OFFICE OF FAIR TRADING

Anticipated acquisition by Northcliffe Media Limited of Topper Newspapers Limited

The OFT's decision on reference under section 33(1) given on 1 June 2012. Full text of decision published 16 July 2012.

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.

THE PARTIES

1. **Northcliffe Media Limited** (Northcliffe) is a wholly-owned subsidiary of A&N Media Limited, itself part of Daily Mail and General Trust plc (DMGT), a diversified international media and information business. A&N Media Limited publishes Metro and The Daily Mail and operates a number of classified listings websites such as Jobsite.co.uk and Findaproperty.com. DMGT also owns Harmsworth Printing, which provides printing services to Associated Newspapers, Northcliffe and third parties, including the Target. DMGT's revenue in its 2011 financial year, ending 2 October 2011, was £1,990m, of which Northcliffe accounted for approximately 12 per cent (£236 million).

2. **Topper Newspapers Limited** (the Target) is a Nottingham-based company whose sole business is publishing The Nottingham & Long Eaton Topper (The Topper). In its 2011 financial year, the Target's turnover was £1.8 million.

TRANSACTION

3. Northcliffe proposes to acquire the Target for a consideration of up to £[ ] (if certain post-completion targets are met). The transaction is conditional on Office of Fair Trading (OFT) clearance. The OFT received a satisfactory submission on 15 February 2012 and, after having interrupted its administrative timetable on several occasions, the OFT's deadline to announce its decision in this case expired on 22 May 2012.

JURISDICTION

4. As a result of the transaction, Northcliffe and the Target will cease to be distinct in accordance with Section 23(1) of the Enterprise Act 2002 (the Act). The transaction qualifies as a relevant merger situation under Section 23(3) of the Act on the basis that as a result of it the parties together account for a share of supply of local newspaper titles by circulation in excess of 25 per cent in 13 JICREG areas[1] in Nottingham. These 13 JICREG areas in aggregate comprise over 300,000 households such that the share of supply test in section 23 of the Act is met in respect of supply over a substantial part of the UK. The OFT therefore believes that it is or may be the case that as a result of this transaction a relevant merger situation will be created.

BACKGROUND

5. In 2009, the OFT carried out a review of the local and regional media merger regime[2] as part of the Government's Digital Britain review. One outcome of the OFT review and the *Digital Britain* report was a commitment that the OFT would request a Local Media Assessment (LMA) from the Office of Communications (Ofcom) for those mergers involving local newspaper assets raising prima facie competition concerns.[3] In such circumstances Ofcom will provide a LMA, drawing on its experience and knowledge of media markets, to inform the OFT's decision-making process. The LMA will focus, amongst other things, on the application of the relevant customer benefits exception under section 30(1) of the Act. The working arrangements in relation to the production of the LMA are governed by the Memorandum of Understanding (MOU) entered into by the OFT and Ofcom in December 2010.[4]

6. In this case, Northcliffe told the OFT that it did not consider that a LMA was required since it would provide its views and evidence on the application of the relevant customer benefits exception directly to the OFT. Ofcom also considered that it was not clear, without further additional evidence, that the

[1] The Joint Industry Committee for Regional Media Research (JICREG) is an industry body that collates data on its paying members' publications. Only newspapers with audited circulation or distribution may be members of JICREG. JICREG areas are formed of groups of local contiguous postcodes in which newspapers circulate, deemed useful for advertising purposes.

[2] See *Review of the local and regional media merger regime*, OFT, June 2009, available at www.oft.gov.uk/shared_oft/mergers_ea02/oft1091.pdf

[3] OFT's *Mergers Jurisdictional and procedural guidance*, June 2009, paragraph 6.15.

[4] See at www.oft.gov.uk/shared_oft/mergers_ea02/OfcomMOU

LMA could materially assist the OFT's merger assessment. Ofcom's LMA Guidance[5] state that Ofcom will only submit its LMA when it is clear that the LMA is likely to add value to the overall merger process and when the analysis carried out by Ofcom could materially aid the OFT's merger assessment. In Ofcom's views the production of a meaningful LMA in this case would have required some additional data. In light of the views conveyed to the OFT by Northcliffe and Ofcom, the OFT decided not to request a LMA and has taken into account all representations made by Northcliffe on relevant customer benefits (or on efficiencies) resulting from this merger in its assessment.

7. The OFT recognises that local newspapers face a number of structural and cyclical challenges. In particular, the OFT notes the decline in total advertising allocated to local and regional newspapers since around 2005 and worsening significantly since 2007.[6] This development has been partly attributed to the decline in the popularity of local newspapers and by the rapid expansion of the internet and other means of advertising.[7] These sector-wide challenges have persisted with advertising revenues, circulation figures and profits continuing to fall, leading some titles to close, change frequency of publication or business model from paid-for to free newspapers.

FRAME OF REFERENCE

8. Northcliffe and the Target (the parties) overlap in the supply of local newspapers and associated websites in Nottingham. DMGT also publishes national newspapers and operates several specialist websites.

9. The OFT considers that market definition provides a framework for its analysis of the competitive effects of the merger[8] but emphasises that the boundaries of the market do not determine the outcome of its analysis of the competitive effects of the merger in any mechanistic way. Irrespective of the precise product scope the OFT considers it appropriate to consider the extent

[5] Ofcom's *Local Media Assessment Guidance*. Publication date: 1 December 2010 (Ofcom's LMA Guidance), paragraph 14.
[6] See UK WARC Expenditure Report, Advertising Association, data from Q1 2002 to Q3 2013. Report produced on 22 December 2011 and submitted by Northcliffe (Submission to the OFT of 15 February 2012, Annexe 8).
[7] See *Review of the local and regional media merger regime*, paragraphs 2.8 to 2.19.
[8] *Merger Assessment Guidelines*, paragraph 5.2.1.

of the competitive constraints on the parties' titles from both within and outside of any candidate market boundaries.[9]

Product scope

10. Local newspaper publishers have two distinct sources of revenue, the cover price and advertising sales, and the competitive constraints faced by local newspapers may differ for each type of customer (advertisers and readers). There are, however, important links between these two customer groups, and any newspaper is dependent on both, intermediating between them as a 'two-sided platform'. For example, an increase in the cover price charged to readers will most likely reduce circulation. The reduced demand from readers will have a knock-on effect, reducing demand from advertisers (or reducing what they pay for advertising).[10] These indirect network effects are relevant to market definition and the overall competitive assessment since the result in this example is likely to amplify the effect on revenue of a price rise on one side of the 'platform'; that is, to amplify the effect of an increase in the cover price.[11]

Local newspapers

Overlap

11. Northcliffe has a number of print titles in the Nottingham area:

    11.1. The Nottingham Post, a paid-for daily local newspaper with a circulation of around 35,000

    11.2. Nottinghamshire Today, a monthly glossy magazine

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[9] *Merger Assessment Guidelines*, paragraph 5.2.2.

[10] This is known as an indirect network effect, where the value of the product to one group of customers (e.g. advertisers) is affected by the number of customers served of the other group (for example, readers). See *Merger Assessment Guidelines,* paragraphs 5.2.20 and 5.7.16.

[11] The overall effect of this interdependence between both sides of the platform may be to reduce the profitability of any price rise by a hypothetical monopolist. This raises a risk that the strict application of the hypothetical monopolist test to define the narrowest plausible market could result in a candidate market that is drawn too narrowly, unless this two-sided nature is recognised. However, in this case, irrespective of the precise product scope, the OFT considers the full extent of the competitive constraints on the parties' titles as part of the competitive assessment.

11.3. AdMag, a local advertising-only classified publication with a circulation of around 3,500, and

11.4. Northcliffe's Nottingham division is also the local partner of the Metro newspaper in the East Midlands.

12. Northcliffe also previously published The Recorder, a weekly local freesheet, although this ceased publication on 29 June 2011 (see paragraph 61 below).

13. Northcliffe has a number of digital media assets which are active in Nottingham, including local and hyper-local news websites. In addition, DGMT operates Jobsite and FindaProperty which are all active in Nottingham, as well as 'Wowcher', a daily deals site.

14. The Target publishes The Topper newspaper, a weekly local freesheet with a circulation of over 200,000. The newspaper is also published on The Topper website in pdf format.

Previous decisions on local newspaper product scope

15. In past cases, both the OFT and the Competition Commission (CC) have generally recognised free and paid-for titles as comprising part of the same product market.[12]

16. Previous OFT and CC's decisions have often differentiated newspapers by their frequency of publication (daily titles and weekly titles).[13]

17. The Competition Appeal Tribunal (CAT) and the CC, however, have also recognised in previous cases that market conditions can vary locally such

[12] *Johnston Press plc and Trinity Mirror plc: A report on the proposed merger*, Competition Commission, 3 May 2002, paragraphs 5.11- 5.13. *Completed acquisition by DC Thomson & Co of Aberdeen Journals Limited*, OFT's decision of 15 June 2006, paragraphs 6 and 10.

