# Anticipated acquisition by Johnston Press plc of eight newspaper titles and assets from Archant Limited

The OFT's decision on reference under section 33 given on 17 April 2007. Full text of decision published 23 April 2007.

## PARTIES

1. **Johnston Press plc (Johnston)**, a UK listed company, is a publisher of local and regional newspapers and non-newspaper publications across the UK and in Ireland. It currently publishes over 300 newspapers, over 40 of which are Scottish local titles, some with associated internet sites. In addition, it also operates 11 printing centres.

2. **Archant Limited (Archant)** is a UK regional media company active in the publication of local and regional newspapers and magazines, contract printing and internet communications.

## TRANSACTION

3. On 19 January 2007, Johnston announced that it had agreed to acquire Archant's eight Scottish local newspaper titles ('the Titles') (comprising three weekly paid-for titles[1] and five free weekly titles[2]), together with various associated assets[3] ('the Business'), for a consideration of £11.205 million. The OFT believes that the combination of assets and goodwill passing comprises an 'enterprise' for the purposes of section 23(1) of the Enterprise Act 2002 (the Act). In the financial year ended 31 December 2006, the turnover of the Business amounted to £6.95 million.

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[1] *Buchan Observer*, *Fraserbugh Herald* and *Ellon Times*.

[2] *Ayrshire Extra*, *Lanarkshire Extra Group*, *Paisley and Renfrewshire Extra*, *Glasgow Southside* and *Eastwood Extra*, and *Bearsden, Milngavie and Glasgow Extra*.

[3] Johnston has informed the OFT that these include: a printing press at Peterhead; two freehold properties at Peterhead and Ellon; four leasehold property interests; the benefit of commercial contracts; various fixed assets; goodwill; and other items (such as the stock, records, debts and intellectual property associated with the Titles).

4. The administrative deadline is 17 April 2007.

## JURISDICTION

5. As a result of this transaction Johnston and the Business will cease to be distinct. The OFT believes that the share of supply test in section 23 of the Act is met with regard to the supply of local weekly newspapers in a substantial part of the UK. The City of Glasgow, forming part of the total circulation area of the parties' overlapping titles[4], is in itself a substantial part of the UK. It is also noted in passing that, on the basis of the figures supplied by the parties, the share of supply test would also appear to be met for the whole of Scotland in respect of local weekly newspapers whether including Scottish national titles and/or regional newspapers. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.[5]

### FRAME OF REFERENCE

6. Johnston and the Business overlap in the supply of local weekly newspapers in Scotland.

#### Product market

7. Local newspapers usually have two groups of customers, advertisers (which purchase advertising space to promote their goods and/or services) and readers. As the OFT's competitive analysis is restricted to the

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[4] Paragraph 3 of the OFT's decision regarding the anticipated acquisition by Johnston Press plc of Thorne and District Gazette and associated titles (May 2005).

[5] Johnston contested jurisdiction on the basis that the OFT must posit some nexus between a finding on share of supply in relation to a substantial part of the UK and the geographic areas affected by the transaction and, in this case, it considered that none of the areas deemed to be affected and giving rise to a share of supply in excess of 25 per cent are of a sufficient size, character and importance to merit analysis under the Act. As noted in its decision regarding the completed acquisition by Vue Entertainment Holdings (UK) Limited of A3 Cinema Limited including its subsdiary, Ster Century (UK) Limited (September 2005), the OFT does not accept that a nexus is required by the Act between the areas in which the share of supply test is met and 'any market or markets in the United Kingdom for goods or services' (for the purposes of section 33(1) of the Act) in relation to which a relevant merger situation can result in a substantial lessening of competition.

consideration of free newspapers, the following assessment is focused on advertisers and readership impact is not considered further.[6]

8. Johnston submits that national (weekly/daily) newspapers do not form part of the same product market as local newspapers but local daily newspapers impose a considerable competitive constraint on advertising rates in local weekly (paid-for and free) newspapers. Johnston also submits that local newspaper publishing is constrained by non newspaper media.[7]

9. Past CC reports[8] into the local newspaper publishing industry have generally concluded that national newspapers should be considered in a separate frame of reference to local newspapers. The CC has also concluded in such reports that local weekly free and paid-for newspapers are substitutes, while local daily newspapers are typically poor substitutes to weekly titles. In respect of advertising in non-print media, the CC has previously concluded that this does not, in general, act as an effective substitute to local newspaper advertisement, although advertising-only publications may provide some competitive constraint to advertising in local newspapers to a varying extent (and particularly in some specific advertising sectors).

