Completed acquisition by Johnston Press plc of Local Press Ltd

The OFT's decision on reference under section 22 given on 5 May 2006. Full text of decision published 18 May 2006.

PARTIES

1. **Johnston Press plc (Johnston)** publishes local newspapers throughout the UK, including 23 local weekly newspapers and one farming periodical in Northern Ireland. These were acquired from Score Press in August 2005.[1]

2. **Local Press Ltd (Local)** currently publishes eight newspapers in Northern Ireland under two separate companies: Derry Journal and Century Press. Local Press's UK turnover in its last financial year was £19.1 million.

TRANSACTION

3. On 4 November 2005, Johnston acquired the share capital of Local Press. The extended statutory deadline expires on 5 May 2006.

[1] Found not to be a relevant merger under the Act on 25 August 2005.

JURISDICTION

4. As a result of this transaction Johnston and Local have ceased to be distinct. The parties overlap in the publication and printing of newspapers and agricultural publications in Northern Ireland. The OFT believes that it may be the case that, post transaction, the parties supply over 25 per cent of publications with agricultural editorial (ie non-advertising content) targeted at the farming community in Northern Ireland and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.[2]

ANALYSIS

5. The parties overlap in three areas: the printing of newspapers in Northern Ireland, the publication of local newspapers in some areas of Northern Ireland and the publication of farming publications in Northern Ireland.

Local newspapers

Product market

6. Past Competition Commission (CC) reports,[3] 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 also concluded that daily papers and weekly titles are generally poor substitutes due to the differences in editorial content and publication frequency.

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[2] Although the parties have more than 25 per cent of the supply of local newspapers in Derry, this area has a small population of 178,200 people over the age of 15 years. At 0.4 per cent of UK population this is well below one of the threshold criteria in the House of Lords judgement on South Yorkshire Transport that would usually determine whether an area is a substantial part of the UK.

[3] 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).

7. The CC has also 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 is not. The CC however has accepted that 'advertising only' publications may provide some alternative to advertising in local newspapers, in varying degrees.

8. The OFT did not receive any 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 reference.

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') of the titles concerned and the JICREG areas within that foot print. [4] As JICREG does not cover Northern Ireland, the only data available is ABC circulation data by footprint and by postcode for the parties.

10. From a demand perspective, the OFT canvassed the parties' advertising customers to find out their next best alternative in the event their main local titles were no longer available. Most responded that they would switch to another local title. There is therefore no support for a wider 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.

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

12. In conclusion, for the purposes of this case, the geographic scope for publications is therefore considered to be local. The competitive effects of the acquisition will be assessed by reference to local shares of supply and by reference to the individual geographic footprint of each overlapping title(s).

Competition assessment

13. The main area of overlap for the titles is in the local authority areas of Derry City and Limavady (the Derry area). Additional overlaps occur in the county of Coleraine and Belfast.

14. In Coleraine, Johnston Press publishes the Coleraine Times and Local Press recently set up the Coleraine Journal. However, the circulation figures of the Coleraine Journal are very small and a number of significant competing titles remain. In Belfast, the overlaps between Local Press's Belfast News and Johnston's East Antrim advertiser are minimal and each has a different geographic focus. In addition there are a number of competing titles. As a result these overlaps do not appear to raise any significant competition issues and are therefore not considered further.

15. Both parties publish paid for titles that circulate throughout much of the Derry area (comprising postcodes BT47, 48, 49 and 51). Local Press publishes the Derry Journal twice weekly, the weekly Sunday Journal, Foyle News and [Derry] on Monday. Johnston publishes the Londonderry Sentinel (the Sentinel) and the Roe Valley Sentinel weekly.

16. In the city itself and the surrounds (BT 48 and part of BT 47) the parties also publish free weekly titles that are extensively cross sold to advertisers with the paid for titles - Local Press's City News and Johnston's North West Echo.

17. As stated above, no JICREG or other reliable data exists and therefore the share of supply data is unavoidably crude. Only the ABC circulation for the entire footprint exists for all titles, with only the parties being able to give circulation within postcodes.

18. There are various ways of looking at the share data. The parties estimate their combined post-merger share at about [65-75] per cent ([20-30] per

cent increment) for the Derry area or on an adjusted basis about [50-60] per cent ([0-10] per cent increment) for the area around the city.[5] The OFT has put the highest share estimates at over 80 per cent with an increment of at least 25 per cent by subtracting the parties' and competitors' titles that circulated almost entirely outside the Derry area. However regardless of which way they are compiled the parties hold a significant share post acquisition.