[13] *Completed acquisition by Dunfermline Press Limited of Berkshire Regional Newspapers from Trinity Mirror PLC*, OFT's decision of 4 February 2008 (the OFT's Dunfermline decision), paragraph 15. Also, *Anticipated acquisition by Kent Messenger Group of seven titles from Northcliffe Media Limited*, OFT's decision of 18 October 2011 (the OFT's Kent Messenger decision), paragraph 58. *Regional Independent Media Limited and Gannett UK Limited/Johnston Press Plc/Guardian Media Group Plc: A report on the proposed transfers*, Competition Commission, 2000, paragraph 4.3. *Johnston Press plc and Trinity Mirror plc: A report on the proposed merger*, Competition Commission, 3 May 2002, paragraph 5.7.

that dailies and weeklies could form part of the same product market. In its Aberdeen Journals judgement, the CAT noted in passing that the submissions that Johnston Press and Trinity Mirror had made before the CC during the review of its 2002 merger, in which they argued for a wide market including paid-for and free as well as dailies and weekly local newspapers, were consistent with the evidence before the CAT in that case.[14]

18. The CC has recognised that titles of different frequency owned by different publishers could be each others' closest competitors for advertisers and readers depending on local market circumstances.[15]

19. Local newspapers carry a range of sectors (for example, property, motor, recruitment and other advertising) and types of advertising (display and classified). A product market segmentation based on different categories of advertising has been considered in previous decisions. For example, in Archant/INM, the CC observed 'substantial and persistent differences between advertising yields for different categories of advertising' and noted that three categories consistently command higher yields than others. Furthermore, it observed that 'this might reflect a lack of alternatives to advertising in local newspapers for these categories, relative to other categories.' [16]

20. The CAT has also noted that a merger can have a different impact on competition depending on the specific advertising category.[17] This is consistent with Northcliffe's submissions in this case (see paragraphs 39 and *ff.* below).

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[14] CAT's judgement of 23 June 2003 re Case number 1009/1/1/02, *Aberdeen Journals Limited and The Office of Fair Trading supported by Aberdeen Independent Limited*, paragraph 160.

[15] *Johnston Press plc and Trinity Mirror plc: A report on the proposed merger*, Competition Commission, 3 May 2002, paragraphs 5.12 and 5.13.

[16] *A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited*, Competition Commission, 22 September 2004. Annexe E, paragraphs 18 and *ff.* See also, *Johnston Press plc and Trinity Mirror plc: A report on the proposed merger*, Competition Commission, 3 May 2002, paragraphs 3.26 and *ff.* Also, *Gannett UK Limited and SMG plc: A report on the proposed transfer*, Competition Commission, 28 March 2003, paragraphs 3.16 and *ff.*

[17] See for example CAT's judgement of 23 June 2003 re Case number 1009/1/1/02, *Aberdeen Journals Limited and the Office of Fair Trading supported by Aberdeen Independent Limited*, paragraphs 159.

21. However, in the majority of cases, while acknowledging limited demand-side substitution, the OFT's and CC's previous decisions broadened the relevant product market to include all (or some) advertising categories as a result of supply-side substitution. This is because newspapers can adjust the space they dedicate to different advertising categories swiftly and at no significant additional cost if any variation in advertising rates would make the switch attractive for the publisher.[18]

22. With regard to other constraints, the OFT has acknowledged both print and non-print media are capable of imposing competitive constraints on local newspapers for advertising content. However, the strength of any constraints from other media in any geographical area will likely vary and needs to be assessed on a case by case basis.[19]

23. Northcliffe's representations and evidence submitted to the OFT in this case are assessed below.

Northcliffe's submission: product scope

24. Northcliffe submits that 'the appropriate frame of reference for examining this transaction encompasses all of the relevant media options available to readers and advertisers in the Nottingham area for each category of advertisers.'[20] It submits four key propositions in support of this argument.

25. First, it submits that '[l]ocal newspapers are only one of a huge number of options on which advertisers can (and do) spend their limited marketing and promotional budgets and on which customers can spend their limited leisure time.'[21]

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[18] *A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited*, Competition Commission, 22 September 2004, paragraphs 4.18: 'Although there appears to be little or no demand-side substitutability between different categories of advertising, supply-side substitution may broaden the relevant market to include all categories of advertising.' See also the OFT's Kent Messenger decision, footnote 17 and the *Merger Assessment Guidelines*, paragraph 5.2.17.

[19] The OFT's Dunfermline decision, paragraph 58; and, *Review of the local and regional media merger regime: Final report*, OFT1091, June 2009, paragraphs 4.16 and *ff*.

[20] Northcliffe's submission to the OFT of 15 February 2012, paragraph 3.68.

[21] Northcliffe's submission to the OFT of 15 February 2012, paragraph 3.6.

26. Second, it submits that in the wide spectrum of advertising channels in Nottingham, The Topper and The Post represent very different propositions for readers and advertisers despite both being print products. Specifically:

26.1. Distinct editorial content: The Post is a paid-for daily publication, the 'newspaper of record' in Nottingham, 70 per cent of its pagination comprises editorial content, it employs around 50 journalists and has an editorial budget of £[ ]. On the other hand, The Topper is a free weekly publication which is distributed door-to-door across Nottingham and Long Eaton, currently employing two journalists and with minimal editorial content (15 per cent of its pagination); and

26.2. Distinct advertising offer: The Post and The Topper are different products that serve different advertising needs. While The Post relies on readers engaging with a paid-for product offering quality editorial content to attract advertisers, The Topper relies on maximum 'pushed' distribution to deliver low-cost exposure, a similar strategy to leafleting or direct mail.

27. Third, Northcliffe submits that the OFT has considered in the past that weekly titles do not compete closely with local newspapers of other frequencies;[22] and that paid-for titles and delivered free titles traditionally attract different audiences and their use by advertisers reflects that difference.[23]

28. Fourth, Northcliffe considers that the dynamics of competition to supply readers with content and advertisers with reach mean that printed and non-printed media should be in the same product scope. In particular, Northcliffe stresses that '[t]he internet has made significant incursions in all key advertising categories.'[24] It then presents the competitive set in each of the five main advertising categories as segmented by Northcliffe (recruitment; property; motors; retail and leisure advertising; and services, business and notice advertising).

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[22] Northcliffe's submission to the OFT of 15 February 2012, paragraph 3.74, citing paragraph 15 of the OFT's Dunfermline decision.

[23] Northcliffe's submission to the OFT of 15 February 2012, paragraph 3.75.

[24] Northcliffe's submission to the OFT of 15 February 2012, paragraph 3.8.

29. The OFT has considered three key questions in assessing the appropriate frame of reference for the assessment of this merger: (i) the competitive constraint between newspapers of different frequencies (including daily and weekly local newspapers); (ii) the inclusion of media other than print newspaper titles in the relevant frame of reference; and (iii) segmentation by customer/advertising category. Each of these issues is addressed, based on the evidence available in this case, below.

Daily and weekly titles

30. The OFT's investigation demonstrates that the nature of competition and substitution between daily and weekly newspaper titles in Nottingham is such that they should be treated as part of the same product scope. The OFT considers that there are four distinct pieces of evidence which support this assessment.

31. Internal documents. Northcliffe provided internal documents to the OFT which imply, inter alia, that The Topper's business strategy was already having an impact on The Post's advertising yield prior to The Recorder being closed and that Northcliffe was concerned that closing The Recorder would further expose The Post to stronger competition from The Topper.

32. Third party comments. The OFT received comments from some third parties indicating that the presence of an independent alternative to The Post was used in negotiations with Northcliffe and vice-versa. These third parties were concerned that the merger would eliminate pricing pressure between the titles in the Nottingham marketplace notwithstanding the fact that The Post and The Topper have different circulation frequencies (that is, weekly and daily).

33. Events following closure of The Recorder. The OFT has considered carefully the events following the closure of The Recorder in its overall assessment. In relation to the product scope, two pieces of evidence relating to the closure of The Recorder are probative. First, the OFT understands that following the closure of The Recorder, The Topper noted a modest increase in its advertising revenues. However, this increment was not sustained in subsequent months. Second, Northcliffe attempted to retain around [20-30] per cent of former Recorder's advertising customers and provided the OFT

with data on the success of that exercise (or at least a sample of it) showing a retention rate above [40-50] per cent.[25]

34. Market trends. In addition, the OFT is also aware of the increasing number of local and regional titles in the UK which have changed their frequency (from daily to weekly) or cover price (from paid-for to free). This could indicate that any distinction between types of local newspapers is becoming more blurred.[26]

35. As a consequence, the OFT considers, on a cautious basis, it is appropriate in this case to consider daily and weekly newspaper titles to form part of the same product scope.

Inclusion of media other than print newspaper titles

36. The OFT does not consider that the parties have provided sufficient evidence to demonstrate that the product scope should be wider than print newspaper titles:

36.1. With regard to other print publications, Northcliffe has not provided substantiated and persuasive evidence of the constraint from print media other than newspapers, such as magazines.

36.2. The OFT has previously assessed the inclusion of other print publications in the same candidate product scope as local newspapers. The OFT was not provided with the necessary data to confirm Northcliffe's submission with regard to other print publications.[27] As a consequence, the OFT, taking a cautious approach, cannot consider that non-newspaper print publications should form part of its candidate product scope. However, constraints from outside the frame of reference, such as those posed by these alternate suppliers of advertising inventory, will be taken

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[25] The data available to the OFT covers a period of 13 weeks from 2 April 2011, (Northcliffe's submission to the OFT of 15 February 2012, Annexe 41B). In light of the limited period of time covered by this data, it may not accurately reflect the long run commercial relationship and constraints between the titles.

[26] See, for example, press article in Guardian Media, 16 April 2012 on actions taken by Johnston Press. Also, Northcliffe's submission to the OFT of 15 February 2012, Annexe 28.

[27] The same applies to the inclusion of digital media. See further paragraphs 36.3 and 46 and ff. below.

into account in the substantive assessment to the extent this is supported by the available evidence.