10. While some of the CC investigations referred to above were conducted some time ago, the OFT has not been presented with sufficient evidence in the course of this investigation to suggest a departure from the general lines of approach taken by the CC as regards the product frame of reference. For example, the majority of third parties which responded to the OFT's investigation opined that they would not switch from a local weekly newspaper to another type of advertising medium if rates were to increase by five to ten per cent. Therefore, the impact of this transaction has been analysed narrowly in respect of local weekly newspapers.

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[6] Those of the Titles which overlap with Johnston local weekly titles (see paragraph 14 below) are free papers. Therefore, cover price is not relevant and the impact on editorial content is considered to be minimal.

[7] Johnston mentions other forms of print media, such as advertising-only publications, specialist niche publications, magazines, directories, leaflets and direct mail, as well as other media types such as the internet, radio and television advertising.

[8] 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 transfers of Regional Independent Media's newspapers and assets to Gannett, Johnston Press and Guardian Media Group (November 2000).

However, given that no competition concerns arise even at this level, it has not been necessary to conclude on any wider product market definition.

**Geographic market**

11. The geographic frame of reference in considering the supply of advertising in local newspapers depends principally on the areas targeted by advertisers in a particular paper. In line with past CC reports, Johnston submits that the appropriate definition of the relevant geographic market for local newspapers is local in dimension and this is typically taken to involve consideration of the 'geographic footprint' of the merging newspapers (the total area within which they circulate) and the JICREG (Joint Industry Committee for Regional Press Research[9]) areas within each footprint.[10]

12. Again, the OFT has not been presented with sufficient evidence in the course of its investigation to suggest a departure from the CC's previous approach. For example, third party advertisers confirmed to the OFT that in general they would not consider switching to national newspapers or titles outside of their given locality in response to an increase in advertising rates by five to ten per cent. Therefore, the competitive effects of the acquisition have been assessed locally by reference to the JICREG areas in which the circulation footprints of the Titles and Johnston titles overlap to analyse the options available to advertisers seeking to reach readers of local weekly newspapers in such localities. However, for the purposes of this case, it is not necessary to conclude on the geographic frame of reference as no competition issues are raised even at this narrowest candidate level.

## HORIZONTAL ISSUES

13. In its past reports (referred to above), the CC has identified a series of tests or 'rules of thumb' which can be applied to assess whether local

[9] This refers to the industry body which operates a database collating data on its paying member publications. JICREG areas are formed of groups of local contiguous postcodes in which newspapers circulate, deemed useful for advertising purposes.

[10] The proposed transfer of eight Trinity Mirror titles to Johnston Press (May 2002) and Newsquest's proposed acquisition of the London newspapers of Independent News and Media Limited (October 2003). As local newspapers do not typically have exact overlapping footprints and the desired catchment areas for any specific advertiser may only partially be covered by the footprint of a particular local newspaper, the precise boundary of the geographic frame of reference in any particular case is difficult to determine.

newspaper mergers give rise to competition concerns. Any JICREG area where the titles of either of the merging parties have a 'penetration rate' below 10 per cent is excluded from the analysis as not being relevant to the competition assessment.[11] For those areas which are not excluded, it is considered whether there are significant overlaps in JICREG areas between the merging titles (for example, a combined post-merger share of 50 per cent or more of total circulation with an increment of 10 per cent or more) and, if so, whether there will be significant competition imposed by local newspapers from other publishers in these areas. In addition, the assessment primarily focuses on so-called JICREG 'core areas' which are construed as those which account for at least 30 per cent of the total circulation of the title to be acquired.[12] The OFT has applied these criteria in the present case to provide a framework for assessing competition in this transaction.

