
Completed acquisition by Johnston Press plc of Scotsman Publications Limited

The OFT's decision on reference under section 22 given on 17 May 2006. Full text of decision published 25 May 2006.

PARTIES

1. **Johnston Press Plc (Johnston)** a UK listed company is a publisher of local and regional newspapers in the UK. It currently publishes over 300 local and regional newspapers and hosts 175 internet sites.
2. **The Scotsman Publications Limited (Scotsman)** publishes seven newspapers all of which circulate in Scotland. Scotsman's UK turnover is £63.5 million.

TRANSACTION

3. As a result of this transaction, which involved the acquisition of the entire issued share capital of Scotsman on 4 January 2006, Johnston and Scotsman ceased to be distinct. The extended statutory timetable expires on 17 May 2006.

JURISDICTION

4. As a result of this transaction Johnston and Scotsman have ceased to be distinct. The OFT believes that the share of supply test set out in section 23 of the Enterprise Act 2002 (the Act) is met¹ with regard to the supply of local newspapers in the city of Edinburgh. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

5. The parties overlap in the supply of newspapers in Scotland.

¹ The OFT believes that the city of Edinburgh alone constitutes a substantial part of the UK.

Product market

6. Past Competition Commission (CC) reports², have generally concluded that local weekly free and paid for newspapers are substitutes and that local weekly newspapers are closer substitutes for each other than for local daily newspapers. Furthermore, the CC has concluded that daily papers and weekly titles are generally poor substitutes due to the differences in editorial content and publication frequency.
7. Third parties have referred to the increasing constraint of internet advertising on advertising in newspapers, and some large customers indicated that they considered radio and TV to be alternatives. The CC has considered the extent to which advertising in non-print media acts as an effective substitute for advertising in local newspapers and generally concluded that it does not. The CC however has accepted that 'advertising only' publications may provide some alternative to advertising in local newspapers, in varying degrees (see references to CC reports above).
8. The OFT did not receive any conclusive evidence in the course of this investigation which warranted a departure from the approach taken by the CC in past reports as regards the product frame of reference³.

Geographic market

9. Previous CC reports have generally defined the relevant geographic market for local newspapers to be local. More specifically, they have considered the specific area in which the newspaper is circulated ('geographic footprint') and the JICREG areas within that footprint.⁴
10. On the demand-side, local newspapers are more likely to attract local advertisers although regional advertisers may buy packages of advertising across a series of complementary local newspapers to cover a region. In response to a price increase or reduction in service quality, local advertisers said they would switch to another local title rather than to a national title. There is therefore no support for a wider

² Archant's acquisition of the London newspapers of Independent News and Media Limited (October 2004); Newsquest's proposed acquisition of the London newspapers of Independent News and Media Limited (October 2003); Gannett's proposed acquisition of three Scottish Media Group titles (March 2003); the proposed transfer of eight Trinity Mirror titles to Johnston Press (May 2002); and the proposed transfer(s) of Regional Independent Media's newspapers and assets to Gannett, Johnston Press and Guardian Media Group (November 2000).

³ Although it is accepted that some third parties considered non-print media to be more of a constraint than that recognised by the CC previously.

⁴ Joint Industry Committee for Regional Press Research (JICREG).

frame of reference on the demand-side. On the supply-side, the parties' competitors were strongly of the view that it was very difficult to extend the geographic footprint of a title into a new area (mainly due to the strategic position of incumbents).

11. In addition, the geographic footprint of local titles gives us important information with regard to the level of competition between them. Specifically, where the titles' geographic footprints overlap significantly, advertisers may consider them substitutes since they target the same readers. Conversely, where titles' geographic footprints overlap to a lesser degree, those titles are likely to be considered poor substitutes by advertisers, since an advertiser switching from one title to another is likely to view a large amount of their advertising spend as 'wasted' on circulation in areas in which they are not interested.
12. For the purposes of this case, the geographic frame of reference for the supply of local newspapers is therefore considered to be local. The competitive effects of the acquisition will be assessed by reference to the JICREG areas covered by each title's footprint, both individually and in aggregate.