36.3. With regard to online media, Northcliffe has provided arguments and evidence (including some switching data) designed to demonstrate the competitive constraint exerted by the internet. However, in assessing the evidence put forward, the OFT has been unable to isolate such an effect from broader cyclical and structural factors such as the recession or a permanent 'one-way' shift to greater use of the internet. Such evidence was not conclusive for the OFT to incorporate online media in the same frame of reference as the parties' local newspapers. As noted above for other print media,[28] constraints from outside the frame of reference, such as those posed by these alternate suppliers of advertising inventory, will be taken into account in the substantive assessment to the extent this is supported by the available evidence.

36.4. A comparative yield analysis between Nottingham (where Northcliffe competes with the Target and other much smaller and localised publishers) and two areas (Hull and Leicester) where Northcliffe is the only publisher with a paid-for and a free title does not seem to corroborate Northcliffe's contention that online media is part of the same frame of reference as print newspapers. Adjusting yield data to account for differences in circulation (that is, expressing yields per thousand copies) shows a relatively constant yield figure year-on-year for most advertising categories rather than the negative slope stressed by Northcliffe when submitting absolute figures. This suggests that even with smaller market size, the yield Northcliffe obtains per every thousand copies remains relatively constant (with a few peaks or troughs potentially explained by cyclical factors). Online media does not appear to have impacted on such yield (see further paragraph 100 below).

36.5. Northcliffe's internal market research on lapsed readers of The Post[29] does not imply alternate media channels or publications are a primary cause of the reduction or cessation in purchasing.

[28] See paragraph 36.2 above.

[29] Northcliffe's submission to the OFT of 15 February 2012, Annexe 45.

36.6. Switching data provided by Northcliffe in relation to radio and TV suggests that these alternative media channels constitute a weaker constraint than online media.[30]

37. Responses from advertisers are mixed. Some have confirmed that they would switch to alternative advertising channels, including other publications, outdoor advertising and leafleting if advertising rates in these local newspapers would increase. Other advertisers expressed a strong preference for advertising in local newspapers on the basis that:

37.1. their target audience consists of regular readers of local newspapers and removing their advertising from (at least one of) these papers would have a substantive impact on their businesses as that audience cannot be reached equally effectively through other advertising channels, most notably the internet, and

37.2. they use at least one of the titles to complement the advertising they place in other advertising channels.

38. In summary, although the OFT does not consider media other than print newspaper titles to form part of the same product scope, constraints emanating from alternative media, in particular the internet, will be taken into account in the OFT's overall competitive assessment.

Segmentation by advertising and/or customer category

39. The parties presented data and submissions to the OFT on the basis of advertising categories. These are narrower segmentations of a wider frame of reference which would include all advertising categories. The OFT has therefore considered whether the relevant candidate product scope should be further segmented on the basis of different types of advertising categories that are featured in local newspapers. The Merger Assessment Guidelines state that '[t]he boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the Authorities may aggregate several narrow relevant markets into a broader one on the basis of considerations about the response of suppliers to changes in prices.'[31]

[30] Northcliffe's submission to the OFT of 15 February 2012, Annexe 42.

[31] *Merger Assessment Guidelines*, paragraph 5.2.17.

40. Three main advertising categories are often identified in the local newspaper industry: motors, property and recruitment. Other advertising categories include official notices (birth, marriages, deaths, planning and business notices, etc.) and retail and business advertising. Each of these advertising categories in turn could be segmented by the format in which the piece of advertising is presented, that is classified or display.

41. Classified advertising usually refers to relatively short text messages presented in order by advertising category in predetermined sections of the newspaper. Display advertising seeks a visual impact to attract the attention of the readers across print publications. It often includes images and may or may not be located in a predetermined section of the publication. For example property, recruitment or motor often have predetermined sections in the newspaper for ease of location by readers. These sections may include both classified, often placed by individual customers, and display advertising placed by (or on behalf of) companies active in these sectors.

42. The OFT's market investigation showed that there was some evidence suggesting that the competitive dynamics may differ in each segment by type of advertisement. The evidence in support of segmentation consisted of:

    42.1. Categorisation of accounting information. Northcliffe's management accounts tend to split their revenues into categories such as motor, property, recruitment and then, for each of these, between display and classified.

    42.2. Competitive sets vary. There are specialist printed titles and digital competitors which seem to focus on specific advertising categories. For example, Autotrader has a strong focus on motors. This suggests that the competitive set in each of these categories may vary.

    42.3. Variances in yields by category. Northcliffe has provided evidence on historical yields for each of these categories and the OFT notes that (i) absolute yields and (ii) the relative changes in yield in recent years vary by advertising category. This is consistent with the view that the competitive structure may be different in each of these categories.[32]

42.4. Event analysis following The Recorder's closure. As stated above,[33] following the closure of The Recorder, Northcliffe tracked the impact on advertising revenues of The Post. The figures indicate that the impact of the closure differed across the various advertising categories. In relation to property, The Post has apparently not retained a single advertiser. The second largest losses (around [50-60] per cent) relate to retail and services, categories in which the Topper carries most of its advertising (up to [65-75] per cent of its portfolio, by revenue). In motors, The Post retained over [80-90] per cent and increased its revenues by [90-100] per cent.

42.5. Third party comment. The OFT notes that third party concerns were limited in this case. Those submitted related primarily to retail display advertising, indicating that segmentation by advertising category may be appropriate.[34]

43. However, the OFT and CC's established decisional practice has traditionally considered all advertising categories to be part of the same candidate frame of reference, based primarily on supply-side substitutability.[35]

44. In light of the considerations above, the OFT has taken a cautious approach and assessed the merger on the basis of all advertising categories as a whole as well as by advertising category (motors, property, recruitment, notices, retail, leisure) and/or type of advertising (classified and display) to the extent that this was relevant to its overall substantive assessment.

Conclusion

45. For the reasons outlined above, the OFT considers that the relevant product scope in this case consists of the supply of print newspapers in Nottingham (and advertising space in them) taking due account of separate advertising categories where appropriate. The constraint from alternative media, in

[32] *A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited*, Competition Commission, 2004, Annexe E, paragraph 10.

[33] Paragraph 33 above.

[34] In addition, another respondent raised concerns in another advertising category (recruitment).

[35] See also the *Merger Assessment Guidelines*, paragraph 5.2.17.

particular constraints emanating from online media, will be taken into account in the overall competitive assessment.

Digital media

46. Both parties operate websites aimed at audiences in the Nottingham area. Specifically, Northcliffe operates six websites in the Nottinghamshire area: www.thisisnottingham.co.uk, which is linked to Northcliffe's Nottingham Post publication, and five 'hyper-local' websites, namely www.longeatonpeople.co.uk; www.carltonpeople.co.uk ; www.beestonpeople.co.uk; www.mansfieldpeople.co.uk; and www.westbridgfordpeople.co.uk. The Target operates one website – www.toppernewspapers.co.uk – which is linked to its print publication.

47. Northcliffe states that its websites provide audiences with a mix of editorial and advertising content, in addition to classified advertising using other Northcliffe digital assets such as Jobsite and FindaProperty. In contrast, the Target's website provides readers with a reproduction of the printed publication (in pdf format) in addition to limited editorial content which is taken from the print publication. The OFT understands that no specific digital or classified advertising is sold by the Target, either as a bundle with its print publication or on a standalone basis.

48. Based on the available evidence, it appears that the Topper's digital operation is a marginal activity. Moreover, the OFT understands that The Topper does not carry digital advertising on its website,[36] does not actively market advertising opportunities on its website and does not leverage its website to sell advertising in its print publication. The OFT has not received any submissions raising concerns in its market testing in relation to the combination of the digital assets of the parties. To the contrary, some advertising customers expect that this acquisition will strengthen The Topper's digital capabilities, in particular with regard to its online offering. At present, The Topper's online offering is limited to the publication of a pdf version of the printed edition of The Topper.

[36] The Topper makes its print publication available on its website in pdf form. As such, the website carries the advertising which appears in the print publication. However, the OFT understands that this does not result in additional revenues to The Topper.

49. Therefore, the OFT considers that the extent of overlap in relation to the digital operations of the parties is extremely limited and does not consider this overlap further.

Geographic scope

50. In past cases, the OFT and the CC have generally assessed the competitive effects of a merger between two local newspaper publishers at a local level.

51. Recent OFT and CC cases[37] have considered the narrowest candidate geographic scopes to be delineated by JICREG circulation or distribution areas in which the parties overlap 'significantly' (defined as being areas in which the parties have at least 50 per cent of circulation with an increment of at least 10 per cent).[38]

52. Consistent with recent decisional practice, Northcliffe considers that the most appropriate geographic scope consists of those JICREG areas in which the parties overlap 'significantly'. In this case, that corresponds to 13 JICREG areas in Nottingham which are a subset of all JICREG areas in which the parties operate.

53. In conclusion, the OFT considers that the relevant geographic scope for an assessment of the competitive effects of this merger is an area comprising 13 JICREG areas in Nottingham identified by the parties as being areas in which the parties' current print titles overlap 'significantly'.[39]

Conclusion on Frame of reference

54. In conclusion, the OFT believes that the candidate frame of reference for this case is the supply of local newspapers in Nottingham taking into account different advertising categories where appropriate. The OFT considers it

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[37] See OFT's Kent Messenger decision, paragraph 42; and, OFT's Dunfermline decision, paragraphs 50 and 51.

[38] *A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited* , Competition Commission, 22 September 2004, Annexe D, paragraph 11. The OFT notes that the CC concluded in that case that JICREG areas represent a 'practical and useful starting point' but that the relevant geographic market may be wider than JICREG circulation areas in which the parties overlap 'significantly'.

