits, or losses, so that Trinity Mirror forgoes little by losing customers

- ii. the competing Local World titles are significantly more profitable than the Trinity Mirror titles
- iii. there is low diversion outside of the market, and a high share of diversion within the market going to Local World titles, in response to a price rise or closure of the Trinity Mirror titles
- iv. Trinity Mirror derives significant profit from its vertical relationship with the competing Local World titles.

Profitability Analysis

113. Trinity Mirror submitted that [], and that the profits generated by Trinity Mirror from its vertical relationships are substantially lower than the profits from its own titles (and in some cases the vertical relationship does not even exist). The parties have submitted evidence which indicates that it is very unlikely that the benefit would outweigh the loss, even if all customers diverted to Local World.

114. For example, the parties submitted that the variable profit (from advertising and cover price) for selling an individual copy of Trinity Mirror's Wales on Sunday ([] pence) is far greater than the net gain through Trinity Mirror's share of estimated Local World variable profit per copy of the overlapping Local World title added to Trinity Mirror printing revenue per copy printed of overlapping Local World title ([] pence).

115. In order to show the extent of switching that would be required to bring about an incentive for Trinity Mirror to increase prices or reduce quality or circulation of its own titles, the parties submitted a comparison of profit margins across the Trinity Mirror titles listed above and the rival Local World titles. The OFT was also provided with an analysis of the parties' profit margins to determine the critical levels of diversion between Trinity Mirror and Local World at which a price rise of five and 10 per cent, or title closure would be a profitable strategy. The analysis shows that, for each Trinity Mirror title listed above, diversion ratios would need to be significantly above [45 to 55] per cent in order for Trinity Mirror to have the incentive to increase its prices by five per cent, and above (or close to) [95 to 105] per cent in order for Trinity Mirror to have the incentive to increase its prices by 10 per cent or close its title.

116. In some local areas the current Transaction results in a merger to monopoly in print newspapers, and a near monopoly in other local areas, and

therefore diversion ratios may be expected to be relatively high. However, the parties have provided switching data between the Trinity Mirror titles listed above and the key rival Local World titles. For each title, the proportion of lost customers that have switched to the key rival in the following year is below [five to 10] per cent (and in most cases much lower). The parties argue that this data indicates that the diversion ratios between the parties are very unlikely to reach levels that are significantly above [45 to 55] per cent.

Other factors influencing Trinity Mirror's incentives

117. In addition to the profitability analysis set out above, the parties submitted that:

- i. []
- ii. diversion outside the market is likely to be very high given the range of other media available, although no evidence was provided to support this
- iii. diversion from Trinity Mirror titles to Local World titles is likely to be low given that in most cases the footprint of these titles are not perfectly aligned (and as evidenced by the switching data)
- iv. there is a very large qualitative difference between a Sunday title (particularly the Wales on Sunday and the Sunday Mercury) and a weekly title, and
- v. there are conflict and confidentiality provisions in the Shareholders' Agreement, as well as corporate governance principles, which would prevent Trinity Mirror from behaving in this way.³⁷

Conclusion on local overlaps between Northcliffe/Iliffe/Trinity Mirror

118. The OFT considers that the evidence provided by the parties indicates that the relative profitability of Trinity Mirror titles compared with Local World indicates that Trinity Mirror is unlikely to be incentivised to increase prices or reduce quality or circulation of its own titles as a result of the Transaction. Furthermore, the OFT did not receive any concerns relating to the specific overlap with Trinity Mirror titles listed above. In light of this, the OFT does not consider that there is a realistic prospect of a SLC with respect to the Northcliffe/Iliffe/Trinity Mirror overlap.

³⁷ The parties submitted that [].

Horizontal unilateral effects at the regional level

119. As set out above, the OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction through the following regional theories of harm:

- i. a weakening of potential competition by the reduced threat of entry by neighbouring titles, and/or
- ii. a weakening of direct competition through the reduced competition for those customers targeting an audience within a region (rather than specific local areas).

Weakening of potential competition

120. The OFT considered whether, as a result of the Transaction, there may be a reduced threat of entry from neighbouring titles, and therefore a reduction in perceived potential competition.³⁸ This is because the parties have a reduced incentive to launch titles within each others' areas, or to extend the circulation of existing titles into new areas.