**Market shares**

14. Johnston has no local weekly titles which overlap with five of the Titles (the *Buchan Observer*, *Fraserbugh Herald*, *Ellon Times*, *Paisley and Renfrewshire Extra*, and *Ayrshire Extra*[13]). Each of the remaining three titles which are being acquired (*Glasgow South and Eastwood Extra*, *Bearsden, Milngavie and Glasgow Extra*, and *Lanarkshire Extra Group*[14]) are free weekly titles circulating in conurbations to the north and east of Glasgow. The following assessment focuses on competition in each JICREG areas where each of these titles has a penetration rate in excess of 10 per cent and the merger results in an overlap with Johnston local weekly newspapers.

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[11] Penetration rate is calculated by JICREG as the circulation volume of a particular newspaper title in a JICREG area divided by the total number of households in that area. The 10 per cent threshold reflects that in areas of low penetration an acquired title is unlikely to attract significant coverage of news, or be considered an effective advertising medium, for that locality.

[12] Where a local area is not core, the CC has held that it is unlikely that a merged entity would wish, for example, to raise advertising rates as this would impact negatively on the ability to attract advertisers in core areas.

[13] The Newspaper Society database (www.nsdatabase.co.uk/) lists the *Ayrshire Extra* as circulating in two JICREG areas, Girvan and Maybole, where a Johnston local title (*Carrick Gazette & Girvan News*) also circulates. However, Johnston has submitted to the OFT that the database entry is factually inaccurate as the *Ayrshire Extra* does not in fact circulate in these areas and, therefore, no overlap exists between the parties in relation to this title. External confirmation of the latter was provided to the OFT during the course of its investigation and, in light of this, the *Ayrshire Extra* is not considered further.

[14] *Lanarkshire Extra Group* is printed in three editions: *North Lanarkshire Extra*; *South Lanarkshire Extra*; and, *Strathaven Extra*.

15. **Glasgow North** – Post-transaction, Johnston will have a combined share of circulation of 35-40 per cent (increment less than 10 per cent) in this area. It will supply five titles: two Archant titles (*Bearsden, Milngavie and Glasgow Extra* and *Glasgow South and Eastwood Extra*[15]); and three Johnston titles (*Kirkintillock Herald*, *Strathkelvin Advertiser* and *Glasgow East News*). While Glasgow North is a core circulation area of *Bearsden, Milngavie and Glasgow Extra* (accounting for between 65-70 per cent of its distribution), this does not apply to any of the Johnston titles. Further, Johnston will face continued competition from *The Glaswegian* (a Trinity Mirror free weekly newspaper with its core circulation area in Glasgow North). The OFT therefore believes that the loss of any competitive constraint resulting from the merger in this JICREG area is not significant.

16. **Milngavie** – The parties have a post-merger combined share of circulation of 80-85 per cent (increment 40-45 per cent) and supply two titles (*Bearsden, Milngavie and Glasgow Extra* and Johnston's paid-for *Milngavie & Bearsden Herald*). While the latter circulates in Milngavie and Bearsden, Milngavie accounts for only around 10 per cent of the total circulation of *Bearsden, Milngavie and Glasgow Extra* – the circulation of which is focused on a wider area.[16] Further, the parties also face competition in this JICREG area from a local weekly paid-for newspaper, the *Arran Banner*[17], as well as *The Glaswegian* (which appears to be the closest constraint on *Bearsden, Milngavie and Glasgow Extra* as it overlaps across its entire circulation footprint). Therefore, the OFT does not believe that there is a realistic prospect that any substantial competition issues will arise in this JICREG area.

17. **Bearsden** – The parties' two titles (*Bearsden, Milngavie and Glasgow Extra* and *Milngavie & Bearsden Herald*) mentioned directly above also circulate in Bearsden and have a post-merger combined share of 65-70 per cent (increment 20-25 per cent). Bearsden only accounts for just over 20 per cent of the Archant title's total circulation. Based on this fact, taken in conjunction with existing competition from other titles which circulate in

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[15] As this title only distributes 138 copies in JICREG Glasgow North (as confirmed by the OFT from the JICREG database) and does not overlap in circulation with Johnston titles in any other area, the OFT does not believe that its acquisition raises any substantial competition issues and it is not considered further.