[39] The OFT notes that these areas relate to the overlap between The Post and The Topper only. Should The Recorder be included in the counterfactual, the OFT believes the number of JICREG areas in which the parties overlap 'significantly' could be higher.

appropriate to assess the direct competitive constraint on the parties' titles as part of the competitive assessment. The merging parties' titles overlap in 13 JICREG areas in Nottingham and the OFT's competitive assessment focuses on such direct competition. In addition to considering the closeness of competition between the parties' titles, the OFT has also taken into account other competitive constraints, including those emanating from online media.

COMPETITIVE ASSESSMENT

Test for reference

55. In assessing this merger, the OFT has had regard to its test for reference as set out in the Act and explained in its Mergers Assessment Guidelines.[40] Specifically, the OFT must form a reasonable belief, objectively justified by relevant facts, as to whether it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition. In practice, this means that, if the OFT believes that the relevant degree of likelihood is greater than fanciful, but below 50 per cent, it has a wide margin of appreciation in deciding whether or not to refer the merger to the CC. It has a duty to refer when it believes there to be a realistic prospect that the merger will result in a substantial lessening of competition (the 'realistic prospect' test). The realistic prospect test under the Act is intentionally a lower and more cautious threshold for a finding of a substantial lessening of competition than that which may be applied by the Competition Commission following a detailed investigation.

The counterfactual

56. This section includes: (i) the methodology for assessing counterfactual (including relevant OFT's guidance and decisional practice); and (ii) the application of the established methodology to this case. The OFT has taken due account of Northcliffe's submissions on this point focusing on two aspects: (i) the sequence of events; and, (ii) the financial situation of The Recorder.

57. The OFT will generally adopt the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual

[40] *Merger Assessment Guidelines*, paragraphs 2.4 and ff.

against which to assess the impact of the merger.[41] However, the OFT will assess the merger against an alternative counterfactual where, based on the evidence available to it, the OFT considers that the prospect of prevailing conditions continuing is not realistic (for example because the OFT believes that one of the merging firms would inevitably have exited the market) or where there is a realistic prospect of a counterfactual that is more competitive than the prevailing conditions. The OFT applies the same standard to its assessment of the counterfactual as it does to its overall test for reference analysis.[42]

58. The OFT, taking into account the test for reference and its role as a first phase agency, adopts a cautious approach when assessing a merger involving the exit of a merging party (or one of its businesses or assets).[43]

59. In this case, the OFT considered whether there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions against which to assess the impact of this merger.

60. In choosing the appropriate counterfactual, the OFT may consider that the immediate pre-merger situation may not be a suitable indicator of what would have happened in the absence of the merger. In particular, the relevant counterfactual could include a period of time prior to the immediate pre-merger situation.[44]

Relevant counterfactual: issues arising in this case

61. The Recorder, Northcliffe's free weekly title in Nottingham, was last published on 29 June 2011 and its final closure was confirmed publicly on 4 July 2011. At the date on which a binding agreement was entered into by Northcliffe to acquire The Topper, The Recorder had been closed for several months. As such, the **immediate** pre-merger situation, that is, the prevailing conditions of competition, in this case consists of The Post and The Topper being the main local newspapers (existing alongside some other smaller local

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[41] *Merger Assessment Guidelines*, paragraph 4.3.5.

[42] See paragraph 55 above.

[43] See for example, *Completed acquisition by Stena AB of certain vessels and assets from DFDS A/S operated in the Irish Sea*, OFT's decision of 8 February 2011, (the OFT's Stena decision), paragraph 37.

[44] See, for instance, CAT's judgement of 21 May 2010 re Case number 1145/4/8/09, *Stagecoach Group PLC v Competition Commission*, paragraph 20.

newspapers). In this 'immediate pre-merger' counterfactual, the merger would be assessed against The Recorder having been closed for several months.

62. Given, in this case, the acquirer had closed a directly competing title just a few months prior to agreeing the SPA to acquire the target, the OFT has sought to ensure that the immediate pre-merger situation is an appropriate counterfactual against which to assess this case. The OFT has therefore carefully considered whether a more competitive counterfactual is realistic. In this case, the assessment turns on a close examination of whether the closure of The Recorder was inevitable and would have occurred absent the merger. In such circumstances, the OFT would not believe there to be a realistic prospect of a more competitive counterfactual, meaning that the OFT would not depart from the 'immediate pre-merger situation' as its relevant counterfactual.

Northcliffe's submission

63. In this case, Northcliffe submits that the relevant counterfactual is the immediate pre-merger situation. Northcliffe submits that:

63.1. The Recorder ceased publication on 29 June 2011.

63.2. Exit or closure of The Recorder was inevitable given that it was the most loss-making title in Northcliffe's local newspaper portfolio in the last financial years.

63.3. Projections for The Recorder showed no foreseeable prospect of profitable operation given its ongoing operating losses. Given the structural changes in the market, particularly the migration of readers and advertisers to the internet, there did not appear to be any or limited opportunity for recovery.

63.4. The decision to close The Recorder was taken by Northcliffe's newly appointed chief executive, Mr Steve Auckland. He had been tasked with a comprehensive review of the entire Northcliffe local newspaper portfolio with a view to restructuring failing parts of the business. Having reviewed the financial and operational position of The Recorder, the decision was taken to close the title (alongside other titles at or around the same time). Northcliffe submits that the decision to close was taken soon after Mr Auckland's appointment, which occurred in March 2011, and was subsequently confirmed by the Northcliffe Board in a meeting in June 2011.

63.5. The closure decision was therefore taken approximately six months prior to entering into a share and purchase agreement (SPA) to acquire The Topper (which is itself conditional on OFT clearance).

63.6. The gap between closure of The Recorder and securing the acquisition of The Topper exposed Northcliffe to the commercial risk of losing a title (and its attached significant brand recognition) without any certainty of acquiring its closest competing title in Nottingham.

63.7. Mr Auckland stressed that he took the decision to close The Recorder without having decided whether the acquisition of The Topper should be pursued.

64. On this basis, Northcliffe submits that:

64.1. it is clear that the closure decision was independent from the decision to acquire The Topper, and

64.2. The financial evidence shows that exit of The Recorder was inevitable because it was loss-making with no prospect of improvement.

These two points are discussed below.

OFT assessment of the independence of both decisions

Sequence of events

65. Evidence submitted to the OFT indicates the following relevant events took place prior to the signing of the SPA:

65.1. On 17 November 2010, an investment paper was sent to Michael Pelosi (Northcliffe's managing director at the time) stating the rationale for the acquisition of The Topper and consequent closure of The Recorder.

65.2. In December 2010, Northcliffe signed a non-binding offer letter for The Topper granting Northcliffe a period of exclusivity. This exclusivity period expired in March 2011.

65.3. On 28 February 2011, Northcliffe's Board met and discussed amongst other things, [ ]. The minutes of that meeting record that '[i]n Nottingham, plans are underway to acquire the competitor free title in that market – namely The Topper'.

65.4. As stated above, in March 2011, Mr Auckland was appointed new chief executive of Northcliffe. At or around this time, several local and regional managers left Northcliffe and Mr Auckland commenced a review of the entire portfolio of Northcliffe's titles. The review concluded that several titles should be closed.[45]

65.5. Northcliffe has acknowledged that 'sporadic' contact with The Topper continued from the end of the exclusivity period in March 2011 to the end of June 2011. These contacts overlapped with the period in which the decision to close The Recorder was taken.

65.6. A new exclusive letter of intent was entered into by the parties at the end of July 2011 (following a revised investment paper sent to Mr Auckland recommending the acquisition of The Topper).

65.7. The merger was announced on 19 August 2011 and the SPA signed on 7 November 2011.

Link between the closure of The Recorder and the acquisition of The Topper

66. During its investigation, the OFT put to Northcliffe that the above sequence of events indicated that the closure of The Recorder and the acquisition of The Topper were linked. Northcliffe made the submissions set out at paragraph 63 above. Moreover, Northcliffe submitted that there was a material break between the end of the first period of negotiations to acquire The Topper and the closure of The Recorder given the change in management at Northcliffe.

67. The OFT notes that there were significant managerial changes, including the appointment of a new chief executive. However, the OFT also notes that the

[45] See further paragraph 76 below.

evidence collected by the OFT does not appear to fully correspond to Northcliffe's explanation of the sequence of events. In particular, internal documents obtained from the parties indicate that:

67.1. a set of senior Northcliffe managers (and corporate advisers from the wider DMGT group) who had been directly involved in the negotiations with the Target continued to be involved in the management of the company during this period

67.2. Northcliffe's Board of directors, which did not undergo significant changes, was aware of and approved both the closure and acquisition decisions

67.3. Northcliffe contacted The Topper (and not vice-versa) on the evening of 13 June 2011 (the date on when Northcliffe's Board approved the closure of The Recorder) to confirm their interest in acquiring the Target, and

67.4. the 'sporadic' contact during that period between both companies may not have continued in the absence of an ongoing interest in acquiring The Topper. These contacts took place primarily (but not exclusively) between a former Northcliffe employee and Ian Spring, one of the Target's trustees who was leading these discussions.

68. In light of this mixed, inconclusive evidence regarding the sequence of events, the OFT cannot rule out that the decision to close The Recorder may have at least partially been influenced by or linked to the decision to acquire The Topper. The OFT now turns to assess whether, notwithstanding this possible link, the exit of The Recorder was inevitable for financial reasons.

The Recorder was loss making with no prospect of improvement

69. Northcliffe has argued that its decision to close The Recorder was based exclusively on its negative contribution to the financial performance of Northcliffe. By way of support, Northcliffe supplied the following evidence to the OFT: a presentation to DMGT's Board on 25 May 2011[ ]; internal presentations; financial accounts; and internal records and minutes in which these issues were addressed together with alternative strategy options.