19. In addition, the degree of geographic overlap between the parties' titles appears to be large, signifying that advertisers could view them as close competitors. The paid for titles have 70-90 per cent of their circulation in common post codes and the free titles have over 90 per cent in common.

20. The parties however submit that irrespective of shares and perceived common footprint the titles are a limited competitive constraint upon each other as they serve different segments of the community. The CC in a 1989 report on regional newspapers in Northern Ireland noted that newspapers tended to serve different sections of the community, although some were less partisan than others.[6] In the case of the Derry area (and the city of Londonderry in particular) there is significant evidence to support that view.

21. Third parties (including concerned customers) supported the parties view and were generally of the opinion that the majority of local areas in Northern Ireland had two main titles, one for each side of the community. This segmentation itself acted to limit competition.

22. A UMS readership survey prepared for Local Press in 2000 in the city supports this contention to a degree. It suggests that the Sentinel is very heavily read by one section of the community, whilst the Journal has a more mixed readership.[7] The parties however advise caution with regard to

[5] The parties later suggested a recalculation of shares due to several factors which they claim market shares alone overstates the impact of this transaction. The OFT does not accept that several of these factors are reasonable but includes the overall figure as a lowest point for shares data.

[6] Century Newspapers Ltd/Thomson Regional Newspapers Ltd: a report on the proposed transfer of two newspapers and related newspapers assets owned by Century Newspapers Ltd to Thomson Regional Newspapers Ltd.

[7] One suggestion put forward by the parties for this was the Journals' fairly comprehensive sports coverage.

the weight placed on the survey results due to its date and small sample size.

23. In Northern Ireland, there are regulations in place in relation to advertising in subject areas such as employment and public notices which require advertisements to reach both side of the community. For these customers the parties contend their titles are complements. Data supplied by the parties on the degree of commonality in their advertising customers may also support this contention. The parties contend that a high degree of common advertising may suggest advertisers need to appear in both titles to reach both sides of the community. It appears that a high proportion of advertising revenue in the Sentinel is from advertising that is also published in the Journal, although not vice versa. This may suggest that many advertisers would not regard the titles as substitutes.

24. The parties also pointed to the circulation by postcode data, showing that about [40-50] per cent of the Journal is circulated in BT48 compared with less than10 per cent of the Sentinel readership, whereas in BT47 the figures are [less than 20 per cent] and about [35-45] per cent respectively. The west side of the city, which forms the main part of BT48, has a large majority of its population from one section of the community.

25. The evidence above suggests that although both titles are more widely read by one side of the community than the other, the Derry Journal scored high percentages of readers from both sides of the community, whereas the Sentinel scored a very low percentage of readers from one side compared to the other. As such, readers and advertisers of the Derry Journal from its preferred side of the community are unlikely to switch to the Sentinel as they will not be attracted by its editorial content and advertisers will not be able to use the Sentinel to reach both sides of the community. The Sentinel would therefore not appear to be a close competitor or constraint on the Derry Journal.

26. This is reinforced by evidence from monthly internal documents produced by the Derry Journal between 2001 and 2005 which demonstrate that the Derry Journal constantly monitors the Derry News but not the Sentinel. This suggests that the Derry Journal's closest competitor is the Derry News. Examples of advertisers switching from the Derry Journal to the Derry News over the last two years also support this view. Furthermore, there are no examples of switching to the Sentinel.

27. Turning to the extent to which the Derry Journal constrains the Sentinel, the 2000 UMS survey suggests that the Derry Journal is more widely read by both sides of the community than Sentinel. It could be argued that, in the absence of another title with a similar community orientation to the Sentinel, the Derry Journal would still be the Sentinel's closest competitor. The only competing title in the Derry area serving that section of the community is the North West Telegraph, a daily regional edition of the Belfast Telegraph with a weekly supplement focussed on Derry. This may be a weak constraint as it covers a wider area than the Derry area.

28. Concern may also remain even if the titles are largely complements as advertisers may constrain the parties by switching, or threatening to switch, a proportion of their advertising expenditure between the titles. However for the OFT to reach a positive belief on either this theory or that outlined in the preceding paragraph, as opposed to a mere suspicion that there is the loss of an effective competitive constraint post merger, a key piece of evidence would be of advertisers switching between the two titles or stating that they had used the threat of switching. None of the advertisers who voiced concerns to the OFT in regard to the parties' strength in Derry produced evidence of any switching between the two. One subsequently stated that in negotiating advertising rates with the parties he generally does not play them off against each other as he did not view them as comparing 'like with like'.