[16] For example, Johnston has confirmed that the two papers did not have any of their top 20 advertisers in common in 2006.

[17] Published by Oban Times Ltd.

this area (*The Glaswegian*, in addition to the *Arran Banner* and *Clydebank Post*[18]), the OFT does not believe that there is a realistic prospect that the competitive position in this JICREG area will be substantially affected by the transaction.

18. **Uddingston Bothwell** – Post-transaction, Johnston will supply two titles (Archant's *Lanarkshire Extra Group* and Johnston's paid-for *Motherwell Times Series*) in this JICREG area with a combined share of circulation of 35-40 per cent. The increment to the share of supply is low – less than 5 per cent – and as Uddingston Bothwell accounts for less than 5 per cent of *Lanarkshire Extra Group*'s total circulation, the OFT does not believe that there is a realistic prospect of a substantial lessening of competition in this area.

19. **Wishaw** – As with Uddingston Bothwell, Johnston will supply two titles in this area (*Lanarkshire Extra Group* and *Motherwell Times Series*). Johnston's post-merger share of circulation is also similar to Uddingston Bothwell at 35-40 per cent and the increment low (less than 5 per cent). Taken in conjunction with the fact that the Wishaw area accounts for less than 15 per cent of *Lanarkshire Extra Group's* total circulation, the OFT does not believe that there is a realistic prospect that the merger will substantially lessen competition in Wishaw.

20. **Carluke** – Post-transaction, Johnston will supply two newspapers in this JICREG area (*Lanarkshire Extra Group* and Johnston's paid-for *Lanark & Carluke Gazette*). Despite a high combined share of circulation in this area (approximately 90 per cent, with an increment of approximately 40 per cent), Carluke accounts for less than 10 per cent of the total circulation of *Lanarkshire Extra Group*. Considered together with the competitive constraint posed by Trinity Mirror's paid-for *Hamilton Advertiser* which also circulates in this area, the OFT does not believe that there is a realistic prospect of a substantial lessening of competition as a result of this merger.

21. **Bellshill** – Post-transaction, Johnston will have a high combined share of circulation of 90-95 per cent (increment approximately 35 per cent) in this area, supplying two titles (*Lanarkshire Extra Group* and *Motherwell Times Series*[19]). While the latter circulates in four areas (focused on Bellshill and

[18] Published by Clyde & Forth Press Ltd.
[19] Where the edition is named the *Bellshill Speaker*.

Motherwell), Archant's *Lanarkshire Extra Group* circulates in twice as many JICREG areas around the West of Scotland and is, therefore, more broad-ranging in coverage.[20] As Bellshill accounts for 15-20 per cent of the total circulation of *Lanarkshire Extra Group* and Johnston will continue to be closely constrained by the Trinity Mirror's *Hamilton Advertiser* (which overlaps in all eight areas in which *Lanarkshire Extra Group* is distributed), the OFT does not believe that there is a realistic prospect that any substantial competition issues will arise in this JICREG area.

22. **Motherwell** – Johnston's post-transaction share of circulation is 85-90 per cent (increment approximately 35 per cent) again in relation to the two titles mentioned above (*Lanarkshire Extra Group* and *Motherwell Times Series*). Like Bellshill, Motherwell only accounts for a fairly small proportion of *Lanarkshire Extra Group*'s total circulation (20-25 per cent) and Johnston will continue to face competition from other local weekly newspapers, including the *Arran Banner*, *Airdrie & Coatbridge Advertiser*[21], *Wishaw Press* and *Hamilton Advertiser*. Therefore, the OFT does not believe that there is a realistic prospect of a substantial lessening of competition in the Motherwell area.