70. Having identified that the situation in several local areas was no longer financially viable, Northcliffe looked at several options to address the problems in each of those areas. Northcliffe explained to the OFT that [ ] did not specifically mention The Recorder, Nottingham (among other local areas) had been identified as raising particular problems and it was clear that losses incurred in Nottingham were predominantly attributable to The Recorder.

Negative financial contribution from The Recorder

71. The evidence available to the OFT indicates that the performance of The Recorder started to decline in 2007. The OFT notes, in particular, that:

71.1. the losses from The Recorder (estimated to be around £[ ] a month in Northcliffe's 2011 financial year) were the equivalent of approximately [0-20] per cent of Northcliffe's overall group profit in that year

71.2. in March 2011, as part of its portfolio profitability analysis, Northcliffe estimated that the performance of The Recorder would have virtually wiped out the anticipated profit generated by its other Nottingham titles for the entire financial year

71.3. in 2011 and 2012, Northcliffe has closed down other titles in its portfolio which were performing better than The Recorder and presented better financial results (albeit still loss-making),[46] and

[46] According to Northcliffe (Response to the Issues Paper of 2 May 2012, paragraph 3.3), at the same time as the decision to close The Recorder was taken, Mr Auckland took the decision to close other titles including: the *Herald of Wales* (which was closed in May 2011), the *Yeovil Times* and *the Bridgwater and Burnham Times* (which was closed in November 2011). Other examples of titles closed by Northcliffe following the appointment of Mr Auckland include: (i) titles which were offered to other publishers but no purchaser was found and were subsequently closed (such as *The Chew Valley Gazette* –February 2012-, *Uttoxetter Post & Times* - and the *Leek Post* –July 2011- and *The Moorlands Advertisers* and the *South Cheshire Advertiser* –July 2011); (ii) titles which were conditionally sold to other publishers but the sale failed due to regulatory reasons and then were closed (such as *Medway News* and *East Kent Gazette* which were closed in December 2011); and, most importantly, (iii) titles which were closed without having been offered for sale to any possible purchaser (such as the *Chelthenham News* and *Gloucester News* in 2011). See Northcliffe's Response to OFT's questions dated 23 February 2011, question 8.

71.4. the wider backdrop of structural decline in the circulation of local newspapers may have reasonably been an important factor in considering whether or not to close the title.

72. As to the parties' overall financial position, the OFT notes that The Recorder was projected to make a negative contribution to Northcliffe's group accounts of some £[ ] in 2011 and a combined negative contribution close to £[ ] over the last three years.[47]

73. As stated above, the relative size of the losses incurred by The Recorder represents [ ] proportion of the overall Northcliffe group's profits. On a fully allocated cost basis, Northcliffe projected that The Recorder would lose £[ ] million in its 2011 financial year, which was almost equivalent to the overall profit generated by other Northcliffe's titles in Nottingham and also represented around [0-20] per cent of Northcliffe's total group profits for 2011.

Structural situation in the sector

74. The OFT has carefully assessed the closure decision of a loss making title against the structural decline in the sector. The entry and exit of titles are part of the dynamics of competition. However, this process is aggravated in this sector by marked declines in revenues and profitability which has a bearing on the decisions taken by market participants.

75. This is demonstrated, in this case, by the fact that Northcliffe was seeking to manage its portfolio of titles and had appointed a new chief executive to address the problems in the distressed part of Northcliffe's business and to actively pursue 'bolt-on strategic acquisitions', title closures and strengthening of its online offering.

Comparison with other loss making titles

76. In order to assess whether the exit of The Recorder was inevitable, the OFT has compared The Recorder's financial performance against other titles in Northcliffe's portfolio. This comparison indicates that other titles which accrued fewer losses than The Recorder were also closed following the strategic review undertaken by Mr Auckland around the same time the decision was taken to close The Recorder. These titles include the Herald of

[47] Between financial years 2007-08 and 2010-11.

Wales, the Exeter Times, the Yeovil Times, the Bridgewater Times and Advertiser Midweek. In addition, Northcliffe's former management had identified that production and distribution costs in Nottingham were higher than in other local areas due to the high volume of circulation. This led to low revenue per copy and in turned depressed profits.

77. Accordingly, a comparison with Northcliffe's behaviour in respect of other, better performing titles supports the view that The Recorder would have been closed even absent this merger.

Conclusion on the counterfactual

78. Northcliffe has provided a significant amount of material in support of its proposed counterfactual. The evidence on the sequence of events leading to the closure of The Recorder indicates that there may have been a link between that closure and the acquisition of The Topper. However, Northcliffe has provided detailed and compelling evidence and data which demonstrates that The Recorder would have been closed absent the merger.

79. Based primarily on the financial situation of The Recorder, and taking into account that better performing titles were also closed at or around the same time, the OFT considers that the closure of The Recorder was inevitable and would have occurred independent of the merger. Accordingly, the OFT does not believe there to be a realistic prospect of a more competitive counterfactual. The OFT therefore considers that the appropriate counterfactual to assess this transaction against is the immediate pre-merger situation, that is, a counterfactual based on prevailing conditions of competition taking into account the closure of The Recorder.

UNILATERAL EFFECTS

Theory of harm

80. The OFT has assessed this merger against the following theory of harm:

    80.1. Unilateral effect concerns in the supply of local newspapers in Nottingham as a result of the combination of close substitutes for a substantial proportion of advertisers and/or readers. In assessing these unilateral effects concerns the OFT has examined the possibility that the merged entity could unilaterally impose price increases or deteriorate its competitive offering beyond the level possible absent the merger:

(i) to both readers and advertisers across all categories or segments, and

(ii) to advertisers in the segment of retail display advertising and/or recruitment advertising.

81. The OFT's approach is generally to focus on the advertisers' side of the market,[48] noting where relevant if any effects from the readers' side of the market may countervail or exacerbate those effects.

Shares of supply

82. The estimated shares of supply of local newspapers (including free and paid-for titles) in the 13 JICREG areas of Nottingham[49] are as follows:

82.1. 90 per cent in 10 out of those 13 areas, and

82.2. in excess of 50 per cent in the remaining three JICREG areas.[50]

83. The OFT considers this circulation data to be prima facie evidence that the transaction may give rise to a realistic prospect of a substantial lessening of competition (SLC). However, in assessing whether it is or may be the case that the merger may be expected to result in an SLC, the OFT will take into account both the closeness of competition between the parties and competitive constraints. In the following sections, the OFT examines:

83.1. the closeness of competition between The Post and The Topper

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[48] See, for example, *Review of the local and regional media merger regime: Final report*, OFT1091, June 2009). Advertising is a key input to the competitive process in other markets, and so if advertising rates increase, then the increase in costs will tend to be passed on by the advertisers to their customers. As such, harm to advertisers will typically also generate harm to end-consumers in those other markets.

[49] Arnold, Beeston, Bingham Rural Area, Carlton, Eastwood, Hucknall, Keyworth, Long Eaton, Nottingham, Radcliffe-on-Trent, Ruddington, Stapleford and West Bridgeford.

[50] As stated in the *Merger Assessment Guidelines*, 'the [UK competition] Authorities will not normally have regard to market shares and concentration thresholds calculated on anything other than the narrowest market that satisfies the hypothetical monopolist test'. See paragraph 5.2.3.

83.2. supply-side constraints, including the constraints posed by other print publications and from digital media, and

83.3. demand-side constraints, including indirect network effects arising from the two-sided nature of the market.

Closeness of competition between The Post and The Topper

84. Northcliffe submits that the merger will not result in a material loss of competition in the supply of local newspapers in Nottingham. It submits that The Post and The Topper are not close competitors due to the limited overlap in their advertiser base[51] which reflects material differences in the nature of the titles. For example, circulation numbers, distribution models and the volume of editorial content are markedly different between the two titles. In addition, Northcliffe states that the quality of editorial content is higher in The Post due to greater investment in journalism compared to The Topper. As such, Northcliffe believes the titles represent very different propositions for both advertisers and for readers (see paragraph 26 above).

85. Northcliffe has provided internal market research which shows lapsed readers of The Post did not stop or reduce reading The Post because they had switched to The Topper (or The Recorder).[52] In addition, Northcliffe's internal documents refer to The Topper as the direct competitor of The Recorder, rather than The Post (although such documents were prepared prior to the closure of The Recorder, so it is possible that The Post and The Topper may have become closer competitors following the closure of The Recorder).[53] Northcliffe also provided an analysis of the switching behaviour of The Recorder's advertisers post-closure which provides some support for the view that these titles were not close competitors.[54]

86. The parties provided the OFT with information on their top advertisers in each advertising category in 2011. A comparison between the titles' advertisers demonstrates that there is very limited overlap in the customer base of The Post and The Topper. Only [ ] advertisers were common to both

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[51] Supported by the parties' submission on their customer bases (Annexes 40-43 of Northcliffe's submission to the OFT of 15 February 2012) and comparative analysis undertaken by the OFT.
[52] Northcliffe's submission to the OFT of 15 February 2012, Annexe 45.
[53] Northcliffe's submission to the OFT of 15 February 2012, Annexe 37.
[54] Northcliffe's submission to the OFT of 15 February 2012, Annexe 41a.

sets of customer lists. However, the OFT considers that such analysis may not be probative in relation to the extent of competitive interaction for advertisers. For example, the fact that a particular advertiser is not common to both titles may either reflect the outcome of a competitive process, or may indicate the titles are not close competitors. The OFT was not provided with advertiser data over a number of years such that it could assess dynamic considerations.