HORIZONTAL ISSUES

Market shares

13. The CC has previously excluded as not being relevant to a competition assessment, any JICREG areas where the titles of either of the parties to a merger have a penetration rate below 10 per cent; and has focused primarily on so-called 'core' areas where one or both competing titles have 30 per cent or more of their circulation/distribution volume.⁵ The OFT has not found any evidence to justify departure from these criteria in this decision.
14. Against those criteria, the merger would result in relevant overlaps with six of the Scotsman's titles: (i) The Scotsman; (ii) Scotland on Sunday; (iii) Edinburgh Evening News; (iv) Herald and Post Edinburgh; (v) Herald and Post Fife; (vi) Herald and Post West Lothian. Each of these are considered below.
15. **The Scotsman** is a daily national newspaper which circulates Scotland-wide and therefore overlaps to some extent with all of Johnston's local weekly titles in Scotland. However, given evidence underlying the CC's previous reports (see

⁵ Johnston Press plc/Trinity Mirror plc (May 2002).

references above), the difference in advertising rates between the local and national newspapers, and the number of competing Scottish versions of UK national newspapers, the OFT believes that the Scotsman does not constrain the behaviour of Johnston's local weekly newspapers (or vice versa) to any significant extent.

16. **Scotland on Sunday** is a national newspaper which circulates Scotland-wide on Sundays and therefore overlaps with all of Johnston's local weekly titles in Scotland. However, for the same reasons given above, the OFT believes that Scotland on Sunday does not constrain the behaviour of Johnston's local weekly newspapers (or vice versa) to any significant extent.
17. **The Edinburgh Evening News** is an evening paid-for daily newspaper which circulates in and around Edinburgh. If weekly and evening daily newspapers are considered to be in separate markets, there is no overlap between the Edinburgh Evening News and Johnston's titles which are all weekly newspapers.
18. However, if weekly and evening daily newspapers are considered to be in the same market, then the Edinburgh Evening News overlaps with Johnston's (i) Midlothian Advertiser, (ii) East Lothian News, (iii) East Lothian Courier, (iv) Berwickshire News East Lothian Herald, (v) Linlithgowshire Journal and Gazette (all paid-for weekly newspapers) and (vi) Lothian and Peebles Times (a free weekly newspaper).
19. The Edinburgh Evening News circulates in 56 JICREG areas. The core JICREG area of the Edinburgh Evening News is Edinburgh, which accounts for 67 per cent of its circulation. Pre-merger the Scotsman had a 99.8 per cent share of circulation of weekly and evening titles in this area (including the Herald and Post Edinburgh the analysis of which follows) increasing by 0.2 per cent as a result of the merger. This increment is so small the competitive situation remains virtually unchanged as a result of the merger.
20. Since all other JICREG areas where the Edinburgh Evening News title circulates account for less than 4 per cent of its total circulation, the OFT believes that these areas do not significantly influence the editorial content or advertising in the title.
21. Furthermore, to the extent that local newspapers do impose a constraint on the Edinburgh Evening News, there are alternative titles which circulate within its footprint: (i) The East Lothian Courier (a paid-for weekly title); (ii) The Fife and Kinross Extra (a free weekly newspaper owned by Dunfermline Press) (iii) The West Lothian Courier (a paid-for weekly newspaper); (iv) Metro Scotland (a free

morning title; (v) non-JICREG registered titles including the Edinburgh Times which circulates monthly in Edinburgh and outlying communities.