**Barriers to entry and expansion**

23. Johnston submits that barriers to entry and expansion for local weekly newspapers (in particular for free titles) are low and, therefore, any attempt post-merger to raise advertising rates would be constrained by launch or expansion opportunities for other newspaper publishers active in or around the areas affected by the transaction. Johnston has also provided examples of local newspapers that have been launched in Scotland in the last few years, together with evidence relating to recent launches of three new free local newspapers in the west and south of Glasgow.

24. While past CC reports referred to above have identified various barriers to entry in local newspaper publishing (including economies of scale, costs linked to investment in editorial content, marketing and sales costs, printing facility access and potential competitive responses by incumbent titles), given the lack of competition issues raised in relation to this transaction the

[20] For example, Johnston has confirmed that the two papers only had two of their top 20 advertisers in common in 2006.
[21] Published by Trinity Mirror.

OFT did not consider it necessary to assess such factors in detail nor to reach a firm conclusion on barriers to entry or expansion in this case.

**Buyer power**

25. Some third parties opined that they would consider sponsoring entry of new local newspapers in their area depending, for example, on the potential appropriateness of the advertising audience. Given the lack of competition issues arising in this case, however, the OFT does not consider it necessary to reach a firm conclusion on buyer power.

## VERTICAL ISSUES

26. No vertical concerns arise as a result of the transaction.

## THIRD PARTY VIEWS

27. The OFT received a small number of third party views in it investigation, most of which were positive about the transaction. One third party response was concerned about the effect of the merger on non-competition issues.

## ASSESSMENT

28. The parties overlap in the publication of local weekly newspapers in Scotland, from which revenues are received from advertisers and in relation to which the impact of this transaction has been considered.

29. At the narrowest level of product and geographic scope, the OFT considers that local weekly newspapers can be considered by reference to the JICREG areas in which the circulation footprint of the Titles and Johnston titles overlap. However, the OFT has not deemed it necessary to conclude on exact product or geographic frames of reference in relation to its assessment of this transaction as the competitive analysis is unchanged whatever definitions are used.

30. Johnston does not have any local weekly titles in the JICREG areas where the majority of the Titles circulate, however, there are overlaps with two of Archant's free newspapers (*Bearsden, Milngavie and Glasgow East News* and *Lanarkshire Extra Group*) which circulate around the north and east of

Glasgow. The OFT, therefore, carried out a competition assessment in relation to each overlapping JICREG circulation area in respect of these two newspaper titles using rules of thumb applied by the CC in previous local newspaper investigations.

31. The core area of *Bearsden, Milngavie and Glasgow East News* is North Glasgow. The evidence provided to the OFT indicates that in this area (in which three of Johnston's titles also circulate) there is sufficient competitive constraint imposed by other newspapers including Trinity Mirror's *The Glaswegian* (which appears to be the title's closest constraint as it overlaps across its entire circulation footprint). In the other JICREG areas in which *Bearsden, Milngavie and Glasgow East News* overlaps with Johnston titles (Milngavie and Bearsden), there are a number of alternative titles in circulation which would again mitigate any attempt by Johnston to raise advertising rates from the levels they would have been absent the transaction. No third party concerns were received by the OFT in relation to these areas.

32. *Lanarkshire Extra Group* circulates in eight JICREG areas in the West of Scotland, in relation to five of which there is an overlap with a Johnston local weekly newspaper title. In two areas (Uddingston Bothwell and Wishaw) the increment to the combined share of circulation is small (less than 5 per cent). In the other three areas (Carluke, Bellshill and Motherwell) Johnston will have high shares (around 90 per cent), and the increments are fairly large (35-40 per cent). However, none of these areas individually account for more than 25 per cent of the total circulation of *Lanarkshire Extra Group*. Taken in conjunction with existing effective competitive constraints from other newspapers in these areas, including Trinity Mirror's *Hamilton Advertiser* (which overlaps in all eight JICREG areas in which *Lanarkshire Extra Group* is distributed), and a lack of third party concerns, the OFT believes that the loss of any competitive constraint in these areas as a result of this transaction will not be significant.

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

## DECISION

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