87. Having reviewed Northcliffe's submissions, third parties' views and other evidence gathered by the OFT, the OFT considers that :

87.1. Limited evidence was supplied by advertisers of switching between The Topper and The Post. Only two respondents to the OFT's investigation stated that they had actually switched spending between The Post and The Topper.

87.2. Research undertaken by A&N Media on lapsed readers of the Nottingham Post noted that the main reasons why they reduced or stopped reading The Post were not related to switching to The Topper but other reasons such as [ ] and [ ]. Most notably, The Topper did not seem to have influenced any lapsing from readers of The Post. Other national and very local newspapers as well as online offerings (for some readers) appear to have driven lapsing from The Post.[55]

87.3. A comparison of the average yields between both The Post and The Recorder shows a material difference. The Recorder's yields were on average [40-50] per cent lower (across all advertising categories) than those of The Post.[56]

87.4. Only a very limited number of advertisers cited switching to The Topper as the reason for reducing or ceasing advertising in The

[55] Northcliffe's submission to the OFT of 15 February 2012, Annexe 45. Presentation titled: '*Nottingham Post Lapsers Research, A&N Media- Marketing Services, Presentation of Findings*', September 2010. See for example, slide 17 on the no influence by The Topper on lapsing.
[56] Northcliffe's submission to the OFT of 15 February 2012, Annexe 49. Rate cards for The Post and The Recorder.

Post.[57] Consistent with this, Northcliffe provided the OFT with 'switching' data relating to Post advertisers who had reduced or ceased spending with the title between 2009-10 and 2010-11. The Post contacted these advertisers to try and determine the cause of the reduced spend. There were no references to switching to The Topper in that evidence.

87.5. In its market testing, the majority of the respondents, including two competitors, were not concerned about the merger. Some of those expected some benefits flowing from the transaction for readers and advertisers. The most positive comments in relation to the merger came from media agencies. They expected Northcliffe to strengthen The Topper and its website as well as an improvement of opportunities for bundling advertising with other Northcliffe services.

87.6. The two titles are differentiated in terms of their offer to both advertisers and readers. The OFT reviewed samples of the titles which clearly demonstrate the difference in the ratio of editorial and advertising, with The Post publishing significantly more editorial than The Topper. From these samples the OFT was unable to conclude definitively on Northcliffe's assertion that [ ]. The OFT also notes that the demographic profile of the readership of The Post and The Topper show some differences.[58] More specifically, it would appear that The Post is read by a younger and more affluent audience than The Topper. Northcliffe has cast doubt on the extent to which such data can be relied upon to assess differences in the target demographic. It submits that the distribution strategy of freesheets ('blanket coverage') tends to skew such readership data, although the OFT notes that Northcliffe's own market research correlates with JICREG data.[59] One respondent confirmed to the OFT that The Post, by virtue

[57] Nottingham's submission to the OFT of 15 February 2012, Annexe 41A (Destination of advertisers post-Recorder closure), Annexe 41B (Recorder Contract Tracker), Annexe 42 (Switching data).

[58] See Newspaper Readership Report for Nottingham Post and Nottingham & Long Eaton Topper, Newspaper Society, JICREG data as at 01/10/2011. The proportion of readers of C2DE, ABC1 and DE types are proportionally higher at The Post than at The Topper (relative to population segmentation in their distribution areas).

[59] Northcliffe's submission to the OFT of 15 February 2012. Annexe 44. Readership data for Post, Topper and competing publications. Annexe 46. Presentation dated 23 April 2010 regarding Nottingham Audience Research 2009.

of it being a paid-for title and having better editorial content, was seen as being more 'upmarket' and 'slightly younger' than The Topper.

88. In addition, of those customers which responded to the OFT's market testing four customers told the OFT that they use the same or similar advertising in The Post and The Topper. Four customers indicated they consider using different adverts or advertise different products. One customer specifically mentioned doing so as a strategy of maximising possible reach for the advert, which could imply that advertising in both can be complementary rather than substitutional.

89. However, a small proportion of advertising customers within the retail display advertising category (and one in recruitment advertising) stated that the parties were either the only two alternative suppliers they could use or were close competitors. For each overlap, these respondents indicated that the loss of competition resulting from the merger would likely lead to increases in advertising prices or a reduction in choice (for example, bundling advertising across titles or areas).

Conclusion on closeness of competition

90. The evidence suggests that the parties exercise limited competitive constraint on each other for most advertisers and readers and can therefore not be considered to be close competitors.

91. However, a small sub-set of advertisers in the retail display advertising segment may be affected by a possible – albeit small - reduction in rivalry resulting from the merger, particularly those booking locally.

Supply-side constraints

Other print publications

92. The JICREG circulation data implies that competition from third party titles is weak.[60] In addition, internal documentary evidence supports Northcliffe's contention that the rivalry between The Post and The Topper is relatively

[60] For example, Johnston Press titles such as the *Mansfield & Ashfield Chad*, the *Hucknall & Buckwell Dispatch*, the *Ilkeston Advertiser*; independent publications such as the *Newark Advertiser*, and other very localised publications which do not appear in the Newspaper Society register.

weak and that while, they exert some competitive constraint on each other, this is not substantial.[61]

93. The OFT has spoken to a number of competitors cited by the parties and this market testing has corroborated the inferences drawn from the circulation information – namely, that third party competitors do not actively compete with the parties at a local level. Some indicated that the constraint they represented was weak, particularly relative to the constraint exerted by the parties on each other.

94. The 'switching' data provided by Northcliffe provides some limited support for its contention that alternate print publications exert a significant constraint on its titles – for example, [ ] 'moved' spend from The Post to Johnston Press' Mansfield Chad. Such examples, however, do not necessarily imply strong competition between those two titles – for example, the reduction in spend by [ ] could have reflected the [ ] rather than a decision to 'switch' spending to a publication in a neighbouring location. Such contextual information was not provided with the 'switching' data provided by Northcliffe.

95. As mentioned in paragraph 42.2 above, the OFT notes that the range of potential alternate print titles which advertisers may consider substitutes could vary by advertising segment – for example, Northcliffe highlights three potential specialist motoring publications in Nottingham, only two specialist property publications active in the Nottingham area and no specialist recruitment publications.

96. However, in general, the OFT does not consider that the evidence available in this case demonstrates that such specialist publications act as a material constraint on the parties' titles.

Constraint posed by digital media

97. Northcliffe submits that the OFT should consider digital media as an effective constraint on the merging parties. Northcliffe submits that 'the internet has made significant incursions in all key advertising categories. The impact on classified advertising has been particularly significant, given the ability of online alternatives to offer targeted searches, including by location. Ultimately,

[61] Northcliffe's submission to the OFT of 15 February 2012, Annexe 14A and 14B. Nottingham Post Switching data. The OFT notes that for over 300 customers contacted which had reduced or ceased spending, The Topper was cited by only one of them.

online players [ ] have revolutionised the classified advertising marketplace and are by far the most significant threat faced by Northcliffe's local newspaper business.'[62]

98. In addition to the print publications it cites as competitors,[63] Northcliffe highlights six 'daily deal' websites and online property, recruitment and motor sites which it claims exert a significant constraint on its print titles in Nottingham – for example, [ ] and [ ]. In support of its arguments, Northcliffe points to numerous instances of advertisers in its Nottingham titles 'switching' advertising spend to non-print media, including online competitors active in Nottingham.

99. Northcliffe has also provided the OFT with yield data by advertising category for The Post and The Recorder for recent years. It claims that the downward trend observed in these data demonstrates, in part, the increasing constraint the internet has posed on local print titles. Indeed, Northcliffe asserts that it is impossible to increase print advertising yield in the Nottingham marketplace due to the constraint posed by online. Northcliffe has also provided investor presentations for Rightmove and industry analysis in further support of its claims in relation to the constraining effect of digital media.

100. Based on the evidence presented to it by the parties in this case, the OFT notes that digital media poses some constraint on print media. However, the OFT does not have sufficient evidence to conclude that this constraint would outweigh the loss of rivalry between the parties in this case. Despite being provided with detailed information by Northcliffe in relation to advertiser switching behaviour[64] and data on changes in advertising yields,[65] the OFT is unable to determine the relative impact of (a) the cyclical decline in advertising spend; (b) structural changes in the media marketplace (that is, spend which has shifted from print and is unlikely to return to it); and, (c) the extent of competitive interaction between different print titles and between print and non-print media, including digital media. As a consequence, the OFT is able to place only limited weight on the claim made by Northcliffe that print titles in Nottingham face a significant constraint from online media such that this constraint on its own would deprive Northcliffe of the ability and incentive to increase profitably advertising prices post-merger.

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[62] Northcliffe's submission to the OFT of 15 February 2012. Paragraph 3.8.

[63] See paragraphs 92 and ff.

[64] Northcliffe's submission to the OFT of 15 February 2012, Annexes 14a, 14b and 42.

[65] Northcliffe's submission to the OFT of 15 February 2012, Annexe 12.

101. Moreover, when the OFT adjusted The Post's yield data to account for changes in circulation (that is, expressing yield in terms of per thousand circulation), the steep declines observed in absolute yields were reversed in some advertising categories and dampened in others. Year-on-year differences in these adjusted yields might imply a recessionary impact only.

102. In its market testing, the OFT found some evidence of sophisticated advertising strategies by customers – for example, using a combination of media channels to more effectively target specific audience groups. As such, different media channels could be considered complementary rather than substitutional. Indeed, the OFT notes that Associated Newspapers has, for a number of years, pursued a multi-platform strategy offering advertisers the opportunity to acquire bundles across platforms and Northcliffe has provided evidence showing that a proportion of its Nottingham customers acquired bundles of advertising across its print and online channels.[66]

103. In addition, the OFT found that some advertisers, including those currently using other media channels or multiple media to advertise (such as online, magazines or outdoor advertising) and those which have recently 'switched' a significant proportion of their expenditure to alternative media channels, stress the importance of targeting their local customers via local newspapers.