22. **Herald and Post Edinburgh** is a free local weekly newspaper which circulates in Edinburgh. It also overlaps with Johnston's Midlothian Advertiser, East Lothian News, Linlithgowshire Journal and Gazette (paid-for weeklies) and Lothian and Peebles Times (a free weekly) (see also paragraph 18 above).
23. The Herald & Post Edinburgh circulates in eight JICREG areas. Its core area is Edinburgh, which accounts for 84 per cent of the title's circulation. The other areas in which the title circulates each account for 3 per cent or less of the title's circulation, although in some cases household penetration exceeds 30 per cent. The parties submit that the Edinburgh JICREG area is the main focus of the title, providing evidence to show that less than 5 per cent of stories relate to areas outside of Edinburgh (from analysis in December 2005). The evidence before the OFT has found therefore indicates that the majority of advertisers will be targeting the Edinburgh JICREG area, where the Scotsman publications Edinburgh Evening News and Herald & Post Edinburgh had a pre-merger share of circulation of 99.8 per cent, and the competitive situation is virtually unchanged as a result of the merger.
24. **Herald and Post Fife** is a free local weekly newspaper which circulates in Fife. It overlaps with Johnston's Fife Free Press (a paid-for weekly) and Fife Leader and Kirkcaldy Herald (free weekly newspapers). The Herald and Post Fife is distributed in six JICREG areas: Burntisland; Cowdenbeath; Dunfermline; Inverkeithing; Kirkcaldy; and Rosyth. Household penetration is high (above 30 per cent) in all of these areas except Burntisland, where penetration is only 3.6 per cent and the increment from the merger is less than 2 per cent. Penetration is highest in Rosyth (94.6 per cent) and Inverkeithing (81.4 per cent) but no overlap results from the merger. In Cowdenbeath, where penetration is about 30 per cent, the share of circulation post merger is only about 25 per cent.
25. The core area of the Herald & Post Fife is Dunfermline, which accounts for 36.8 per cent of the title's circulation. However, there is no increment in market share arising from the merger in Dunfermline.
26. The OFT has considered whether there would be any competitive effects arising from the merger in the remaining non-core area covered by the title, Kirkcaldy, where the share of circulation of the Herald & Post Fife is 27.4 per cent. In Kirkcaldy, Johnston has two JICREG titles, the Fife Free Press and the Fife Leader South, which together account for 72.3 per cent of total circulation in the area,

and one non-JICREG registered title, the Kirkcaldy Herald. The post-merger share of circulation in Kirkcaldy is therefore almost 100 per cent.

27. However, the OFT considers that while geographical price differentiation may be possible;⁶ because the titles have wider circulation than Kirkcaldy (i.e. 70 per cent of the Herald and Post Fife circulates in other JICREG areas) most advertising customers will be looking to target wider areas than Kirkcaldy itself. Targeted price differentiation would therefore be difficult. Third party customers contacted by the OFT raised no concerns.
28. Across the footprint of the Herald & Post Fife, Dunfermline Press, a competitor has a share of circulation of 42.8 per cent; Scotsman 28.8 per cent and Johnston 28.5 per cent. In Dunfermline, the share of Dunfermline Press is over 65 per cent, but in Kirkcaldy its share is negligible.
29. A third party told the OFT that aggressive pricing exists in the marketplace and some of its customers have switched to Herald & Post Fife, Lothian Times and the Southern Reporter (all Johnston/Scotsman titles). Its primary concern about the merger was that Johnston could increase its reach and offer more aggressive pricing structures (including packaged advertising deals). It also argued that Johnston could make changes to reduce choice to competitors while 'squeezing the competitiveness' of other competitors. However it did not specify what these changes were nor how they could occur).
30. Given the existence of competition in the Fife area from Dunfermline Press and possible other constraints such as advertising only publications, the OFT believes that the merger will not increase Johnston's ability to impose price increases to advertisers in Fife. The OFT believes that Johnston may be able to negotiate better rates with some advertisers in Kirkcaldy, but that the impact of this would be limited as it would be difficult to identify individual customers whose choice has been affected by the merger.
31. **Herald and Post West Lothian** is a free local weekly newspaper which circulates in West Lothian. It overlaps with Johnston's Linlithgowshire Journal and Gazette (a paid-for weekly newspaper) and Falkirk Grangemouth and Linlithgow Advertiser (a free weekly newspaper). The Herald and Post West Lothian circulates primarily in Livingston which accounts for 47 per cent of its circulation. There is no increment to share of circulation arising from the merger in Livingston and the title only

⁶ The CC in Archant/INM considered this question in relation to advertising customers in London and found no evidence to support the theory in that particular case.

overlaps with Johnston titles in Linlithgow and Uphall Newbridge which both account for less than 5 per cent of the Herald and Post West Lothian's circulation.