Summary

29. In conclusion, it appears that in effect the parties' titles are limited substitutes. The Derry Journal's closest competitor is the Derry News, which remains post merger, and there is no evidence of switching, or the threat of switching, between the titles to support the argument that the merger removes an important constraint on the Sentinel. As such the merger changes very little.

Farming publications

Product market

30. The parties overlap in farming publications in Northern Ireland. Johnston Press publishes a 56 page weekly farmer's periodical called Farm Week.

Local Press produces Farming Life, as a supplement to its Northern Ireland wide daily newspaper, the News Letter, on Wednesdays and Saturdays.

31. Although not a stand alone publication, Farming Life is 72 pages (or 50 per cent of the News Letter's pages) in the Saturday edition and therefore clearly represents a major part of its readership and advertising on that day. The News Letter is also regarded by the parties (and the CC in Century/Thomson) as being focussed on the rural community in Northern Ireland. Customers were strongly of the view that the two publications are very similar to each other despite the difference in publication method. Given its size and focus Farming Life is not seen as part of a generalist publication (the News Letter) with some farming content but as the leading farming publication. This view is supported by a survey conducted in 2004 by Millward Brown Ulster (Millward survey) in relation to farming publications in Northern Ireland.

32. As with paid for newspapers there are two sets of interdependent customers to consider - readers seeking appropriate editorial and advertising content and advertisers seeking readers.

33. The parties contend that there are a large number of publications, including advertising only titles, and non-print media that could be used by advertising customers to target the farming community in Northern Ireland. However, this view was not supported by customers and most competitors, many of whom considered the parties' publications to be the main or only publications in this area for both readership and advertising. The Millward survey also supported the limited impact of non-print media such as the internet at this point in time, finding that 70 per cent of the readership had not used it.

34. On the supply side, in local newspapers ease of supply side substitutability between advertising segments allows for a general frame of reference. In more specialist publications narrower considerations of supply side substitution have been adopted eg Future/Highbury.[8] To test these views the OFT canvassed publishers active across Northern Ireland to assess the possibility of entry into this segment. Third party competitors considered it unlikely that they or other Northern Ireland wide newspapers would begin producing their own farming supplements or expand their existing small sections to something of the scale of Farming Life or Farm Week. As such it is not clear that switching would occur on sufficient scale or sufficiently rapidly to consider the appropriate frame of reference as all advertising or publications. It is therefore considered appropriate to take a cautious view and assess farming publications on a separate frame of reference.

Geographic market

35. Farming Life and Farm Week circulate in Northern Ireland and (to a limited extent) the Republic of Ireland and are priced in Euro and Sterling. However, farming journals in the Republic, such as the Irish Farmers Journal, have a separate Northern Irish edition priced in Sterling. Furthermore, farming is a major part of the Northern Irish economy and readers are therefore likely to be particularly focussed on Northern Ireland, as suggested by third party comments on which titles they would advertise in. As a result, it therefore seems appropriate to take a cautious view and assess the geographic scope for farming on a Northern Ireland wide basis.

Competition assessment

36. The parties contend there are a large number of publications that can be utilized to target the farming population in Northern Ireland and on this basis submit their post transaction share to be just under 25 per cent, with a modest increment of about 5 per cent. However, the parties' list of competing publications targeting the agricultural community in Northern Ireland requires closer examination as it includes a large number of titles

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[8] Future plc/Highbury House 13 April 2005. In an earlier decision (Guardian Media Group/Trader Publishing, 23 September 2003) the extent to which the merger of two specialist motor advertising only publications were constrained by supply side substitution from local newspapers was considered favourably by the OFT. Setting aside the other specifics of the case, the views of third parties, and the lack of competition for readership through editorial content distinguishes the current case from that earlier decision.

which are either not specifically targeted at farmers or are not specifically targeted at Northern Ireland.

37. As the parties acknowledge, it is difficult to compose accurate figures when dealing with newspapers that also sell by virtue of non-farming content, advertising publications that cover all types of vehicles and farming journals that sell throughout the UK. The OFT has therefore considered the extent to which these titles are actually alternatives and the extent to which their circulation figures exaggerate market power, amending the share of supply figures by excluding publications that do not appear to be close competitors.

38. Including many of the titles named by the parties makes little difference to the parties' share of circulation figures in Northern Ireland. Farming journals produced in the Republic (including the Irish Farmers Journal Northern Ireland edition, which has a circulation of 5000 compared to Farm Week's 12,000) account for about two per cent. Similarly small on an individual basis are farming journals covering all of the UK (all together about six per cent), newspapers from the Republic that cover farming (about three per cent) and an equestrian magazine (less than one per cent). On the basis of the readership data in the Millward survey there is a case that the Irish Farmers Journal in particular and two of the UK titles and a newspaper from the Republic should be included, accounting for about six per cent share (out of about 12 per cent if all the above titles were included).