104. The OFT notes that Northcliffe's 'switching' evidence is in general more limited in relation to the constraint posed by radio and TV compared to online. The OFT also notes that, based on the evidence supplied by Northcliffe in this case, nationally-booked advertisers and agencies are more likely to use radio and TV than locally-booked advertisers. For similar reasons to those outlined in paragraph 100 above, the OFT is unable to determine the extent to which 'switching' between Northcliffe's Nottingham titles and radio and TV reflects competitive factors as opposed to other factors.

105. However, the broad body of evidence available to the OFT suggests that the extent of the constraint exerted by third party print publications and other media on the parties' titles is uncertain for the following reasons.

106. The OFT received a few complaints from advertisers in relation to the proposed transaction. These complaints imply that the parties are each other's

[66] Northcliffe's submission to the OFT of 15 February 2012, Annexe 50.

closest competitors and that the presence of an independent alternative to The Post helps in negotiations with Northcliffe, and vice-versa. These advertisers were concerned that the merger would eliminate pricing pressure between the titles in the Nottingham marketplace. The OFT notes that the majority of these few complaints are from customers that acquire retail display advertising in either or both of the titles which may indicate that retail display advertisers in particular do not view alternate media as an effective substitute for print advertising. [67]

107. Consistent with this concern, the OFT notes that an internal document (written by Northcliffe's previous management team) suggests that the acquisition of The Topper would be a defensive strategy to enable Northcliffe to migrate The Post from daily to a weekly title. In an email on 18 November 2010, Mr Michael Pelosi, then Managing Director of Northcliffe, states '[ ]. It would be more risky if we moved The Post to weekly frequency with The Topper owned by a third party.'[68]

108. Despite the extensive 'switching' evidence supplied to the OFT by Northcliffe, the OFT does not consider that the broad body of evidence provided to it demonstrates, to a sufficient degree, that actual switching has been taking place between Northcliffe's titles, third party publications and other media. For the reasons stated above (see paragraph 100 above), the OFT does not consider it is able to place material weight on this evidence, nor on Northcliffe's claims in relation to it.

Self-supply

109. The OFT is aware that some of the parties' retail display customers already 'self-supply', that is, they produce their own printed literature for distribution either door-to-door or via other means. The OFT considers that this could be viable for advertisers for whom media options other than print are not viable.

Conclusion on supply-side constraints

110. As noted above, the OFT considers that the limited rivalry between the parties may act as a constraint for a small sub-set of the parties' customers – in particular, retail display advertisers who book locally. The OFT also considers

[67] The OFT also received a complaint in relation to recruitment advertising.
[68] Northcliffe's submission to the OFT of 15 February 2012, Annexe 39.

that there may be some weak constraint from other print publications and other digital media although any such constraint is likely to vary across categories and types of advertising and may not fully protect all customers.

111. Supply-side constraints on their own may not be sufficient to protect customers from any price increases or reduction in quality. In this case, the evidence is not conclusive, in particular with regard to the level of constraint imposed by digital media on the merging parties. For this reason, the OFT has considered additionally whether demand-side constraints, in combination with any supply-side constraints, may jointly be sufficient to protect any customers that may currently benefit from the limited degree of competition between the merging parties. This is discussed further below.

Demand-side constraints

112. The OFT considers that several factors on the demand-side need to be taken into account for the purposes of assessing the degree of likelihood of an SLC. These factors include:

112.1. The extent to which customers can and do substitute between print and alternative media channels.

112.2. The knowledge and greater visibility of advertising prices in local newspaper advertising markets that certain customers have, to the extent that they advertise in several geographic areas or across multiple advertising channels. Such customers may be well placed to protect themselves against any hypothetical prices increases through the use of yardstick/comparative benchmarking.

112.3. Indirect network effects: the two-sidedness of the market in question.

113. Each of these factors is considered in turn below.

Ability for advertisers to substitute between alternative media

114. As noted in paragraphs 92-109 above, the OFT has been presented with limited evidence that the parties actively compete or respond to the behaviour of other non-print media, such as online media. That is, there is limited evidence of a supply-side constraint. The OFT has also considered whether alternative media may constrain the parties post-merger to the extent that

advertisers and readers switch between them and this will discipline the commercial behaviour of Northcliffe. That is, whether there is a demand-side constraint from alternative media. This is assessed in this section.

115. Northcliffe submitted 'switching' data in relation to customers which had reduced spend with The Post between 2010 and 2011. The OFT notes that many customers reported reduced advertising budgets which had resulted in them prioritising their spend. Some customers explicitly stated that they were preserving spend on other media over local newspaper spend and had therefore disproportionately reduced their local newspaper spend, that is, they were reducing spend on other media by a smaller amount relative to that on local newspapers.

116. This evidence suggests that the way advertisers split their advertising budgets has become more uneven as some advertisers have faced advertising budgets cutbacks, (they have disproportionately cut print relative to other media channels). In this sense, different media could be considered both complementary (customers advertise across multiple media) and substitutional (advertisers prioritise spend to certain channels relative to others).

117. As noted by the CAT in Aberdeen Journals,[69] advertising spend on complementary media can, in certain circumstances, also be substitutional. The OFT considers that there is evidence in this case that in the face of reduced advertising budgets, some advertisers were evaluating the relative effectiveness of media and were making allocation decisions on that basis, that is, a reduction in advertising budget resulted in substitution of spend between media channels which were also considered complements.

118. As the OFT notes in the section below, many existing advertisers of the parties currently buy advertising across multiple media.

119. As a consequence, the OFT considers that taking into account the limited competitive constraint between the parties in Nottingham as set out in paragraph 90 above, to the extent that Northcliffe, post-merger, seeks to protect their share of advertising budgets (which may be distributed amongst a range of complementary media), their yield strategy may be subject to a constraint from that complementary media. Whilst, from a supply-side perspective, the OFT does not consider that other media will actively seek to

[69] CAT' judgement of 23 June 2003 re *Aberdeen Journals Limited and the Office of Fair Trading supported by Aberdeen Independent Limited*, paragraphs 140-145.

constrain print media if advertising prices were to rise, from a demand-side perspective, given the factors above, there does appear to be a degree to which, in this weaker sense, local newspapers and other media may be considered substitutes.

Advertising in several geographic regions

120. The OFT notes that advertising in The Post is either 'booked' nationally, via sales house working under contract to Northcliffe, or locally via Northcliffe's Nottingham sales team. By way of contrast, The Topper has a local sales team only. The OFT understands from its market testing in this case that nationally booked advertising in The Post is likely to be placed by large organizations which run campaigns across several areas and possibly several media or by agencies, which are likely to work for multiple clients across multiple regions across multiple media.

121. Further, the OFT understands from its market testing in this case that at least some customers which book advertising locally may also advertise across multiple regions.

122. Where advertisers book advertising across multiple regions or media, they are better able to compare the relative advertising rates of a particular title to either other newspapers they advertise in or to advertising rates on other media, or to both. This would allow them to undertake yardstick benchmarking on a cost per thousand basis (which, in the OFT's view, reflects more accurately the value paid-for the advertising space).

123. The OFT considers that such simple yardstick benchmarking will help mitigate against any attempt by Northcliffe to increase prices post-merger, which in any event the OFT considers unlikely for the reasons set out above. In addition, even advertisers without other print or media options may compare the relative price of print advertising in either The Post or The Topper with the costs of self-supply.

Indirect network effects: the two-sidedness of the market

124. As stated above,[70] local newspapers act as 'two-sided platforms'. This two-sided nature of the market introduces a feedback mechanism which is likely to accentuate the impact on demand on one side of the market given the

[70] See paragraph 10 above.

response of the other side of the market. Economic theory suggests that the intermediary in a two-sided market will optimise its pricing strategy taking into account both sides of the market and the inter-relationships between each, which may result in different behavior compared to that of firms operating in one-sided markets.

125. Based on the evidence presented to the OFT in this case, it does not consider that there is any advertising category in which all advertisers rely solely on either party for their advertising needs. In addition, the OFT considers the high fixed cost nature of newspaper publishing to be relevant to its assessment. In light of the two-sided nature (as well as other specific features) of the market, the OFT considers that Northcliffe, even if hypothetically its market position was enhanced vis-à-vis a sub-set of customers as a result of the merger, would not have the ability or incentive to restrict profitably output or increase prices.

126. In respect of The Post, Northcliffe's paid-for title:

126.1. The OFT considers that, were Northcliffe to restrict unilaterally output or raise prices for certain advertising categories, that those advertisers with alternate options would switch at least a proportion of their spend to alternate media. This would mean that the costs of production would have to be met either by a smaller group of advertisers or by readers. The OFT considers that it is unlikely that advertisers with alternate advertising options would tolerate such increases.

126.2. Were Northcliffe to raise the cover price of The Post, it is likely that its circulation would fall resulting in both its fixed costs having to be met by the remaining readers or by advertisers. Such increases in cover price appear unlikely in this case on the basis of (a) the consistent fall in circulation of The Post in recent years even in the absence of significant price increases and (b) internal market research highlighting broader economic (that is, likely price-related) factors as a key reason why readers cease purchasing The Post.[71]

[71] Northcliffe's submission to the OFT of 15 February 2012, Annexe 45, *Nottingham Post Lapsers Research*, Presentation of Findings, by A&N Media, Marketing services, September 2010, slides 8 and *ff.*

126.3. In addition, due to the presence of indirect network externalities, declining circulation would make it harder for Northcliffe to raise revenue from advertisers. As a result, Northcliffe would not have the ability or incentive to reduce profitably the output[72] of this title.