121. The parties submitted that the main threat of entry in a particular JICREG area is not from expansion by a neighbouring title, but by the launch of a new hyper-local publication (of which the parties have provided some examples). Furthermore, the parties submitted that in the context of the current industry decline and falling circulations and revenues, neither Northcliffe nor Iliffe has been in 'expansionist mode' for many years. Although there is one example in the last year of a launch by Northcliffe of a new edition of the Brentwood Gazette in neighbouring Romford (where Iliffe was not present), this was an exceptional case. Northcliffe and Iliffe have never launched or expanded into each other's areas in the past three years. Moreover, the OFT did not receive any evidence that either party set prices according to perceived entry from the other. The evidence in this case suggests that the parties are not currently constrained by perceived potential competition from one another.

³⁸ *Merger Assessment Guidelines*, Joint publication of the CC and the OFT, paragraph 5.4.16

Weakening of direct competition

122. In addition, the OFT considered whether the Transaction results in a weakening of direct competition through the reduced competition for those customers targeting an audience within a region (rather than specific local areas). This would be the case if there are advertising customers who wish to reach a certain number of readers within a region, without being concerned about the precise local area in which those readers are based. In such circumstances, titles within the same region but different local areas would be in direct competition, and the regional increments would lead to a direct loss of competition.
123. The parties submitted that there are very few customers who are seeking to advertise across a region. Advertisers generally target a 'hyper-local' audience, which is supported by the fact that a significant majority (64 per cent) of Iliffe's 2012 advertising revenues came from customers placing adverts in only one or two titles. Further, for advertisers seeking a genuine regional coverage, Iliffe is unable to offer them a package that provides this, as its share of circulation is low in the main areas of overlap (6.5 per cent in Derbyshire and 16 per cent in Staffordshire). Finally, the constraints imposed by third parties (such as Johnston Press and Midlands News Association) and the internet are sufficient to constrain the parties with respect to any regional customers.

Conclusion on regional overlaps

124. The OFT considers that the evidence put forward by the parties indicates that the parties do not currently impose a significant constraint on each other, whether through potential or direct regional competition. Although the OFT did receive one third party concern relating to the regional overlap, this related to the Northcliffe/Iliffe/Trinity Mirror overlap. The OFT does not consider that Trinity Mirror would have an incentive to alter its behaviour as a result of the Transaction – because (as set out above) very high diversion from Trinity Mirror to Local World titles would be required to make it profitable for Trinity Mirror to alter its behaviour and the switching data described earlier, along with evidence that independent constraints exist within each broad region of the country, suggests that such high diversion would be unlikely.

125. The OFT does therefore not consider that there is sufficient evidence to support a finding of a realistic prospect of a SLC on the basis of a regional overlaps between the parties.

BARRIERS TO ENTRY AND EXPANSION

126. Entry (or the threat of new entry) and expansion by both local newspapers and other media could act as a further competitive constraint on the parties' titles post-Transaction.

127. The parties submitted examples of entry from 'hyper-local' products. They submitted that barriers to entry are low in this regard because:

- i. printing services are readily available at cost effective rates
- ii. small-scale IT desktop publishing packages are available at minimal cost
- iii. there is limited requirement for editorial production in smaller operations, and
- iv. increased 'citizen journalism', combined with improved IT functionality in the home, has reduced the requirement for front-line journalistic input.

128. Since the OFT has not found a realistic prospect of a SLC as a result of the Transaction, the OFT does not consider it necessary to conclude on this issue.

THIRD PARTY VIEWS

129. In this case, the OFT contacted 10 competitors of the parties, 10 advertising agency customers, and 500 individual advertising customers. One concern was received from a competitor, but this related to the regional overlap between Trinity Mirror and Local World. The majority of respondents were supportive of the Transaction, highlighting the centralisation of resources as a scope for cost-saving. Only one concern was received from a competitor, but this related to the regional overlap between Trinity Mirror and Local World.

130. Of the customers contacted, none of the advertising agencies had concerns. Of the 500 advertising customers contacted by the OFT, 11

responded. Only one customer was concerned about the closure of titles, but this was not in an area identified by the OFT as an area of concern.

131. The parties agreed to include the OFT's invitation to comment in several Northcliffe and Iliffe titles. However, the OFT has received no concerns as a result of this exercise.

ASSESSMENT

132. On 7 January 2013, Northcliffe and Iliffe were combined to form Local World. Yattendon now has material influence over Local World and DMGH has at least material influence, as a result of their shareholding and board representation. The OFT therefore considers that, as a result of the Transaction, Northcliffe has ceased to be distinct from Yattendon and Iliffe has ceased to be distinct from DMGH.