Barriers to entry and expansion

32. Previous CC reports have consistently identified a number of barriers to entry in local newspaper publishing. These barriers include: (i) economies of scale; (ii) costs associated with investment in editorial content (higher for paid-for titles); (iii) marketing and sales costs (higher for paid-for titles); (iv) access to printing facilities; and (v) the competitive response of incumbent titles (see references to CC reports above).
33. Johnston submits that entry is easy and would occur if there were increases in Johnston advertising rates. It points to a number of recent launches in Scotland: Dunfermline City Life; and East Kilbride Mail were both launched in 2004; Eastern Eye Scotland was launched in February 2006 and the Herald and Post Perth was launched in September 2004.
34. Third parties canvassed for their views said that it is difficult to grow the footprint of a local newspaper, especially that of a paid-for title. A title could be launched quickly but the publisher would need to persuade readers and advertisers to accept a new title and the reaction of competitors would be key to its success. However one third party said that barriers to entry in setting up a newspaper are low, especially for a free newspaper, and the cost to an established newspaper would be insignificant. It also said that it intends to maintain and grow its own sales.
35. Evidence on barriers to entry is therefore somewhat mixed, but the OFT believes that although they may be significant for completely new entrants they are less so for existing newspaper publishers.

Countervailing buyer power

36. The majority of advertisers negotiate individual discounts off a standard advertising rate card. It may therefore be possible that some of the larger advertisers may be able to exercise a degree of buyer power. However this may not hold true for smaller advertisers who may not purchase advertising space in sufficient volumes although smaller customers may have more choices.

VERTICAL ISSUES

37. No vertical concerns arise as a result of this transaction.

THIRD PARTY VIEWS

38. Most third parties had no concerns. Some had concerns that were not merger specific and one had concerns that the merger would enable Johnston to price more aggressively and sell packages of advertising across a number of titles. This third party was also concerned that Johnston could make changes to reduce choice to advertisers while 'squeezing the competitiveness'. However this third party did not specify the type of changes envisaged nor how they could occur.

ASSESSMENT

39. The parties overlap in the supply of newspapers in Scotland.
40. The OFT believes that the Scotsman, and Scotland on Sunday both national newspapers are not constrained by the behaviour of Johnston's local weekly newspapers to any significant extent.
41. If weekly and evening newspapers are in separate markets there is no overlap between the Scotsman's Edinburgh Evening News and Johnston's local weekly newspapers. However, the OFT also assessed the effects of the merger if they are considered to be in the same market. On this analysis, in the core JICREG area of Edinburgh, Johnston had a 99.8 per cent share of circulation of weekly and evening titles which increased by 0.2 per cent which is so small the competitive situation remains virtually unchanged as a result of the merger. Furthermore since all other JICREG areas where the Edinburgh Evening News circulates account for less than 4 percent of its total circulation, the OFT believes that these areas do not significantly influence the editorial content or advertising in the title. In addition, to the extent that local newspapers do impose a constraint on the Edinburgh Evening News, there are a number of alternative titles which circulate in its footprint.
42. The evidence the OFT found indicates that in the core area in which the Herald and Post Edinburgh circulates (Edinburgh), it and the Edinburgh Evening News had a 99.8 per cent share of circulation pre-merger and therefore the competitive situation remains largely unchanged as a result of the merger.
43. The core area of the Herald and Post Fife is Dunfermline where there is no increment in share as a result of the merger. The OFT also considered whether the merger would have any competitive effects in the non-core JICREG areas covered by the title. In Kirkcaldy the post-merger share is almost 100 per cent. However, the OFT considers that advertising customers target wider areas than Kirkcaldy itself. Targeted price differentiation would therefore be difficult. In addition there

is other competition including Dunfermline Press and possible other constraints such as advertising only publications.

44. Scotsman publishes the Herald and Post West Lothian which overlaps with two of Johnston's local newspapers. There is no increment to share of circulation arising from the merger in the core JICREG area and the other two areas in which this publication overlaps with Johnston titles both account for less than 5 per cent of its circulation.
45. The OFT believes that although barriers to entry may be significant for new entrants to the newspaper market, they are less so for existing newspaper publishers.
46. Most third parties had no concerns although some had concerns that were not specific or not merger specific.
47. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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