39. The inclusion of two categories of publication in the assessment will have a far greater impact on the parties' shares, as they account for about 35 per cent of the parties' figures for all publications. One category is advertising only titles, of which there are four cited. Including all the circulation figures for such a publication overstates their impact. These titles have no editorial content (which is the main appeal of Farming Life according to the Millward survey) and therefore only compete for advertising. Within that group, Autotrader, which the parties believe accounts for about a 15 per cent share of circulation has only 10 of its over 300 pages covering farm machinery. Even though the Millward survey acknowledges Autotrader is read by almost half of Farming Life's readership on a monthly basis (compared to under 15 per cent for another advertising only title) it also highlights that it does not advertise other key product such as livestock. Intuitively, it may be expected to be the case that Farming Life readers will buy Autotrader for purposes other than farming – because they simply

wish to buy a used car. Most significantly the advertisers we spoke to did not see advertising only titles as a substitute for the parties' titles.

40. The other category is local papers with farming pages, who point out the coverage is only a couple of pages and do not regard themselves as competitors. The Millward survey also gives the four publications listed by the parties very low readership, from 3 per cent to 15 per cent.

41. It is noted and accepted that inclusion – within a farming publications sector - of the total circulation figures for non-exclusive publications such as the News Letter may overstate their market power (for example, the Saturday edition of the News Letter sells an extra 16,000 copies compared to the Monday-Friday editions and this number (at least) might be accounted for by the farming community). However, we do not have such detailed figures for competitors and so by also leaving rival titles circulation in full this may be expected to balance out.

42. Once relatively weak competitors are removed, the parties combined post transaction share of supply by circulation stands at about [40-50] per cent with an increment of [5-15] per cent.

43. Irrespective of share figures, the parties' titles are seen as the first and second most significant publications for customers, based on third party comments and survey evidence. Customers and competitors were overwhelmingly of the view that the parties' two titles above have held this position as the closest competitors in Northern Ireland. This was backed up by the Millward survey which clearly showed that the two publications were in fact the most widely read in the last 12 months. Furthermore, the Millward survey also showed that they were also the two most popular for classified advertising.

44. The conclusion that the parties are close competitors is also supported by directly comparing circulation figures from all the titles suggested by the parties. The only title larger than Farming Life is Agribusiness. This is a supplement to the Irish News. Most third party respondents did not list Agribusiness as a particularly viable alternative; and both the parties and Irish News confirmed that Agribusiness was generally better known for its business coverage than for its farming related content. The Millward survey also did not support the contention that Agribusiness was a viable

alternative. The only other titles larger than Farm Week are Autotrader and other local newspapers with farming content (both addressed above).

45. Third parties (both from the customer and competitor perspective) were concerned that the merger brought together the two leading farming publications in Northern Ireland and were concerned that one party would control both these titles post transaction. Customers also stated that they would switch advertising between the parties' titles.

Barriers to entry and expansion

46. The parties contend that they are constrained by the threat that any newspaper could begin producing a farming related supplement or expand existing farming sections. The CC has consistently identified a number of barriers to entry in local newspaper publishing. These notwithstanding, as explained above, this is a two-sided market. In order to attract more advertisers, the publication will have to attract a greater readership amongst the farming community (supporting the view of the smaller competitors that they have no impact upon the parties). Currently, advertisers believe they would be able to reach their target audience in Northern Ireland by using either Farm Week or Farming Life. Post merger, if advertisers needed to switch in response to a price increase by the parties to a new or expanded title, they would face an increase in cost as they would have to spread the advertisement over several titles to reach the same numbers of readers. If this were feasible, then we would have expected advertisers to mention this as an alternative post-merger strategy. However, this was not the case reflecting the considerable difference in position in the eyes of its customers of the parties' titles and those of its rivals.

47. When third party publishers (in particular those who currently have sections carrying farming related content) were canvassed as to entry or expansion, they stated that it was very difficult or impossible to expand citing low readership and in turn little incentive for advertisers to increase the spend of farming related adverts in their publications. While competitors may have an incentive to raise issues, this does not necessarily mean that such an issue is not valid. Given these comments, the need to switch a large proportion of the readership or advertisers facing the added cost of switching advertising across a number of alternative titles, it is cautiously concluded that the constraint imposed by potential entry is not timely,

likely or sufficient to offset the concern raised by the merger of the two most significant titles in this area.