133. The OFT considered whether Trinity Mirror has the ability to materially influence Local World, and therefore whether it has ceased to be distinct from Local World. It considered Trinity Mirror's representation on Local World's board, its rationale for entering into the Transaction based on its internal documents, its shareholding and the commercial arrangements in place with Local World. However, given that it did not find a realistic prospect of a SLC with respect to the Northcliffe/Iliffe/Trinity Mirror overlap, the OFT did not consider it necessary to conclude on whether there is a realistic prospect that Trinity Mirror has the ability to exert material influence over Local World.

134. Northcliffe, Iliffe and Trinity Mirror overlap in the supply of local newspapers and associated websites across the UK. Northcliffe and Iliffe print titles overlap in 43 JICREG areas across eight counties (mainly Derbyshire and Staffordshire) and the Trinity Mirror print titles overlap with Northcliffe and/or Iliffe titles in 131 JICREG areas across 11 counties (mainly in the Midlands, Outer London, and South Wales).

135. The OFT considers that the relevant frame of reference in this case was the supply of local newspapers, including free and paid, weekly and daily, and across all advertising categories, taking account of the varying degree of constraint on a case-by-case basis. In line with Ofcom's conclusions in its LMA and the evidence presented by the parties, the OFT concluded that other media may impose a constraint on local and regional printed

newspapers. However, in this case, the OFT did not find it necessary to examine in detail the extent of the constraint imposed. The OFT considered it appropriate to assess the Transaction at the local and regional level, using the total footprint of 12 titles for the Northcliffe/Iliffe overlap, six titles for the Northcliffe/Iliffe/Trinity Mirror overlap, as well as the JICREG areas in which those titles circulate.

136. At a local level, the OFT considered whether there is a realistic prospect of a SLC on the basis of unilateral incentives for Local World to increase prices or reduce quality or circulation of Northcliffe or Iliffe titles, as a result of local overlaps between Northcliffe and Iliffe.
137. The OFT has previously analysed local newspaper cases by applying a set of four filters. In applying these in this case, the OFT found that there were no areas of concern as regards the Northcliffe and Iliffe overlap, and two areas of concern as regards the Northcliffe/Iliffe and Trinity Mirror overlap: Nuneaton and Loughborough Rural. However, the OFT considered it appropriate to test the underlying metrics of the filters in this case, because it was concerned that the 'core' and 'penetration' filters may not, in this case, be sufficiently cautious to rule out a realistic prospect of a SLC as a result of the Transaction.
138. The OFT therefore considered all JICREG areas in which Northcliffe and Iliffe have a combined share of at least 50 per cent, and applied a sensitivity analysis designed to examine any increment over two per cent in those areas. It went on to consider the 12 Northcliffe and Iliffe titles which circulate in those areas, identifying the title belonging to the other party that appeared to provide the strongest constraint on it pre-Transaction.
139. The parties submitted evidence for each pair of titles showing that they do not compete for the same advertisers because: (i) the areas in which the titles overlap are not core for at least one of the two titles; (ii) one of the titles generally has a low level of household penetration in the overlap area; (iii) advertisers are 'hyperlocal' and are mostly located in titles' core areas; (iv) there are generally very few overlapping advertising customers between the paired titles, both by volume and value; (v) switching data shows that few advertising customers switch between the paired titles; (vi) neither Northcliffe or Iliffe monitored the other party's paired title pre-Transaction; and/or (vii) in some cases, the socioeconomic status of the paired titles' readership differs significantly.