127. In respect of The Topper, the mechanism is different due to the absence of a cover price:

127.1. The OFT considers that, were Northcliffe unilaterally to restrict output or raise prices for certain advertising categories, that those advertisers with alternate options would be likely to switch at least a proportion of their spend to alternate media. This would mean that the costs of production would have to be met either by a smaller group of advertisers, or Northcliffe would have to cut distribution given it cannot pass such costs onto readers (in the absence of a cover price).

127.2. Due to the presence of indirect network externalities, declining distribution would be likely to make it harder for Northcliffe to raise revenue from advertisers in aggregate and therefore, in the OFT's view, this would dampen or reduce Northcliffe's ability and incentive to reduce profitably the output of this title.

Conclusion on unilateral effects

128. The OFT has considered carefully whether it believes the merger will result in a realistic prospect of a substantial lessening of competition. The OFT has considered, in line with the Mergers Assessment Guidelines, the extent to which this 'merger will be expected to lead to an adverse effect for customers' in 'terms of its effect on rivalry over time in the market or markets affected by it'.[73] In light of the specific features of the market and the circumstances of this case, the OFT considers that the effect on rivalry over time will be limited, in that, competition may be lessened but not substantially so by this merger.

[72] Output in this market refers to advertising inventory, which is a combination of circulation and advertising pagination.

[73] See *Merger Assessment Guidelines,* paragraph 4.1.3.

129. In its assessment, the OFT has taken into account the limited rivalry between The Post and The Topper. In addition, the OFT considered a broad range of evidence relating to potential supply and demand-side constraints and the specific features of the newspapers publishing market, namely its two-sided nature which gives rise to indirect network effects. The OFT considers that the combination of all those factors, taken in the round, should be sufficient to protect customers over time.

BARRIERS TO ENTRY AND EXPANSION

130. 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-merger.

131. Northcliffe identified several examples of recent entry which it claimed had affected the Nottingham media marketplace:

131.1. on the internet, the introduction of daily deal sites such as Groupon and Wowcher and local trade directory websites, such as nottinghamtradefinder.co.uk and ngmagazines.org.uk, and

131.2. in print, the publication of Spotlight, an independently owned community magazine, 'What's the buzz', a print and online outlet, and the Life series of magazines.

132. In its market testing, the OFT was not made aware of any immediate plans by third parties to enter the Nottingham marketplace. One hyper-local publisher stated they were planning on expanding publication into a couple of additional postcodes in Nottingham, although this would represent only a fraction of the circulation area of either The Post or The Topper.

133. Since the OFT has not found that this merger would lead to the realistic prospect of a substantial lessening of competition, the OFT does not require to conclude on this issue.

EFFICIENCY GAINS

134. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that

the merger does not give rise to an SLC.[74] Efficiencies can also be taken into account in the form of relevant customer benefits as an exception to the OFT's duty to refer.[75]

135. For the OFT to consider that efficiencies will enhance rivalry so that the merger does not result in an SLC, the efficiencies must be timely, likely and sufficient, having regard to the effect on rivalry that would otherwise result from the merger. The efficiencies must also be merger specific.[76]

136. In this case, Northcliffe submits that a key rationale for the transaction is the efficiencies they expect to result from the transaction: both significant cost savings and customer benefits. On the latter, Northcliffe submits that the merger will result in improved quality such as more editorial content.

137. However, since the OFT has not found that this merger gives rise to a realistic prospect of an SLC, the OFT does not need to conclude on this issue.

THIRD PARTY VIEWS

138. The OFT received comments from around 30 advertising customers, three publishers and two unsolicited submissions from interested groups. The vast majority of advertisers and other customers contacted by the OFT did not raise any competition concerns with regard to this merger.

139. Around a third of the advertisers raised unilateral effects concerns (that advertising prices might rise). Those customers which did raise some concerns were a sub-set of customers primarily within a narrow advertising segment. Their concerns were not supported by sufficient evidence such that the OFT could place material weight on them. [77] These concerns have been discussed in detail above.

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[74] *Merger Assessment Guidelines*, Section 5.7.

[75] *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance*, OFT, December 2010, Chapter 4. The OFT has no evidence on any substantiated relevant customer benefits. However, third parties have commented that they expect that the online capabilities of The Topper will be enhanced.

[76] It is important to note that the same criteria – timely, likely, sufficient, and merger specific – applies equally to an assessment of whether relevant customer benefits are able to mitigate the effect of an SLC.

[77] For further on the weight that the OFT places on third parties' opinions, see paragraph 6.12 of the OFT's *Mergers- Jurisdictional and procedural guidance*, paragraph 6.12.

ASSESSMENT

140. Northcliffe and the Target (the parties) overlap in the supply of local newspapers and associated websites in Nottingham.

141. The OFT believes that the candidate frame of reference for this case is the supply of local newspapers in Nottingham taking into account different advertising categories where appropriate. Most importantly, the OFT considers it appropriate to assess the direct competitive constraint on the parties' titles as part of the competitive assessment, including from print and digital media and the closeness of competition between the parties' titles. The parties' titles overlap in 13 JICREG areas in Nottingham and this competitive assessment focuses on such direct competition. The parties will have a very high share of combined circulation in all these 13 JICREG areas with over 90 per cent in 10 of those areas and over 50 per cent in the remaining three.

142. This case raises unilateral effects concerns in the supply of local newspapers in Nottingham as a result of the combination of close substitutes for a small proportion of advertisers and/or readers. In assessing these unilateral effects concerns the OFT has examined the possibility that the merged entity could unilaterally impose price increases or deteriorate its competitive offering beyond the level possible absent the merger to both readers and advertisers across: (i) all categories or segments; (ii) advertisers in retail display and/or recruitment.

143. The evidence suggests that the parties exercise only a relatively weak competitive constraint on each other for most advertisers and readers and can therefore not be considered to be close competitors. However, a small sub-set of advertisers in the retail display advertising segment may be affected by a possible – albeit small - reduction in rivalry resulting from the merger, particularly those booking locally.

144. Supply-side constraints may not be sufficient on their own to protect customers from any price increases or reduction in quality. In this case, the evidence is not conclusive, in particular with regard to the level of constraint imposed by digital media on the merging parties. For this reason, the OFT has considered additionally whether demand-side constraints, in combination with any supply-side constraints, may jointly be sufficient to protect any customers

that may currently benefit from the limited degree of competition between the parties.

145. The OFT considers that several factors on the demand-side need to be taken into account for the purposes of assessing the degree of likelihood of an SLC. These factors include:

145.1. the extent to which customers can and do substitute between print and alternative media channels

145.2. the knowledge and greater visibility of advertising prices in local newspaper advertising markets that certain customers have, to the extent that they advertise in several geographic areas or across multiple advertising channels. Such customers may be well placed to protect themselves against any hypothetical prices increases through the use of yardstick/comparative benchmarking, and

145.3. indirect network effects: the two-sidedness of the market in question.

146. The OFT considers that complementary media may constrain Northcliffe's post-merger strategy to increase its yields. The evidence before the OFT suggests that Northcliffe would face rivalry to protect its share of advertising budgets distributed amongst a range of complementary media. From a supply-side perspective, the OFT does not consider that other media will actively seek to constrain print media if advertising prices were to rise. However, from a demand-side perspective there does appear to be a degree to which, in this weaker sense, local newspapers and other media may be considered substitutes.

147. Furthermore, an additional demand-side constraint comes from the fact that some large advertisers book advertising across multiple regions or media. These are able to compare the relative advertising rates of a particular title to either other newspapers they advertise in or to advertising rates on other media, or to both. The OFT considers that such yardstick benchmarking will help advertisers mitigate against any attempt by Northcliffe to increase prices post-merger. This applies even to advertisers without other print or media options. In some cases, these may compare the relative price of print advertising in either The Post or The Topper with the costs of self-supply.

148. In addition, the OFT considers that the two-sided nature (as well as other specific features) of the market would prevent Northcliffe from profitably restricting output. This is the case even if, hypothetically, its market position might be enhanced vis-à-vis a small sub-set of customers as a result of the merger. The evidence presented to the OFT suggests that it would not have the ability or incentive to restrict output profitably which might in turn lead to price increases.

149. The OFT has considered carefully whether it believes the merger will result in a realistic prospect of a substantial lessening of competition. The OFT has considered, in line with the Mergers Assessment Guidelines, the extent to which this 'merger will be expected to lead to an adverse effect for customers' in 'terms of its effect on rivalry over time in the market or markets affected by it'.[78] In light of the specific features of the market and the circumstances of this case, the OFT considers that the effect on rivalry over time will be limited, in that, competition may be lessened but not substantially so by this merger.

150. In its assessment, the OFT has taken into account the limited rivalry between The Post and The Topper. In addition, the OFT considered a broad range of evidence relating to potential supply and demand-side constraints and the specific features of the newspapers publishing market, namely its two-sided nature which gives rise to indirect network effects. The OFT considers that the combination of all those factors, taken in the round, should be sufficient to protect customers over time. In other words, the likelihood of anti-competitive effects occasioned by the merger are small.

151. For the reasons outlined above, the OFT considers that, in this case, the transaction will not result in a realistic prospect of a substantial lessening of competition.

DECISION

152. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.

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[78] See *Merger Assessment Guidelines,* paragraph 4.1.3.