Buyer power

48. 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. Therefore we have found no evidence of countervailing buyer power.

Summary

49. To conclude, this transaction brings together the number one and two farming publications in Northern Ireland and although there remain some other publications that could in theory be utilized to target the farming community, they appear to pose limited constraints. Furthermore, third party competitors cite little incentive to enter and both customers and competitors voiced concern in relation to the leverage this may give the parties post transaction vis-à-vis farming advertising. As such the OFT considers that this transaction raises competition concerns in relation to farming publications in Northern Ireland.

Printing of newspapers

Relevant market

50. The evidence indicates there are no demand or supply side alternatives and newspaper printing will therefore be considered as a separate frame of reference.

51. The parties contend the geographic frame of reference is wider than Northern Ireland but as post acquisition shares are low even on a narrow Northern Ireland only frame; it is unnecessary to reach a conclusion.

Competition assessment

52. The parties both operate printing presses in Northern Ireland and estimate their post acquisition share of supply for printing capacity in Northern

Ireland at less than [15-25] per cent and for Northern Ireland and the Republic taken together at below [10-20] per cent.

53. The parties contend that their presses are [][i]. Other printers confirmed that they have adequate spare capacity to print for third parties.

54. However, one third party alleged that there are few alternative printing presses in Northern Ireland and that post merger the parties would have sufficient market power to either increase the price for third party printing or reduce capacity so as to refuse to supply. The OFT found no evidence to support this view.

55. Consequently, on the basis of the low shares and the spare capacity from other major publishers, this transaction does not appear to raise any competition concerns in relation to printing.

ASSESSMENT

56. The parties overlap in three areas: the printing of newspapers in Northern Ireland, the publication of local newspapers in some areas of Northern Ireland and the publication of farming publications in Northern Ireland.

57. The parties post transaction share of printing of newspapers is low and rivals have stated they have spare capacity, offsetting the concerns expressed by one third party that they have market power. The OFT therefore 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 the printing of newspapers in Northern Ireland.

58. Of the parties' overlaps in local newspaper publishing, only that in Derry raised concerns. Some third parties were concerned that Johnston would control the two main titles in the Derry area. While structurally the merger results in some high shares in some small geographic areas, the effect of the merger on competition for readers and advertisers is far more limited. Evidence shows that the titles serve different parts of the Derry community and points to the conclusion that the two titles do not compete with each other to any meaningful extent. Most significantly, internal documents indicate the Derry Journal took little account of the Sentinel and concerned advertising customers had no evidence of switching, or the threat of switching, between the titles. As a result the merger changes very little in

terms of competition. The OFT therefore 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 local newspaper publishing in Northern Ireland.

59. Although the parties farming publications take different forms, there is strong evidence that they are close competitors. Customers and competitors, as well as survey evidence supplied by the parties, characterises them as the two most important titles for farmers in Northern Ireland. Customers stated that they would switch advertising spend between them. There are a number of other publications that at least partially overlap with the parties titles', allowing for share data to be examined in a number of different ways. However, most of these are limited competitors and third parties were of the view that there remained few realistic alternatives that advertising customers could switch to and reach comparative levels of readership.

60. Evidence from third parties suggest that the constraint imposed by potential entry is insufficient to offset the concern raised by the merger of the two most significant titles and customer concern in an area where agriculture is particularly important. Accordingly this transaction raises significant competition issues in the supply of farming publications in Northern Ireland.

61. Consequently, the OFT believes 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.

UNDERTAKINGS IN LIEU

62. Where the duty to make a reference under section 22(1) of the Act is met, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate for the purpose.

63. The OFT has therefore considered whether there might be undertakings in lieu of reference which would address the competition concerns outlined

above. The OFT's guidance on undertakings in lieu of reference state that, 'undertakings in lieu of reference are appropriate only where the competition concerns raised by the merger and the remedies proposed to address them are clear cut'.

64. By way of remedy Johnston has indicated a willingness to give an undertaking to divest Farm Week. The proposal appears to the OFT to be a clear cut remedy as it directly addresses all of the competition concerns arising from the merger. This remedy can also be implemented within a reasonable time frame.

65. Accordingly, the OFT has decided to exercise its discretion to seek undertakings in lieu of a reference.

DECISION

66. The merger will therefore be referred to the Competition Commission under section 22 of the Act, unless Johnston gives suitable undertakings pursuant to section 73 of the Act to address the competition concerns outlined above.

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[i] Details excised at the request of the parties for reasons of commercial confidentiality.