140. Based on the different types of evidence provided by the parties that these titles did not compete pre-Transaction, and the fact that the OFT did not receive any third party concerns relating to the overlaps identified, OFT does not consider there to be a realistic prospect of a SLC as a result of the overlap between Northcliffe and Iliffe at a local level. The OFT also considered the extent to which the parties were constrained, pre-Transaction, by a group of competing titles which provide a constraint in aggregate. However, the OFT did not find any areas which raised concerns on this basis.
141. The OFT also considered whether there is a realistic prospect of a SLC on the basis of unilateral incentives for Trinity Mirror to increase prices or reduce quality or circulation of Trinity Mirror titles, as a result of local overlaps between Local World and Trinity Mirror. However, on the basis of the evidence provided by the parties on profitability, the OFT did not consider that the loss that Trinity Mirror would incur from such behaviour would be offset by the benefit it derives from (i) its 20 per cent stake in the Local World titles; and/or (ii) the profit it would make from supplying printing and advertising sales house services to the rival titles.
142. At a regional level, the OFT considered whether there is a realistic prospect of a SLC as a result of the Transaction through a weakening of potential competition by the reduced threat of entry by neighbouring titles and/or a weakening of direct competition through the reduced competition for those customers targeting an audience within a region. However, given that Northcliffe and Iliffe have not launched or expanded into each other's areas in the past three years, and the fact that the Iliffe titles are insufficient to provide customers with a regional coverage, the OFT has not found a realistic prospect of a SLC at the regional level.
143. The OFT considered the extent to which entry and expansion by both local newspapers and other media could act as a further competitive constraint on the parties' titles post-Transaction. However, given the OFT's conclusion on SLC, it has not found it necessary to conclude on this issue.
144. The OFT contacted several competitors and customers in this case, including both advertising agencies and individual advertising customers. Respondents were mostly supportive of the Transaction, pointing to the potential benefits arising out of it.

145. Consequently, the OFT does not believe it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

146. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act'.

ENDNOTES

ⁱ The OFT clarifies that the shares held by Yattendon were received by its ultimate owners, the Trustees of the 2008 appointed fund of Lord Iliffe's settlement dated 1 April 1969.

ⁱⁱ See previous endnote.

ⁱⁱⁱ The OFT clarifies that the shares in Local World held by David Montgomery amount to 5.21 per cent.

^{iv} The OFT clarifies that the shares in Local World held by Odey European Inc amount to 3.52 per cent.

Annex 1: Table showing metrics for each paired titles listed in Table 1

Reference Title (RT)	Paired Title (PT)	Category	Frequency	Paid/Free	Share of RT's circulation in overlap area (per cent)	Share of PT's circulation in overlap area (per cent)	Household penetration of RT in overlap area	Household penetration of RT in overlap area	Household penetration of PT in footprint of RT (per cent)	Percentage of RT customers also advertising in PT (by value, per cent)	Percentage of PT customers also advertising in RT (by value, per cent)	Proportion of RT turnover lost due to switching to PT (per cent)	Proportion of PT turnover lost due to switching to RT (per cent)
Burton Advertiser	Lichfield Mercury	(i)	Both weekly	Both free	24	6	17	8	3	13-16	7-10	2.4	2.3
Lichfield Mercury	Burton Advertiser	(i)	Both weekly	Both free	6	24	8	17	4	7-10	13-16	2.3	2.4
Leicester Mail Group	Burton Advertiser	(i)	Both weekly	Both free	1	56	1	22	10	3-6	4-9	3.9	3.5
Uttoxeter Advertiser	Lichfield Mercury	(ii)	Both weekly	Both free	1	6	0.1	8	4	6-11	4-11	1.0	0.9
Uttoxeter Post & Times	Lichfield Mercury	(ii)	Both weekly	Paid/Free	1	10	0.1	30	6	7-13	5-8	1.0	2.0
Derby Telegraph	Burton Mail	(ii)	Both daily	Both paid	99	6	2	10	2	30-35	15-21	2.4	1.3
Burton Mail	Derby Telegraph	(ii)	Both daily	Both paid	6	99	10	2	1	15-21	30-35	1.3	2.4
Burton Mail	Lichfield Mercury	(i)	Daily/weekly	Paid/Free	30	70	6	38	18	23-25	13-15	0.7	2.8
Ashbourne News Telegraph	Telegraph Lite	(i)	Both weekly	Paid/Free	5	87	0.2	56	32	7-9	2-4	0.4	0.1
Ashbourne News Telegraph	Derby Telegraph	(ii)	Weekly/Daily	Both paid	17	76	4	16	13	23-24	6-10	4.7	0.4
Staffordshire Newsletter	Sentinel Advertiser	(i)	Both weekly	Paid/Free	1	67	0.02	44	25	5-8	3-6	0.9	0.3
Leek Post & Times	Sentinel Advertiser	(ii)	Both weekly	Both free	13	100	1	44	28	17-23	23-25	4.7	1.2
Stoke Sentinel	Staffordshire Newsletter	(ii)	Daily/Weekly	Both paid	62	99	15	7	3	8-10	27-32	2.0	0.7
Tamworth Herald Series	Nuneaton News	(i)	Weekly/Daily	Both paid	96	81	0.5	66	14	6-10	6-7	0.8	1.3